

# TOWN OF UNDERHILL

## Development Review Board

PETER DUVAL  
COURT ORDERED CONDITIONAL USE REVIEW  
Docket #: DRB-17-16(2)

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Applicant(s):	Peter Duval
Consultant/Representative:	Wilcox & Barton, Inc.
Property Location:	25 Pine Ridge (PR025)
Acreeage:	±5.00 Acres (Grand List) / ±5.23 Acres (ArcMap)
Zoning District(s):	Water Conservation

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### ***Background:***

On June 29, 2018, the Development Review Board rejected Mr. Duval's (the "Applicant") conditional use review application to convert his single-family dwelling with an accessory dwelling (see § 5.4.B.4 regarding this assertion) to a multi-dwelling structure. After the denial of his reconsideration request, Mr. Duval subsequently appealed the decision to the Environmental Division of the Superior Court. After back and forth motions from both sides regarding the scope of his appeal, the Town submitted a motion to the court requesting the application be remanded back to the Town's Development Review Board for two reasons: 1) the DRB should have the opportunity in the first instance to review a complete set of the necessary application materials from Mr. Duval prior to the court's review, and 2) to help narrow the issues being litigated by hopefully disposing of unresolved issues. On May 21, 2019, the Court granted the motion (see Exhibit FFF), specifically stating:

"We . . . **GRANT** the Town's motion for remand and **REMAND** this matter back to the DRB for further review of the wastewater system design as it relates to conditional use standards. Mr. Duval shall submit the requested evidence within 60 days or risk dismissal of his application and appeal for a failure to prosecute. All other unrelated matters in this docket are stayed pending the conclusion of the DRB's actions on remand." *[Emphasis Added]*

On Monday, July 15, 2019, Mr. Duval submitted the enclosed materials for the Board to review, specifically:

- A copy of a Town's motion to the Court titled: "Memorandum in Opposition to Appellant's Motion for Reconsideration," and
- A copy of the attachments included in his motion to the Court titled: "Response to the Town's Motion to Remand."

Contained within those attachments to Mr. Duval's motion (titled: "Response to the Town's Motion to Remand") was a copy of a site plan that was part of a wastewater design prepared by Wilcox & Barton, Inc., dated January 30, 2019. The document on its face indicated it was page 1 of 2.

On Wednesday, July 17, 2019, Staff reached out to Mr. Duval advising that the submitted materials did not contain a complete wastewater system design, as only a site plan was involved in the submitted materials. Staff asked Mr. Duval to submit the second page of the plans and a complete set of the wastewater system design information. In addition, Staff also inquired if Mr. Duval could confirm that the wastewater system design complies with the recently adopted 2019 State wastewater rules & regulations (for reasons explained below). Lastly, Staff informed Mr. Duval that he would be writing a staff report on the information provided **BEFORE** the 60 day deadline (Saturday, July 20, 2019).

On Friday, July 19, 2019, Mr. Duval submitted Page 2 of his wastewater plan, while also making the following objections:

1. "The DRB does not have authority to regulate wastewater;
2. Giving specific attention to wastewater systems, the ULUDR are inconsistent with Vermont Laws;
3. Vermont law is clear regarding municipal involvement in wastewater systems – only notice of certain events and coordination of permits is allowed by statute;
4. The DRB makes new demands for information that is well-beyond the allowed scope of its review, even after having already reached a final decision." (see HHH)

In response to Staff's inquiry about the wastewater system design complying with the 2019 State wastewater rules & regulations, Mr. Duval stated the following:

"I filed my application with the DRB, November 2, 2017. The zoning ordinance that were in effect at that time are the ordinance that the DRB may use to review the project. I have provided an engineered drawing of a wastewater system design that I would like to build. The DRB asked for AFTER it made its final decision and well into the appeal process – an outrageous abuse of the process. The wastewater system design speaks for itself when the DRB is finished with its attempt to regulate the design, I will make my application to ANR and they will determine whether it merits a Wastewater System and Potable Water Supply Permit." (see Exhibit HHH)

Based on the correspondence outlined above, Staff infers that the Applicant believes that the Board does not have authority to consider whether his wastewater system design complies with current wastewater regulations when considering his conditional use application against the applicable criteria.

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### ***Review of the Board's Rationale of Denial***

Prior to his appeal to the Environmental Court, the Board denied Mr. Duval's conditional use review application for various reasons (see the Board's decision: DRB Decision #: DRB-17-16, Exhibit GGG), which are outlined directly below:

1. Mr. Duval failed to submit various items requested in the DRB's February 15, 2018 memorandum related to slopes, erosion control techniques, stormwater management, the wastewater system, and bedrooms in each unit.
2. Mr. Duval failed to satisfy or address various aspects of the zoning regulations:
  - a. The purpose statement of the Water Conservation District due to the lack of a wastewater system design (Article II, Table 2.4);
  - b. Various aspects of the parking, loading & service area requirements (§ 3.13);
  - c. The source protection area requirements due to the lack of a wastewater system

- design (§ 3.17);
  - d. Various aspects of the steep slopes requirements, mainly due to the lack of a wastewater system design (§ 3.18)
  - e. Various aspects of the surface waters & wetlands requirements (§ 3.19) due to the lack of a wastewater system design;
  - f. The water supply & wastewater system requirements (§ 3.22); and
  - g. Landscaping and screening requirements largely because of the inconsistencies between the submitted site plan at the time (previous Exhibit UU) and the “walk along videos (Exhibits VV – Exhibit CCC).
3. Mr. Duval failed to submit sufficient evidence that the project satisfied the character of the area of the Water Conservation District as it relates to the purpose statement of that district since a wastewater system design was not submitted;
  4. The Board found that the project did not conform with the character of the area as outlined in that decision under Section 5.4.B.2.
  5. The proposed project was not support by the Town Plan, which encourages denser, compact development in the traditional village centers.

***The Board’s Task as it Relates to the Court Order***

Based on the materials that Mr. Duval submitted on July 15 and 19, the Board is to review the wastewater system design as it relates to the conditional use review criteria. This includes revisiting the aforementioned reasons for denial to determine if any findings have changed. Additionally, should any indirect conclusions be made as a result of the submitted wastewater design plan, the Board can update its previous findings on the issue.

**2018 UNDERHILL UNIFIED LAND USE & DEVELOPMENT REGULATIONS  
RELEVANT REGULATIONS:**

- Article II, Table 2.6 – Mt. Mansfield Scenic Preservation (pg. 21)
- Article III, Section 3.2 – Access (pg. 30)
- Article III, Section 3.7 – Lot, Yard & Setback Requirements (pg. 38)
- Article III, Section 3.11 – Outdoor Lighting (pg. 41)
- Article III, Section 3.13 – Parking, Loading & Service Areas (pg. 44)
- Article III, Section 3.14 – Performance Standards (pg. 46)
- Article III, Section 3.17 – Source Protection Areas (pg. 55)
- Article III, Section 3.18 – Steep Slopes (pg. 56)
- Article III, Section 3.19 – Surface Waters & Wetlands (pg. 63)
- Article III, Section 3.23 – Water Supply & Wastewater Systems (pg. 68)
- Article V, Section 5.1 – Applicability (pg. 112)
- Article V, Section 5.3 – Site Plan Review (pg. 115)
- Article V, Section 5.4 – Conditional Use Review (pg. 120)
- Article V, Section 5.5 – Waivers & Variances (pg. 123)
- Article VI – Flood Hazard Area Review (pg. 127)

**CONTENTS:**

- a. Exhibit EEE - Duval Court Ordered Conditional Use Review Staff Report
- b. Exhibit FFF - Court Order

- c. Exhibit GGG - DRB Decision #: DRB-17-16
- d. Exhibit HHH - Email Correspondence from Mr. Duval, Dated 07/19/2019
- e. Exhibit III - Wastewater System Design Site Plan, Dated 01/30/2019
- f. Exhibit JJJ - Wastewater System Design Details, Dated 01/18/2019
- g. Exhibit LLL - ANR Atlas Surface Waters Map
- h. Exhibit MMM - Miscellaneous Materials Submitted by Mr. Duval
- i. Exhibit NNN - Correspondence from Halls
- j. Exhibit OOO - Duval (PR025) Court Ordered Conditional Use Hearing Procedures

## STAFF FINDINGS OF RELEVANT SECTIONS

### ARTICLE II – ZONING DISTRICTS

	Water Conservation District Requirements	Existing Lot (Single-Family Dwelling)	Existing Lot (Proposed Development)
<b>Lot Size:</b>	5.0 Acres	±5.0 Acres	±5.0 Acres
<b>Frontage:</b>	300 Feet	±304 Feet	±304 Feet
<b>Setbacks:</b>			
• Front North	30 ft. (Prin) / 30 ft. (Acc)	±112 Feet	±74
• Side 1 West	50 ft. (Prin) / 20 ft. (Acc)	±26 Feet	±75
• Side 2 East	50 ft. (Prin) / 20 ft. (Acc)	±97 Feet	±97
• Rear South	50 ft. (Prin) / 20 ft. (Acc)	±813 Feet	>400
<b>Max. Building Coverage:</b>	20%	Assumed Met	Assumed to be Met
<b>Max. Lot Coverage:</b>	30%	Assumed Met	Assumed to be Met
<b>Maximum Height:</b>	35 Feet	Assumed Met	Assumed to be Met

**ARTICLE II, TABLE 2.4 – WATER CONSERVATION DISTRICT (PG. 15)**

**Purpose Statement:** To protect the important gravel aquifer recharge area in Underhill Center.

The Applicant has submitted a site plan (Exhibit III), dated January 30, 2019, depicting the location of the wastewater system, as well as the information relating to the details of the wastewater system, dated January 18, 2019 (Exhibit JJJ). Staff notes that the wastewater system design submitted for review predates the Agency of Natural Resources (ANR) new Wastewater System & Potable Water Supply Rules – effective as of April 12, 2019. As a result, since the Applicant did not submit a Wastewater System & Potable Water Supply Permit application prior to the new wastewater regulations being promulgated, should the Applicant submit the current design to ANR, there is no assurance that the design subject to this review will be approved and a permit issued.

The Board typically relies on a wastewater design, designed under current State Wastewater System Regulations, to satisfy the presumption that the wastewater system will not pollute the surrounding environment. This policy is supported by the following findings in its decision (DRB-17-16, Exhibit GGG):

- Section 3.22, regarding Water Supply & Wastewater Systems:

“The Board largely relies on a wastewater system and potable water supply design plan or correspondence from the Department of Environmental Conservation as evidence that adequate wastewater capacity and water supply will be provided.”

- Section 3.17, regarding Source Protection Areas, of that decision, the Board stated the following:

“The Board finds that the attainment of a State of Vermont, Department of Environmental Conservation Wastewater System & Potable Water Supply Permit, or the submission of a wastewater system design plan, creates the presumption that the applicant will not contaminate the nearby soils, surface water, and groundwater.”

Based on the information above, as well as the submitted information, the Board will need to evaluate whether the Applicant has satisfied the Board’s own policy regarding the presumption that the wastewater system design will not pollute to surrounding environment.

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## **ARTICLE II – ZONING DISTRICTS**

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### **ARTICLE III – GENERAL REGULATIONS**

#### **SECTION 3.2 – ACCESS (PG. 27)**

Staff finds that no new information can be inferred from the submitted site plan pertaining to the wastewater system design (Exhibits III & JJJ) as compared to the previous site plan (Exhibit UU).

#### **SECTION 3.3 – CONVERSION OR CHANGE OF USE (PG. 30)**

Staff finds that no new information can be inferred from the submitted site plan pertaining to the wastewater system design (Exhibits III & JJJ) as compared to the previous site plan (Exhibit UU), and that the applicant has already satisfied the requirements of this section.

#### **SECTION 3.4 – EQUAL TREATMENT OF HOUSING (PG. 31)**

Staff finds that the Board’s findings relating to this Section were in response to various assertions made by the Applicant during its previous review. Review at this time seems unnecessary.

#### **SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS (PG. 35)**

Staff finds that the proposed use remains the same – a four-unit, multi-family dwelling. As proposed, the structure will satisfy the dimensional requirements, which includes the frontage and setback requirements (see Table Above). No district dimensional waivers in accordance with Section 3.7.E have been requested.

#### **SECTION 3.11 – OUTDOOR LIGHTING (PG. 38)**

Staff finds that no new information can be inferred from the submitted site plan pertaining to the wastewater system design (Exhibits III & JJJ) as compared to the previous site plan (Exhibit UU), and that the Applicant has already satisfied the requirements of this section.

#### **SECTION 3.13 – PARKING, LOADING & SERVICE AREAS (PG. 41)**

Staff finds that no new information relating to this Section has been submitted, and that the issues identified in the Board’s decision (DRB-17-16, Exhibit GGG) remain unresolved. The Board found the following issues with the parking:

- The utilization of tandem parking;
- Vehicular circulation encroaching upon the handicapped parking space, and vice versa;
- The snow removal area being located in an area not easily accessible; and
- The lack of evidence relating to the number of bedrooms, which could impact the number of parking spaces required.

While the wastewater system design denotes that the system will be designed for a four unit, multi-family building, with 3 bedrooms per unit (i.e. a 12 bedroom structure), no documentation explicitly stating so has been submitted. Additionally, Staff is unable to say with certainty that the proposed wastewater system design will conform with the newly promulgated 2019 Wastewater Rules (effective as of April 12, 2019), potentially resulting in a system that can only serve a structure with a smaller demand.

**SECTION 3.14 – PERFORMANCE STANDARDS (PG. 43)**

In regards to this Section, Staff finds that no new information can be inferred from the submitted site plan pertaining to the wastewater system design (Exhibits III & JJJ) as compared to the previous site plan (Exhibit UU). Additionally, the Board found that the Applicant has already satisfied the requirements of this section.

**SECTION 3.17 – SOURCE PROTECTION AREAS (PG. 52)**

Staff finds that the Applicant has submitted a wastewater system design, dated January 18 & 30, 2019. As outlined in the Board’s decision (DRB-17-16, Exhibit GGG), a submitted wastewater system design designed under the current wastewater regulations typically creates the presumption that the project will not harm the source protection area, in this case an active groundwater source protection area. As explained above, the submitted design predates the newly promulgated 2019 Wastewater Rules (effective as of April 12, 2019), and therefore, Staff is unable to say with certainty that the aforementioned presumption is satisfied.

Based on the information above, as well as the submitted information, the Board will need to evaluate whether the Applicant has satisfied the requirement that the wastewater system design does not pollute to surrounding environment.

**SECTION 3.18 – STEEP SLOPES (PG. 53)**

Staff finds that the Applicant has submitted a wastewater system design, dated January 18 & 30, 2019. As outlined in the decision (DRB-17-16, Exhibit GGG), areas of steep slope (15%-25%) or very steep slopes (>25%) on the property have been identified. As explained above, the submitted design predates the newly promulgated 2019 Wastewater Rules (effective as of April 12, 2019), and therefore, Staff is unable to say with certainty that the site location presented on the site plan (Exhibit III) will remain the same should any amendments to the system be required.

As currently configured, the system is 60 ft. wide and is proposed to be sited in an area that rises between 9 and 9.5 ft. Therefore, the depicted wastewater system seemingly impacts a slope of 15.0% to 15.8%. The Board should determine whether they have enough information to evaluate the project as it relates to this Section. Staff also notes that this information was requested by the Board in its February 15, 2018 memorandum to the Applicant as Request Item #1.a., which the Applicant has still failed to submit.

Lastly, Staff notes that if the Board concludes that the wastewater system impacts steep slopes, then the Board would be reviewing the impact to steep slopes, not reviewing the wastewater design system itself, as the Applicant contends.

**SECTION 3.19 – SURFACE WATERS & WETLANDS (PG. 60)**

Staff finds that the Applicant has submitted a wastewater system design, dated January 18 & 30, 2019. As outlined in the Board’s decision (DRB-17-16, Exhibit GGG), the Board was unable to say with certainty that the “approximate proposed leach field area” would meet the setback requirements from Crane Brook, especially since Crane Brook was not identified on the site plan. The Board also noted that Crane Brook is within a floodplain, and therefore, the leach field would need to be sited at least 100 ft. from the “top of bank” In accordance with §§ 3.19.D.1 & 3.19.D.4.

In reviewing the submitted site plan (Exhibit III), it fails to identify Crane Brook, thus complicating the review process. When comparing the Site Plan (Exhibit III) and the ANR Atlas Website, specifically the depiction of Crane Brook (Exhibit LLL), Staff found that there is sufficient evidence to reasonably believe that the edge of the wastewater design system is within the 100 ft. buffer requirement under §§ 3.19.D.1 & 3.19.D.4; however, notes that there is uncertainty due to the lack of information provided on the site plan.

The aforementioned measurement is based on the assumption that the current layout conforms with the 2019 Wastewater Rules. However, as outlined in this staff report, there is no certainty that the current design will remain the same should any modifications be required should the design not meet aspects of the 2019 State Wastewater Regulations.

**SECTION 3.22 – WATER SUPPLY & WASTEWATER SYSTEMS (PG. 65)**

Staff finds that the Applicant has submitted a wastewater system design, dated January 18 & 30, 2019. As outlined in the decision (DRB-17-16, Exhibit GGG), the Board acknowledges that it typically relies on a wastewater system design as evidence that adequate wastewater capacity and water supply will be provided. Staff is unable to verify that the wastewater system design submitted by the Applicant will not be subsequently amended after this review if the submitted design requires amendments in order to conform with the 2019 State Wastewater Regulations.

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**ARTICLE VI – SPECIFIC USE STANDARDS**

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**SECTION 4.12 – HOME BUSINESS (HOME OCCUPATION, HOME INDUSTRY) (PG. 82)**

Staff finds that no new information relating to this Section has been submitted, and notes that the Applicant acknowledged that he abandoned this idea during the previous review process (DRB-17-16, Exhibit GGG). Should the Applicant reengage with the home business idea, further review may be required.

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**ARTICLE V – DEVELOPMENT REVIEW**

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**SECTION 5.1 – APPLICABILITY (PG. 105)**

Staff finds that conditional use review is required per Article II.

**SECTION 5.3 – SITE PLAN REVIEW (PG. 108)**

Section 5.3.A – Purpose (pg. 108): When reviewing a conditional use review application, site plan review is also required per Section 5.4.C.

Section 5.3.B – Standards (pg. 108): The Board may wish to consider and impose appropriate safeguards, modifications and conditions relating to any of the following standards:

Section 5.3.B.1 – Existing Site Features (pg. 108): Staff finds that the Applicant has submitted a wastewater system design, dated January 18 & 30, 2019. As outlined in the decision (DRB-17-16, Exhibit GGG), the Board found that the previously submitted site plan depicting a “proposed approximate leach field” was conceptual in nature, thereby inhibiting the Board from making positive findings regarding the standards enumerated within this section.

Staff is unable to verify that the wastewater system design submitted will not be subsequently changed after this review should modifications be needed in order to comply with the 2019 Wastewater Rules. As a result, Staff is unable to definitively say that the system will not adversely impact the existing site features enumerated within this subsection, specifically steep slopes (§ 5.3.B.1.a.iii) and surface waters and associated buffers (§ 5.3.B.1.a.iv).

Other issues that remain unaddressed from the Board’s previous decision are:

- Drainage Patterns (§ 5.3.B.1.a.i);
- Wetlands and associated buffers (§ 5.3.B.1.a.iv); and
- Special flood hazards areas under Article VI (§ 5.3.B.1.a.v)

Section 5.3.B.2 – Site Layout & Design (pg. 108): Staff finds that no new information relating to this Section has been submitted, and that the Applicant has already satisfied some of the requirements of this section. However, the Applicant has still failed to satisfy other requirements of this section (see the Board’s decision: DRB-17-16, Exhibit GGG), specifically in regards to surface waters. While the Applicant did submit a wastewater system design, dated January 18 & 30, 2019, Staff is unable to verify that the proposed wastewater system design will conform to the buffering requirements for Crane Brook (see Section 3.19 above). The submitted site plan still lacks the information needed to determine if the wastewater system is out of the 100 ft. setback requirement for Crane Brook.

Section 5.3.B.3 – Vehicle Access (pg. 109): Staff finds that no new information can be inferred from the submitted site plan pertaining to the wastewater system design (Exhibits III & JJJ) as compared to the previous site plan (Exhibit UU).

Section 5.3.B.4 – Parking, Loading & Service Areas (pg. 110): Staff finds that no new information can be inferred from the submitted site plan pertaining to the wastewater system design (Exhibits III & JJJ) as compared to the previous site plan (Exhibit UU).

Section 5.3.B.5 – Site Circulation (pg. 110): Staff finds that no new information can be inferred from the submitted site plan pertaining to the wastewater system design (Exhibits III & JJJ) as compared to the previous site plan (Exhibit UU).

Section 5.3.B.6 – Landscaping and Screening (pg. 111): Staff finds that no new information can be inferred from the submitted site plan pertaining to the wastewater system design (Exhibits III & JJJ) as compared to the previous site plan (Exhibit UU).

Section 5.3.B.7 – Outdoor Lighting (pg. 112): See Section 3.11 above.

Section 5.3.B.8 – Stormwater Management and Erosion Control (pg. 112): Staff finds that no

new information can be inferred from the submitted site plan pertaining to the wastewater system design (Exhibits III & JJJ) as compared to the previous site plan (Exhibit UU).

#### **SECTION 5.4 – CONDITIONAL USE REVIEW (PG. 113)**

Section 5.4.A – Purpose (pg. 113): Conditional use review is required to ensure compliance with standards addressing the potential impacts of the proposed development on adjoining properties, the neighborhood, and/or zoning district in which the development is located, and the community at large. Typically, land uses that are subject to conditional use review require that review because of their scale, intensity and potential for off-site impacts.

Section 5.4.B – General Standards (pg. 114): Conditional Use Review shall be granted only if the Board finds that the proposed development will not result in an undue adverse effect on any of the following subsections:

Section 5.4.B.1 – The Capacity of Existing or Planned Community Services or Facilities (pg. 114): Staff finds that the Applicant has submitted a wastewater system design, dated January 18 & 30, 2019. As outlined in the decision (DRB-17-16, Exhibit GGG), the Board acknowledged that it was unable to make findings about the wastewater system depicted in the previous site plan (see Exhibit UU) due to the conceptual nature of the design, and therefore, was unable to confirm that the proposed project would not adversely affect the soils, surface waters, and groundwater in the vicinity.

Staff is unable to verify that the wastewater system design submitted by the Applicant will not be changed following this review should it not conform to the 2019 Wastewater Rules. Therefore, Staff cannot say with certainty that the system will not adversely affect the soils, surface waters, and groundwater in the vicinity.

Section 5.4.B.2 – The Character of the Area Affected (pg. 114): Staff finds that the Applicant has submitted a wastewater system design, dated January 18 & 30, 2019. As outlined in the decision (DRB-17-16, Exhibit GGG), the Board made various findings under this subsection. The two main findings provided under this subsection were:

- The Applicant failed to provide a wastewater system design that demonstrates that a wastewater system will not be adverse to the important gravel aquifer recharge area in Underhill Center, as defined by the Water Conservation District's purpose statement.
- The Applicant failed to submit an application that conforms with the character of area as outlined in Section 5.4.B.2 of that decision (see DRB-17-16, Exhibit GGG for the Board's rationale).

In regards to the first finding directly above, Staff is unable to verify that the submitted wastewater system design will not be adverse to the Water Conservation District's purpose statement (protecting the important gravel aquifer recharge area in Underhill Center) since there is uncertainty as to whether changes will occur following this review. Changes could potentially be required to the submitted designed system should it not meet aspects of the 2019 State Wastewater Regulations. See Table 2.4 and Section 3.22 above for more information.

In regards to other aspects of this subsection, especially in regards to the location, scale,

type, density and intensity, Staff finds that no new information can be inferred from the submitted site plan pertaining to the wastewater system design (Exhibits III & JJJ) as compared to the previous site plan (Exhibit UU).

Section 5.4.B.3 – Traffic on Roads and Highways in the Vicinity (pg. 114): Staff finds that no new information can be inferred from the submitted site plan pertaining to the wastewater system design (Exhibits III & JJJ) as compared to the previous site plan (Exhibit UU), and that the Applicant has already satisfied the requirements of this section.

Section 5.4.B.4 – Bylaws in Effect (pg. 115): Since the Board’s previous decision, there is sufficient evidence to believe that the Applicant has installed an accessory dwelling without the proper permitting prior to the initial filing of his application (November 2, 2017).

Section 5.4.B.5 – The Utilization of Renewable Energy Resources (pg. 115): Staff finds that no new information can be inferred from the submitted site plan pertaining to the wastewater system design (Exhibits III & JJJ) as compared to the previous site plan (Exhibit UU). Additionally, the Board found that the Applicant already satisfied the requirements of this section.

Section 5.4.C – Site Plan Review Standards (pg. 116): Under this subsection, site plan review is required as part of conditional use review. Analysis can be found above under Section 5.3.

Section 5.4.D – Specific Standards (pg. 116): The Board may consider the following subsections and impose conditions as necessary to reduce or mitigate any identified adverse impacts of a proposed development:

Section 5.4.D.1 – Conformance with the Town Plan (pg. 116): Staff finds that no new information can be inferred from the submitted site plan pertaining to the wastewater system design (Exhibits III & JJJ) as compared to the previous site plan (Exhibit UU). Staff refers the Board to their decision (DRB-17-16, Exhibit GGG) for more information.

Section 5.4.D.2 – Zoning District & Use Standards (pg. 116): See Table 2.4 above.

Section 5.4.D.3 – Performance Standards (pg. 116): See Section 3.14 above.

Section 5.4.D.4 – Legal Documentation (pg. 116): Staff finds that no new information can be inferred from the submitted site plan pertaining to the wastewater system design (Exhibits III & JJJ) as compared to the previous site plan (Exhibit UU). Staff refers the Board to their decision (DRB-17-16, Exhibit GGG) for more information.

**SECTION 5.5 – WAIVERS & VARIANCES (PG. 113)**

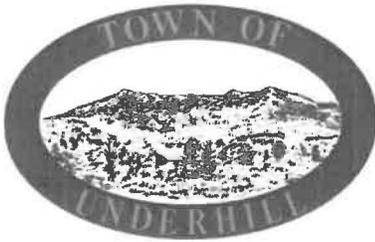
Staff finds that no new information can be inferred from the submitted site plan pertaining to the wastewater system design (Exhibits III & JJJ) as compared to the previous site plan (Exhibit UU). The Applicant has not requested any additional reviews.

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**ARTICLE VI – FLOOD HAZARD AREA REVIEW**

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Staff finds that no new information can be inferred from the submitted site plan pertaining to the wastewater system design (Exhibits III & JJJ) as compared to the previous site plan (Exhibit UU). Additionally, the Board found the Applicant already satisfied the requirements of this section.



***UNDERHILL DEVELOPMENT REVIEW BOARD***

**CONDITIONAL USE REVIEW  
HEARING PROCEDURES  
Monday, August 19, 2019**

**Applicant(s):** Peter Duval  
**Docket #:** DRB-17-16(2)

State the following:

1. This is a court ordered conditional use review hearing on the application of Peter Duval pertaining to the conversion of a single-family dwelling to a multi-family dwelling on the land he owns at 25 Pine Ridge Road (PR025) in Underhill, Vermont. As ordered by the court, the project is remanded "back to the [Development Review Board] for further review of the wastewater system design as it relates to conditional use standards."

Conditional use review is intended to ensure compliance with standards addressing the potential impacts of development on adjoining properties, the neighborhood, and/or zoning district in which the development is located, and the community at large. Typically, land uses are subject to conditional use review because their scale, intensity and potential for off-site impacts warrant more careful scrutiny by the Development Review Board (DRB). Standards and conditions to be imposed relate to the identification, avoidance and/or mitigation of potential impacts.

2. Copies of the Rules of Procedure that the Board follows are available for review at the front counter, and can be obtained from the Planning & Zoning Administrator.
3. The order of speakers tonight will be:
  - a. We will hear from, and ask questions of, the applicant(s) and his or her representative(s);
  - b. Then we will hear and ask questions of the Planning & Zoning Administrator;
  - c. Then we will give other persons in the room a chance to speak. Under our Rules of Procedure, each speaker is limited to five minutes; however, that time can be extended upon request to the Board and majority consent of the Board; then
  - d. The applicant(s) and/or their representative(s) will have an opportunity to respond; then;
  - e. Final comments will be solicited from all parties.

All speakers should address their comments to the Board, not to other parties present at the hearing. Board Members may feel free to ask questions of any speaker.

4. Are any state or municipal representatives present, and acting in their representative capacities?
5. An Interested Parties Info Sheet is available to all attendees at the front counter or from the Planning & Zoning Administrator. Please review it for further information.

***Then state:***

Only those interested persons who have participated, either orally or through written statements in a DRB proceeding may appeal a decision rendered in that proceeding to the Environmental Division of Superior Court.

6. If you are an applicant, representative of the applicant(s), or an interested party who wants to participate in the hearing, we will have you come up to the witness chair and clearly state your name, residential address, and mailing address if it differs.
7. I am now going to swear in all those present who wish to speak tonight. All individuals who plan to testify must take the following oath by responding "I do" at the end: ***"Do you hereby swear that the evidence you give in the cause under consideration shall be the whole truth and nothing but the truth under pains and penalties of perjury?"***
8. Are there any conflicts of interest or have there been any ex parte communications on the part of the Board Members?
9. At this point I am going to enter into the record the information package that was sent by the Planning & Zoning Administrator prior to the hearing. The information included in this package relevant to this hearing is:

Exhibit EEE - Duval Court Ordered Conditional Use Review Staff Report  
Exhibit FFF - Court Order  
Exhibit GGG - DRB Decision #: DRB-17-16  
Exhibit HHH - Email Correspondence from Mr. Duval, Dated 07/19/2019  
Exhibit III - Wastewater System Design Site Plan, Dated 01/30/2019  
Exhibit JJJ - Wastewater System Design Details, Dated 01/18/2019  
*Exhibit KKK [Intentionally Omitted]*  
Exhibit LLL - ANR Atlas Surface Waters Map  
Exhibit MMM - Miscellaneous Materials Submitted by Mr. Duval  
Exhibit NNN - Correspondence from Halls  
Exhibit OOO - Duval (PR025) Court Ordered Conditional Use Hearing Procedures

These exhibits are available in the Duval conditional use review file (DRB-17-16(2) / PR025) at the Underhill Zoning & Planning Office and on the Town's website.

10. We'll begin testimony, and hear from the applicant(s) and/or their representative(s).
11. Next we will hear from the Planning & Zoning Administrator.
12. Are there members of the public who would like to speak?
13. Any final comments from the Board or applicant(s) and/or their representative(s)?
14. Does the Board feel that they have enough information at this time to make a decision on the application?

- a. *If more information is needed to make a decision on the application, continue the hearing to a date and time certain, and outline for the Applicant(s) what is required at that continued hearing; or*
  - b. *If, by consensus, enough information has been presented to make a decision on the application, ask for a motion to close the evidentiary portion of the hearing.*
15. Ask for a motion to approve or deny the application, as well as asking the Board if they wish to discuss the application in open deliberation or closed deliberation session? (After the ruling, continue with the info below.)

“Within 45 days from this hearing, the Planning & Zoning Administrator, on behalf of the Board, will send a copy of the decision to the Applicant(s), their representative(s), and those who have participated in tonight’s hearing. A 30-day appeal period will begin on the date the decision is signed. The letter will outline the next steps in the process. If there are no other comments or questions we will close this portion of the meeting.”

## STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION  
Docket No. 93-8-18 Vtec

## Duval CU Denial

**ENTRY REGARDING MOTION**

Count 1, Municipal DRB Conditional Use (93-8-18 Vtec)

Count 2, Municipal DRB Conditional Use (93-8-18 Vtec)

Title: Motion to Remand (Motion 6)

Filer: Town of Underhill

Attorney: Joseph S. McLean

Filed Date: April 5, 2019

Response in Opposition filed on 05/10/2019 by Peter K. Duval, Appellant

**The motion is GRANTED.**

The present action is an appeal of a conditional use permit denial issued by the Town of Underhill Development Review Board (DRB) related to an application submitted by Peter K. Duval. Mr. Duval seeks to convert a single-family home with an attached accessory dwelling into a 4-unit multi-family dwelling at property he owns at 25 Pine Ridge Road in Underhill, Vermont. Mr. Duval appealed the denial and the Town of Underhill (Town) subsequently cross-appealed, raising additional issues in its Statement of Questions. Presently before the Court is the Town's motion to remand this matter back to the DRB for further consideration of Mr. Duval's application.

"At the request of the tribunal appealed from, the court, at any time prior to judgment, may remand the case to that tribunal for its reconsideration." V.R.E.C.P. 5(i). Rule 5(i) is consistent with the Vermont Supreme Court's analysis in In re Maple Tree Place, in that the Court goes "beyond its role as an appellate tribunal, even under a de novo review standard, to start addressing new issues never presented to the [municipal panel] and on which interested persons have not spoken in the local process." 156 Vt. 494, 500 (1991). Therefore, situations in which remand may be appropriate include, among others, when an issue arises on appeal that was not presented to the lower tribunal, or when our interpretation of a zoning ordinance would be aided by the input of the administrative body responsible for applying it. See Timberlake Assocs. v. City of Winooski, 170 Vt. 643, 644 (2000) (mem.) (citing Maple Tree Place, 156 Vt. at 500).

Important to our present analysis of the pending motion is the factual background of this matter. Mr. Duval submitted his present application in November 2017. A public hearing on the matter was continued twice at his request, with a hearing ultimately occurring on May 7, 2018. In February 2018, the Town Planning Director and Zoning Administrator (ZA) sent Mr. Duval a

letter containing a list of materials the DRB considered necessary to assist them in deciding the merits of Mr. Duval's application.<sup>1</sup>

In its ultimate decision, the DRB concluded that "the applicant did not submit sufficient factual evidence demonstrating that he will be able to attain a Wastewater System & Potable Water Supply Permit" from the Vermont Agency of Natural Resources (ANR). In re: Peter Duval, No. DRB-17-16, slip op. at 10 (Underhill Dev. Rev. Bd. Jun. 28, 2018). It also noted that he failed to submit a wastewater system design plan such that the DRB could confirm the project's compliance with the applicable zoning district requirements. The DRB determined that due to this deficiency it was, in part, unable to render decisions related to regulations pertaining to source protection areas, steep slopes, surface waters and wetlands, and water supply and wastewater systems, among others.

Mr. Duval stated in our October 15, 2018 initial status conference that he intended to submit a wastewater system permit application to ANR by January 1, 2019. As of March 12, 2019, Mr. Duval had not submitted such an application, nor does he state in his opposition that he has since done so.

On February 4, 2019, the DRB approved a resolution to request a remand pursuant to V.R.E.C.P. 5(i). The Town asserts that due to Mr. Duval's failure to submit a wastewater system design, the DRB was never afforded the opportunity to evaluate the proposal's compliance with the relevant regulations in the first instance, so that review by this Court would be improper.

The crux of Mr. Duval's opposition to the pending motion is based on his assertion that the Town is attempting to exert impermissible authority over wastewater system regulation. He argues that ANR is the proper permitting authority.

It is uncontested that the Town is without authority to permit a wastewater system design. The Town, however, is not attempting to do so. Instead, the Town seeks to evaluate the pending application's compliance with the relevant conditional use standards to be applied when the DRB conducts conditional use review. See, e.g., Duval, No. DRB 17-16, at 20. This is a valid exercise of the DRB's authority and not grounds to deny the present motion for remand.

Mr. Duval further argues that the remand will not serve a purpose and is therefore improper. We disagree. Many of the issues Mr. Duval has raised in his Statement of Questions were not considered by the DRB in the first instance due to inadequate evidence. The Court received representations that such evidence would be forthcoming in our present action. While such evidence has yet to be produced, based on its description we conclude that the Town should review it in the first instance for compliance with the applicable regulations.

The Town requests that Mr. Duval submit to the DRB evidence of either a Wastewater System & Potable Water Supply Permit or a wastewater design plan stamped by a professional engineer. It requests that this Court order submittal of such evidence within 60 days of the date of this remand decision, with the risk of dismissal for failure to prosecute his application and appeal if he does not abide by this deadline. See V.R.C.P. 41(b)(2) (authorizing dismissal for

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<sup>1</sup> The list requested information regarding issues of site circulation and site plans, including identification of areas of steep and very steep slope, erosion control techniques for both during and after construction, stormwater management techniques and design both during and after construction, a septic system depiction, identification of the footprint of the proposed buildings on the site plan with boundaries of each dwelling unit, landscaping and screening techniques with locations depicted on the site plan, the building's massing, a traffic impact assessment, information on the adequacy of the water supply, a project phasing plan, and any waivers of variances requested. See Town Ex. A. The ZA also requested additional information if home occupations were proposed.

failure to prosecute). Given the factual and procedural history of this matter, we conclude that such a requirement is reasonable.

We therefore **GRANT** the Town's motion for remand and **REMAND** this matter back to the DRB for further review of the wastewater system design as it relates to conditional use standards. Mr. Duval shall submit the requested evidence within 60 days or risk dismissal of his application and appeal for a failure to prosecute. All other unrelated matters in this docket are stayed pending the conclusion of the DRB's actions on remand.

This concludes the matter before the Court. A Judgment Order accompanies this decision.  
So ordered.

Electronically signed on May 21, 2019 at 08:53 AM pursuant to V.R.E.F. 7(d).



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Thomas G. Walsh, Judge  
Superior Court, Environmental Division

Notifications:

Appellant Peter K. Duval  
Joseph S. McLean (ERN 2100), Attorney for Cross Appellant Town of Underhill  
Interested Person John McNamara  
Interested Person Catherine McNamara  
Interested Person Steve Coddling  
Interested Person Dianne Terry  
Interested Person John Koier  
Interested Person Barbie Koier  
Interested Person Nancy Hall  
Interested Person John Hall  
Interested Person Susan May  
Interested Person Thomas May  
Interested Person John Hardacre  
Interested Person Marilyn Hardacre  
Interested Person David Demuynck  
Interested Person Cathy Leathersich  
Eric G. Derry (ERN 5528), Attorney for party 3 Co-counsel



# Town of Underhill

## Development Review Board

### Conditional Use Review Findings and Decision

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#### CONDITIONAL USE REVIEW APPLICATION BY PETER DUVAL TO CONVERT A SINGLE-FAMILY DWELLING WITH AN ATTACHED ACCESS DWELLING TO A FOUR UNIT, MULTI-FAMILY DWELLING

In re: Peter Duval  
25 Pine Ridge Road  
Underhill, VT 05489

Docket No. DRB-17-16

**Decision:** Denied (see Section IV for More Details)

#### I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns a conditional use application for the conversion of a single-family dwelling with an attached accessory dwelling at 25 Pine Ridge Road in Underhill, Vermont to a four unit, multi-family dwelling. The property is owned by Peter K. & Ellen M. Duval.

- A. On November 2, 2017, the applicant, Peter Duval, submitted hard copies of his conditional use review application to the Planning & Zoning Administrator. The applicant subsequently submitted digital copies of his application on November 4, 2017. Sometime between Monday, November 6, 2017 and Wednesday, November 15, 2017, the application was determined complete. A site visit was scheduled to begin at 8:30 AM on Sunday, December 3, 2017, and the hearing was scheduled to commence at 6:35 PM on Monday, December 4, 2017.
- B. On November 11, 2017, the Town's legislative body, the Selectboard, warned their first and second public hearings for the proposed zoning regulation amendments to the *Underhill Unified Land Use & Development Regulations*.
- C. On November 15, 2017, notice of the conditional use review hearing was mailed via United States certified mail, return receipt requested, to the following property owners adjoining the property subject to the application:
1. PR015 – Barbara & John Koier, 15 Pine Ridge Road, Underhill, VT 05489
  2. PR026 – John D. & Marilyn O. Hardacre, 26 Pine Ridge Road, Underhill, VT 05489
  3. PR027 – David A. Demuyne & Cathy A. Leathersich, 27 Pine Ridge Road, Underhill, VT 05489
  4. PV015 – Michael & Emily Diffenderffer, P.O. Box 42, Underhill Center, VT 05490
  5. PV019 – Trustees of David A. & Carla N. Osgood, David & Carla Revocable Trust, P.O. Box 81, Underhill Center, VT 05490
  6. PV029 – Gregory M. Leech & Amy E. Golodetz, 29 Pleasant Valley Road, Underhill, VT 05489
  7. Applicant: PR025 – Peter K. & Ellen M. Duval, 25 Pine Ridge Road, Underhill, VT 05489

- D. During the week of November 12, 2018, notice of the public hearing for the proposed conditional use permit was posted at the following locations:
1. The Underhill Town Clerk's office;
  2. The Underhill Center Post Office; and
  3. The Underhill Flats Post Office.
- E. On November 18, 2017, the notice of public hearing was published in the *Burlington Free Press*.
- F. A site visit at the property location (25 Pine Ridge Road, Underhill Vermont) commenced at 8:30 AM on Sunday, December 3, 2017.
- G. Present at the site visit were the following members of the Development Review Board:
1. Board Member, Charles Van Winkle, Chairperson
  2. Board Member, Matt Chapek
  3. Board Member, Mark Green
  4. Board Member, Daniel Lee
  5. Board Member, Penny Miller
  6. Board Member, Stacey Turkos

Municipal representatives and members of the public present during the site visit were:

7. Planning & Zoning Administrator, Andrew Strniste
  8. Applicant, Peter Duval (25 Pine Ridge Road, Underhill, VT 05489)
  9. Abutting Neighbor, Barbara Koier (15 Pine Ridge Road, Underhill, VT 05489)
  10. Abutting Neighbor, John Koier (15 Pine Ridge Road, Underhill, VT 05489)
  11. Abutting Neighbor, Marilyn O. Hardacre (26 Pine Ridge Road, Underhill, VT 05489)
  12. Abutting Neighbor, John D. Hardacre (26 Pine Ridge Road, Underhill, VT 05489)
  13. Abutting Neighbor, Cathy Leathersich (27 Pine Ridge Road, Underhill, VT 05489)
  14. Abutting Neighbor, David Demuynck (27 Pine Ridge Road, Underhill, VT 05489)
  15. Abutting Neighbor, Gregory M. Leech (29 Pleasant Valley Road, Underhill, VT 05489)
  16. Pine Ridge Resident, Chantal O'Connor (2 Pine Ridge Road, Underhill, VT 05489)
  17. Pine Ridge Resident, Thomas M. Costello (2 Pine Ridge Road, Underhill, VT 05489)
  18. Pine Ridge Resident, John McNamara (7 Pine Ridge Road, Underhill, VT 05489)
  19. Pine Ridge Resident, Heidi Duke (16 Pine Ridge Road, Underhill, VT 05489)
  20. Pine Ridge Resident, Geoff Duke (16 Pine Ridge Road, Underhill, VT 05489)
  21. Pine Ridge Resident, Leslie Dee (28 Pine Ridge Road, Underhill, VT 05489)
  22. Pine Ridge Resident, Thaddeus F. Gembczynski Jr. (28 Pine Ridge Road, Underhill, VT 05489)
  23. Pine Ridge Resident, Nancy Hall (31 Pine Ridge Road, Underhill, VT 05489)
  24. Pine Ridge Resident, Dianne Terry (34 Pine Ridge Road, Underhill, VT 05489)
  25. Pine Ridge Resident, Roy Towlen (38 Pine Ridge Road, Underhill, VT 05489)
- H. The conditional use review hearing commenced at 6:35 PM on December 4, 2017 at the Town of Underhill Town Hall, 12 Pleasant Valley Road in Underhill, Vermont.
- I. Present at the conditional use review hearing were the following members of the Development Review Board:

1. Board Member, Charles Van Winkle, Chairperson
2. Board Member, Matt Chapek
3. Board Member, Mark Green
4. Board Member, Daniel Lee
5. Board Member, Karen McKnight
6. Board Member, Penny Miller
7. Board Member, Stacey Turkos

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

Others present at the hearing were:

1. John Koier, Abutting Neighbor (15 Pine Ridge Road, Underhill, VT)
2. Barbara Koier, Abutting Neighbor (15 Pine Ridge Road, Underhill, VT)
3. Marilyn Hardacre, Abutting Neighbor (26 Pine Ridge Road, Underhill, VT)
4. John Hardacre, Abutting Neighbor (26 Pine Ridge Road, Underhill, VT)
5. David Demuynck, Abutting Neighbor (27 Pine Ridge Road, Underhill, VT)
6. Bethany Demuynck, Abutting Neighbor (27 Pine Ridge Road, Underhill, VT)
7. Cathy Leathersich, Abutting Neighbor (27 Pine Ridge Road, Underhill, VT)
8. Greg Leech, Abutting Neighbor (29 Pleasant Valley Road, Underhill, VT)
9. Amy Golodetz, Abutting Neighbor (29 Pleasant Valley Road, Underhill, VT)
10. Chantal O'Connor, Pine Ridge Resident (2 Pine Ridge Road, Underhill, VT)
11. Cathy McNamara, Pine Ridge Resident (7 Pine Ridge Road, Underhill, VT)
12. John McNamara, Pine Ridge Resident (7 Pine Ridge Road, Underhill, VT)
13. Heidi Duke, Pine Ridge Resident (16 Pine Ridge Road, Underhill, VT)
14. Jamie Duke, Pine Ridge Resident (16 Pine Ridge Road, Underhill, VT)
15. Geoff Duke, Pine Ridge Resident (16 Pine Ridge Road, Underhill, VT)
16. Leslie Dee, Pine Ridge Resident (28 Pine Ridge Road, Underhill, VT)
17. Thaddeus F. Gembczynski Jr., Pine Ridge Resident (28 Pine Ridge Road, Underhill, VT)
18. Nancy Hall, Pine Ridge Resident (31 Pine Ridge Road, Underhill, VT)
19. Dianne Terry, Pine Ridge Resident (34 Pine Ridge Road, Underhill, VT)
20. Steve Coddling, Pine Ridge Resident (34 Pine Ridge Road, Underhill, VT)
21. Susan May, Pine Ridge Resident (37 Pine Ridge Road, Underhill, VT)
22. Carol Truesdell, Pine Ridge Resident (38 Pine Ridge Road, Underhill, VT)
23. Roy Towlen, Pine Ridge Resident (38 Pine Ridge Road, Underhill, VT)
24. Scott Thomas, Underhill Resident (263 River Road, Underhill, VT)
25. Peter Duval, Applicant (25 Pine Ridge Road, Underhill, VT)

J. Chair 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. Peter Duval
2. Geoff Duke
3. Leslie Dee
4. John McNamera
5. David Demuynck
6. Nancy Hall
7. Cathy Leatherisch
8. John Koier

9. Chantal O'Connor
10. Marilyn Hardacre
11. Dianne Terry
12. Susan May
13. Jamie Duke
14. Heidi Duke

K. In support of the conditional use review application, the following exhibits were submitted to the Development Review Board:

- Exhibit A - PR025 - Duval Conditional Use Staff Report
- Exhibit B - PR0025 Rules of Procedure - Conditional Use Review
- Exhibit C- Conditional Use & Site Plan Review Hearing Request Application
- Exhibit D - Site Plan Review Standards Checklist
- Exhibit E - Site Plan Review Standards Checklist Supplement
- Exhibit F - Conditional Use Review Standards Checklist
- Exhibit F Supp - Conditional Use Review Standards Checklist Supplement
- Exhibit G - Project Narrative
- Exhibit H - Certificate of Service
- Exhibit I - Maintenance Plan
- Exhibit J - Floor Plan Proposal
- Exhibit K - Supplemental Floor Plan Proposal
- Exhibit L - Lot Configuration Sketch
- Exhibit M - Site Plan of Existing Conditions
- Exhibit N - Zoomed In Site Plan of Existing Conditions
- Exhibit O - Site Plan of Proposed Project
- Exhibit P - Zoomed-In Site Plan of Proposed Project
- Exhibit Q - ANR Groundwater Source Protection Areas Map
- Exhibit R - ANR Slopes Map
- Exhibit S - ANR Streams & Waterbodies Map
- Exhibit T - ANR Floodplains Map
- Exhibit U - Proposed Site Plan with Labels
- Exhibit V - Zoomed-In Proposed Site Plan with Labels

The following exhibits were subsequently submitted into the record during the hearing:

- Exhibit W - Mt. Mansfield Modified Union School District Ability to Serve Letter
- Exhibit X - Thesis by Wendy Usrey Titled The Rental Next Door The Impact of Rental Proximity on Home Values
- Exhibit Y - Copy of the Pine Ridge Road and Evergreen Road Subdivision
- Exhibit Z - Act 250 Land Use Permit # 4C0377-1
- Exhibit AA - Copy of Map Illustrating Floodplains in Project Vicinity
- Exhibit BB - Petition of Opposition by Pine Ridge Road Neighborhood

L. Prior to the commencement of the evening's hearing, the applicant had requested a continuance, which was subsequently granted at the hearing, and scheduled for a date and time specified at the hearing (Section 5.2.B.3): 6:35 PM on Monday, February 5, 2018 at Underhill Town Hall at 12 Pleasant Valley Road, Underhill, Vermont.

M. The continued conditional use review hearing began at 6:35 PM on Monday, February 5, 2018 at

the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, Vermont.

N. Present at the subdivision amendment continued hearing were the following members of the Development Review Board:

1. Board Member, Charles Van Winkle, Chairperson
2. Board Member, Matt Chapek
3. Board Member, Mark Green
4. Board Member, Daniel Lee
5. Board Member, Karen McKnight
6. Board Member, Penny Miller
7. Board Member, Stacey Turkos

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

Others present at the hearing were:

1. John Koier, Abutting Neighbor (15 Pine Ridge Road, Underhill, VT)
2. Barbara Koier, Abutting Neighbor (15 Pine Ridge Road, Underhill, VT)
3. Marilyn Hardacre, Abutting Neighbor (26 Pine Ridge Road, Underhill, VT)
4. John Hardacre, Abutting Neighbor (26 Pine Ridge Road, Underhill, VT)
5. David Demuynck, Abutting Neighbor (27 Pine Ridge Road, Underhill, VT)
6. Chantal O'Connor, Pine Ridge Resident (2 Pine Ridge Road, Underhill, VT)
7. Tom Costello, Pine Ridge Resident (2 Pine Ridge Road, Underhill, VT)
8. Cathy McNamara, Pine Ridge Resident (7 Pine Ridge Road, Underhill, VT)
9. John McNamara, Pine Ridge Resident (7 Pine Ridge Road, Underhill, VT)
10. Heidi Duke, Pine Ridge Resident (16 Pine Ridge Road, Underhill, VT)
11. Jamie Duke, Pine Ridge Resident (16 Pine Ridge Road, Underhill, VT)
12. Geoff Duke, Pine Ridge Resident (16 Pine Ridge Road, Underhill, VT)
13. Leslie Dee, Pine Ridge Resident (28 Pine Ridge Road, Underhill, VT)
14. Thaddeus F. Gembczynski Jr., Pine Ridge Resident (28 Pine Ridge Road, Underhill, VT)
15. Elizabeth Gembczynski, Pine Ridge Resident (28 Pine Ridge Road, Underhill, VT)
16. Kathleen Gembczynski, Pine Ridge Resident (28 Pine Ridge Road, Underhill, VT)
17. Nancy Hall, Pine Ridge Resident (31 Pine Ridge Road, Underhill, VT)
18. Dianne Terry, Pine Ridge Resident (34 Pine Ridge Road, Underhill, VT)
19. Steve Coddington, Pine Ridge Resident (34 Pine Ridge Road, Underhill, VT)
20. Susan May, Pine Ridge Resident (37 Pine Ridge Road, Underhill, VT)
21. Thomas May, Pine Ridge Resident (37 Pine Ridge Road, Underhill, VT)
22. Roy Towlen, Pine Ridge Resident (38 Pine Ridge Road, Underhill, VT)
23. Peter Duval, Applicant (25 Pine Ridge Road, Underhill, VT)

O. Chair 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. Peter Duval
2. Leslie Dee
3. John McNamara
4. Chantal O'Connor
5. Nancy Hall
6. Marilyn Hardacre

7. Tom Costello
8. Roy Towlen
9. Thomas May
10. Susan May
11. Jamie Duke
12. John Koier

P. In support of the continued conditional use review application, the following exhibits were submitted to the Development Review Board:

Exhibit DDD - PR025 - Duval Conditional Use Supplemental Staff Report.  
Exhibit CC - Email Correspondence from Cathy McNamara Regarding Act 250 Permit  
Exhibit DD - Email Correspondence from Rachel Lomonaco (ANR) Regarding Act 250 Permit

Q. Prior to the commencement of the evening's hearing, the applicant had again requested a continuance, which was subsequently granted at the hearing, and scheduled for a date and time specified at the hearing (Section 5.2.B.3): 6:35 PM on Monday, May 7, 2018 at Underhill Town Hall at 12 Pleasant Valley Road, Underhill, Vermont. Prior to the end of the hearing, Chair Van Winkle advised that the Board would close the oral testimony portion of the hearing at the May 7, 2018 hearing; however, would accommodate those participants that were unable to attend the May 7, 2018 continued hearing by leaving open the evidentiary portion of the hearing, thereby letting all interested parties, including the applicant, until May 21, 2018 to submit written evidence and testimony into the record.

R. Between February 5, 2018 and March 6, 2018, the Planning & Zoning Administrator and Development Review Board became aware of Vermont State statute 24 V.S.A. § 4449(d), which requires all applications submitted and received after the legislative body's (the Selectboard) first public hearing warning date (November 11, 2017) for proposed zoning regulation amendments to be reviewed under the zoning regulations in effect at the time of the application and the proposed revised zoning regulations. The statute requires the more strict regulations be applied. To note, the Underhill residents approved the proposed zoning regulations on March 6, 2018.

S. Thereafter, Planning & Zoning Staff reached out to the applicant advising that the application could potentially be subject to review under the 2018 *Underhill Unified Land Use & Development Regulations*.

T. The continued conditional use review hearing began at 6:35 PM on Monday, May 7, 2018 at the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, Vermont.

U. Present at the subdivision amendment continued hearing were the following members of the Development Review Board:

1. Board Member, Charles Van Winkle, Chairperson
2. Board Member, Matt Chapek
3. Board Member, Mark Green
4. Board Member, Daniel Lee
5. Board Member, Karen McKnight
6. Board Member, Penny Miller
7. Board Member, Stacey Turkos

Others present at the hearing were:

1. Barbara Koier, Abutting Neighbor (15 Pine Ridge Road, Underhill, VT)
2. Cathy McNamara, Pine Ridge Resident (7 Pine Ridge Road, Underhill, VT)
3. John McNamara, Pine Ridge Resident (7 Pine Ridge Road, Underhill, VT)
4. Heidi Duke, Pine Ridge Resident (16 Pine Ridge Road, Underhill, VT)
5. Jamie Duke, Pine Ridge Resident (16 Pine Ridge Road, Underhill, VT)
6. Leslie Dee, Pine Ridge Resident (28 Pine Ridge Road, Underhill, VT)
7. Thaddeus F. Gembczynski Jr., Pine Ridge Resident (28 Pine Ridge Road, Underhill, VT)
8. Elizabeth Gembczynski, Pine Ridge Resident (28 Pine Ridge Road, Underhill, VT)
9. Kathleen Gembczynski, Pine Ridge Resident (28 Pine Ridge Road, Underhill, VT)
10. Nancy Hall, Pine Ridge Resident (31 Pine Ridge Road, Underhill, VT)
11. Dianne Terry, Pine Ridge Resident (34 Pine Ridge Road, Underhill, VT)
12. Steve Codding, Pine Ridge Resident (34 Pine Ridge Road, Underhill, VT)
13. Yuri Britten, Attendee (13 Bereand Lane, Jericho, VT)
14. Peter Duval, Applicant (25 Pine Ridge Road, Underhill, VT)
15. Gunner McCain, Applicant's Consultant (93 S. Main St., Waterbury, VT)

V. Chair 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. Peter Duval
2. Dianne Terry
3. Cathy McNamara
4. John McNamara
5. Jamie Duke
6. Heidi Duke
7. Leslie Dee
8. Nancy Hall
9. Steve Codding

W. In support of the continued conditional use review application, the following exhibits were submitted to the Development Review Board:

- Exhibit EE - PR025 - Conditional Use Continuance Request Materials
- Exhibit FF - Duval Recommended Changes to February 5, 2018 Minutes
- Exhibit GG - PR025 - 24 V.S.A. § 4449(d)
- Exhibit HH - Email from John Koier Regarding Application

X. Prior to the conclusion of the evening's hearing, Chair Van Winkle reminded all parties that the Board would leave open the evidentiary portion of the hearing until May 21, 2018 to allow those participants that were unable to attend the evening's continued hearing to submit written evidence and testimony into the record.

Y. On May 21, 2018, during the scheduled "Old Business" portion of the agenda (scheduled for 6:40 PM at Underhill Town Hall, 12 Pleasant Valley Road, Underhill, Vermont), the Board provided clarity on which set of the zoning regulations applied in relation to 24 V.S.A. § 4449(d), and then asked all other written testimony and evidence to be submitted into the record. The following exhibits were submitted to the Development Review Board:

Exhibit II - Duval Correspondence Re 24 VSA 4449(d)  
Exhibit JJ - Memorandum to DRB Regarding PR025  
Exhibit KK - Duval-sh068-Phase4-Elev-050718  
Exhibit LL - 38019 - Duval Memo - 20180504  
Exhibit MM - Phases of Development  
Exhibit NN - Gooseneck Wall Light  
Exhibit OO - LED\_bollard\_BR840\_series  
Exhibit PP - Step Light G5\_6\_7\_pdf  
Exhibit QQ - PR025 20180521 Motion to Stay Proceedings  
Exhibit RR - PR025 201805211600 Narrative  
Exhibit SS - PR025 201805211600 Presentation with notes  
Exhibit TT - PR025 201805211600 Presentation  
Exhibit UU - 38019 - Duval Site Plan - 20180507  
Exhibit VV - Walk Along Pine Ridge -- KR014-Connell  
Exhibit WW - Walk Along Pine Ridge -- PR007-McNamara  
Exhibit XX - Walk Along Pine Ridge -- PR027-Leathersich  
Exhibit YY - Walk Along Pine Ridge -- PV001-Rade  
Exhibit ZZ - Walk Along Pine Ridge -- PV029-Leech-Golodetz  
Exhibit AAA - Walk Along Pine Ridge -- SH068-Hamill  
Exhibit BBB - Walk Along Pine Ridge Landscape Only  
Exhibit CCC - Walk Along Pine Ridge Phase 4

All exhibits are available for public review in the PR025 Duval Conditional Use Review file (PR025 / DRB-17-16) at the Underhill Zoning & Planning office.

## II. FACTUAL FINDINGS

The Minutes of the December 4, 2017, February 5, 2018 and May 21, 2018 meetings, written by Andrew Strniste, as well as Minutes of the May 7, 2018 meeting, written by the Board's Clerk, Matt Chapek, are incorporated by reference into this decision. Please refer to the Minutes for a summary of the testimony.

Under Vermont State statute 24 V.S.A. § 4449(d), zoning permit applications, including development review board applications, submitted after the Town's legislative body's warning for the first public hearing to present to the public proposed amendments to a set of zoning regulations shall be reviewed under both the existing regulations and the proposed regulations. In other words, after November 11, 2017, the date of the Underhill Selectboard's first publicly warned hearing for the proposed amendments to the 2014 *Underhill Unified Land Use & Development Regulations*, all zoning permit applications, including development review board applications, are to be reviewed under the 2014 *Underhill Unified Land Use & Development Regulations*, as well as the proposed 2018 *Underhill Unified Land Use & Development Regulations*.

In reviewing the pertinent correspondence between the applicant and the Planning & Zoning Administrator, which was captured in a memorandum sent to the applicant on March 26, 2018 (see Exhibit GG), the Board notes that there is sufficient evidence to suggest that the application should be reviewed under the 2018 *Underhill Unified Land Use & Development*. While the applicant suggests that the date the application was submitted (November 2, 2017) is the date the application is considered "filed," thus complete, the Board recognizes that the Planning & Zoning Administrator requested the applicant to submit more information, as authorized under Section 5.2.A.1.e of the Town's *Unified Land Use & Development Regulation*, and likely did not consider the application complete until after

November 11, 2017 – likely November 14, 2017 or November 15, 2017.

In the interest of fairness to the applicant, the Board finds the 2014 *Underhill Unified Land Use & Development Regulations* apply. The Board notes had this application been reviewed under the 2018 *Underhill Unified Land Use & Development Regulations*, the proposed multi-family dwelling use would be nonconforming, as multi-family dwelling uses were eliminated in the underlying, applicable zoning district.

Therefore, 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 (ULUDR)* as amended thru March 4, 2014:

**PROJECT DESCRIPTION**

The applicant, Peter Duval, is co-owner of the property located at 25 Pine Ridge Road. The applicant is proposing to convert the existing single-family dwelling with an attached accessory dwelling (located in the basement) to a four-unit, multi-family dwelling.

As outlined in Exhibit G, the applicant originally described his project as:

“A multi-generational, mixed-use, flexible-configuration residence and barn, with cascaded use of thermal energy, fortified for storms and natural disasters of the future. All descriptions of site work and buildings in this proposal are a presentative expression of the program, not a predetermined outcome of the anticipated design process.”

The description of the program is also outline in Exhibit G, which was submitted with the application materials for the December 4, 2017 hearing. The Board acknowledges the forward thinking of the applicant’s proposal and recognizes that he has since altered his application to conform with application requests and accommodate concerns. While the Board appreciates the forward thinking of the project proposal, the application still must be reviewed under the applicable zoning regulations, and therefore, the proposed project must be reviewed as if it were the more familiar multi-family dwelling use designation.

Since the proposed project involves the conversion of a single-family dwelling with an attached accessory dwelling (a permitted use as depicted under Article II, Table 2.1) to multi-family dwelling use designation (a conditional use as depicted under Article II, Table 2.1), conditional use approval by this Board is required. The applicant has advised that the proposed project will be constructed in four phases:

<u>Phase</u>	<u>Descriptions</u>	<u>Year of Completion</u>
0	Renovation	2019
1	Build-up	2020
2A	South Addition	2025
2B	West Addition	2022
3	Breezeway	2030
4	Silo and Knoll	2030

\*See Exhibit SS, Pages 55 & 56

The subject property is located at 25 Pine Ridge Road (Pine Ridge Road), which is in the Water Conservation District as defined in Article II, Table 2.5.

**A. ARTICLE II, TABLE 2.4 – WATER CONSERVATION DISTRICT**

The Board finds that the existing structure with proposed addition subject to this application, and as depicted on the site plan (Exhibit UU), meet the minimum dimensional requirements, specifically pertaining to setbacks and frontage. The existing use, a single-family dwelling with an attached accessory dwelling, is a permitted use (ULUDR Table §§ 2.4.B.4 & 2.4.B.5), and that the proposed use, a multi-family dwelling, is a conditional use (ULUDR Table § 2.4.C.11), and therefore, the conversion of use requires conditional use approval from this Board under Section 3.3.A.3.

The Board finds that the applicant did not submit sufficient factual evidence demonstrating that he will be able to attain a Wastewater System & Potable Water Supply Permit from the State of Vermont, Department of Environmental Conservation. Since the applicant failed to submit a wastewater system design plan, the Board cannot confirm that the applicant’s project will conform to the purpose statement of the Water Conservation District, which “is to protect the important gravel aquifer recharge area in Underhill Center.” See Section 3.22 for more details.

**ARTICLE III, GENERAL REGULATIONS**

**C. SECTION 3.2 – ACCESS**

The Board finds that had the conditional use review application been approved, the applicant would have been required to obtain an access permit from the Underhill Selectboard. The applicant has informed the Board that he is only requesting one waiver: the width of the driveway being reduced from 20 feet to 12 feet, which is the jurisdiction of the Selectboard. As proposed, the Board finds that the proposed driveway and access point satisfy the requirements of the 2014 *Underhill Unified Land Use & Development Regulations*.

**D. SECTION 3.3 – CONVERSION OR CHANGE OF USE**

The Board finds that conditional use review approval is required per Section 3.3.A.3 since the applicant proposes to convert a single-family dwelling with an attached accessory dwelling, permitted uses under ULUDR Table §§ 2.4.B.4 & 2.4.B.5, to a multi-family dwelling, a conditional use under ULUDR Table § 2.4.C.11.

**E. SECTION 3.4 – EQUAL TREATMENT OF HOUSING**

The Board finds that the applicant relies on this section in Exhibit SS, Page 51, to argue that the Board should not deny his project based on the type of housing being proposed, specifically relying on Section 3.4.A.4, which states:

A. In accordance with the Act [§ 4412(1)], these regulations shall not have the effect of excluding the following from the Town of Underhill: (4) multi-family dwellings, consisting of three or more dwelling units in a structure.

The Board finds that this section requires the inclusivity of multi-family housing. Since April 2017, the Board has approved two multi-family dwelling projects:

1. DRB Docket #: DRB-17-09 – A mixed-use building containing three dwelling units and office space (413 Vermont Route 15, Underhill, Vermont), and
2. DRB Docket #: DRB-17-06 – A mixed-use building containing three dwelling units and commercial space (1 Pleasant Valley Road, Underhill, Vermont).
  - a. Note: the applicant for this project subsequently submitted a variance request application to convert the commercial space to a fourth dwelling unit under the 2018 *Underhill Unified Land Use & Development Regulations*; however, the

proposed project was denied, and allowed to keep the building as permitted under DRB-17-06 or convert a structure to entirely a three-unit, multi-family dwelling.

The Board finds that these proposals were located within the Village Centers, thus satisfying stated goals in the *Underhill Town Plan* focusing on centering multi-family/group living facilities in the Village Centers:

- Chapter 3 (Page 17 – Context): “The goal of land use planning in Underhill is to create a unified development plan for the Town that preserves its rural character by encouraging denser, compact development and economic opportunities in traditional village center areas. . . .”
- Section 3.5 (Page 25 - Policy): “The Water Conservation zoning district purpose definition should reflect the geologic reason for creation of the district, the traditional uses within the district, and also provide guidance for future development within the zoning district.”
- In regard to increasing the affordable housing stock for those of low and moderate incomes, Section 7.3 (Page 47 – Strategy): “Provide for greater density in areas designated as village centers by encouraging duplexes and multi-family dwellings.”
- Section 7.3 (Page 47 – Strategy): “Encourage multi-generational, multi-income and senior housing in the village centers.”

**F. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS**

The Board finds that the applicant is proposing one principal use – a four-unit, multi-family dwelling – to be located on the lot, thus satisfying the requirements of Section 3.7.A. Additionally, the applicant has not asked for any district dimensional waivers, as allowed under Section 3.7.E.

The property satisfies the frontage requirement of 300 feet, as the frontage for the subject property is ±304 feet. Assuming completion, the proposed structure would be ~77 feet from the north, side property line; ~86 feet from the west, side property line; ~98 feet from the east, side property line; and greater than 100 feet from the south property; therefore, meeting the setback requirements of 30 feet from the front property line and 50 feet from the side and rear property lines. Lastly, the proposed structure is located over 300 feet to the north from an unnamed brook and 650 feet to the north from Brown’s River, thus satisfying the requirements for unnamed brooks and named rivers (see Section 3.19 for additional detail).

**G. SECTION 3.11 – OUTDOOR LIGHTING**

The Board finds that the applicant submitted supporting documentation (Exhibits NN, OO & PP) illustrating that he would satisfy the outdoor lighting requirements under this section, which conforms with the Board’s desire that all lighting shall be downward facing, shielded lighting, installed with motion sensors, not exceeding 1800 lumens each (~100 watt incandescent bulb) and have no objectional spillover light to adjacent properties.

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

The Board finds that the applicant has proposed four (4) tandem parking spaces, one (1) single parking space and one (1) handicapped parking space for the 4-unit project. Although the 2014 *Underhill Unified Land Use & Development Regulations* requires a minimum of six (6) parking spaces (3 spaces per 2 dwelling units), the Board requested a minimum of eight (8) parking spaces in addition to one (1) handicapped parking space in its letter of February 15, 2018 - along with unit outlines/locations on the site plan indicating number of bedrooms per unit.

While the Board acknowledges that the intent of tandem parking space design is commendable in minimizing impervious surfaces and parking sprawl, it finds the proposed parking layout which includes tandem parking in the majority of its parking spaces as unacceptable for several reasons:

The Board regards tandem parking as a more typical urban or village center practice and not one that is realistically to be followed voluntarily in a rural residential setting. It has the potential to encourage multiple vehicles to be parked along the roadway in violation of Section 3.13.a.

The Board finds that tandem parking design is not recognized in the *Underhill Unified Land Use & Development Regulations* and fails to meet the maneuverability requirement of Section 3.13.A.1, which states:

“All required spaces shall have a minimum width of nine feet, a minimum length of 18 feet, unobstructed access and maneuvering room, and a gravel or paved surface sufficient for year-round use.”

Under Section 5.4.D, the Board may consider use standards and “impose conditions as necessary to reduce or mitigate any identified adverse impacts of a proposed development.” Although the applicant verbally testified in a previous hearing that the proposed multi-family project would contain 12 bedrooms, there is no supporting documentation illustrating such, and therefore, the Board is unable to evaluate if the depicted number of parking spaces is adequate.

The Board finds that vehicular circulation will likely encroach upon the handicapped parking space and vice versa, as the corner of the handicapped space is between 11 and 12 feet from the edge of the driveway.

The Board notes that the excess snow removal area, identified on the site plan (Exhibit UU) as “snow stockpile area” is in an area that is not easily accessible, as it is located behind the screened composting area and parking spaces.

The Board finds that the applicant has satisfied the other requirements of this section, such as: providing a bicycle rack. While the applicant does not propose to screen the parking area by the way of fencing or hedging, he has met the intent of this section with the implementation of the berm and trees.

The Board finds that the Section 3.13.C, pertaining to waivers of on-site parking requirements, does not apply.

**I. SECTION 3.14 – PERFORMANCE STANDARDS**

The Board finds that the applicant did not submit the requisite information to support that he will not be in violation of the regulations enumerated in this Section; however, the Board finds that the proposed use, a multi-family dwelling, is unlikely to create or result in any of the situations under Section 3.14.B. The Board finds that the Zoning Administrator has the authority to take enforcement action should one of the situations under this Section have occurred.

**J. SECTION 3.17 – SOURCE PROTECTION AREAS**

The Board finds that the proposed project location is within an active groundwater source protection area, and as a result, the applicant is required to satisfy Section 3.17.B. The Board finds

that the attainment of a State of Vermont, Department of Environmental Conservation Wastewater System & Potable Water Supply Permit, or the submission of a wastewater system design plan, creates the presumption that the applicant will not contaminate the nearby soils, surface water, and groundwater. The applicant has failed to submit a Wastewater System & Potable Water Supply Permit or a wastewater system design plan, and therefore, the Board is unable to verify (specifically in reference to Section 3.17.B.1) that the proposed project will not have an adverse impact to the active groundwater source protection area.

**K. SECTION 3.18 – STEEP SLOPES**

The Board finds that there are areas of steep slopes (15-25%) or very steep slopes (>25%) on the property under consideration; however, the existing structure with the proposed addition will not impact steep slopes. However, the site plan (Exhibit UU) depicts that the “approximate proposed leach field area” is located on a steep slope – between 16% and 18% (eight/nine feet in elevation over a linear length of 50 feet). Additionally, the Board expresses reservations with this part of the site plan, as the area immediately adjacent to the “approximate proposed leach field area” advised that the slope is to be verified with on-site mapping. According to slope information provided by the Agency of Natural Resources (Exhibit R), there is convincing evidence that the “approximate proposed leach field area” is located in an area of very steep slopes, where septic systems are prohibited as stated under Section 3.18.E.

Assuming the proposed leach field is an area of steep slopes, under Section 3.18.D, septic systems are to be sited to minimize site disturbance, in conformance with the standards enumerated therein. The Board finds that the applicant has not submitted the requisite information to evaluate that the “existing vegetation and drainage materials will be maintained to the maximum extent physically feasible to avoid stream alterations and relocations, and increased stormwater runoff due to vegetation removal, slope disturbance, re-contouring or site compaction.” Also, the Board is unable to determine that no new drainageways will be created thus satisfying the requirements under Section 3.18.D.1.

Since the applicant has designated the area as approximate, determining that the wastewater system will satisfy the requirements of this section is not feasible with the information presented. Assuming the “approximate proposed leach field area” will remain as shown on the site plan, the area will be within the east, side yard setback, thus not satisfying the requirements of Section 3.18.D.2.b. The applicant has not acknowledged the other requirements under Section 3.18.D.2.b, though the Board finds that those requirements are more related to installation than review.

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

The Board finds that Brown’s River and unnamed brook are located on the property – according to the Agency of Natural Resource’s website (Exhibit S). The existing principal structure is located over 300 feet to the north from the Crane Brook (noting that Staff had incorrectly labeled the stream as an unnamed brook) and over 650 feet to the north from Brown’s River. The proposed additions to the existing structure will not encroach upon these setbacks.

However, the Board is unable to say with certainty that the “approximate proposed leach field area” will meet the setback requirements from Crane Brook under Section 3.19.D.4, as the brook is not identified on the site plan (Exhibit UU). Since Crane Brook is an area considered a Zone A Flood Hazard Area (Exhibit T), the leach field must be sited at least 100 feet from the top of the bank (Section 3.19.D.1). Note, the top of the bank is also not identified on the site plan. Due to the lack of information submitted about the wastewater system, as well as the failure to illustrate Crane Brook on the site plan, the Board is unable to determine if mitigation measures need to be

taken under Section 3.19.F.

**M. SECTION 3.22 – WATER SUPPLY & WASTEWATER SYSTEMS**

In most applications presented to the Board, either the Wastewater System & Potable Water Supply system has been designed or the permitting process will have started with the anticipation of submitting a permit application to the State of Vermont, Department of Environmental Conservation. In some applications, the obtainment of a Wastewater System & Potable Water Supply Permit is not required, which is usually acknowledged by some form of correspondence from the Department of Environmental Conservation.

The Board largely relies on a wastewater system and potable water supply design plan or correspondence from the Department of Environmental Conservation as evidence that adequate wastewater capacity and water supply will be provided. In the subject application, the applicant has failed to present a wastewater system & potable water supply design plan, nor submitted any correspondence from the Department of Environmental Conservation.

Section 3.22.A states:

“No building or structure intended for human occupancy shall be erected, altered or converted to another use unless adequate water supply and wastewater disposal systems are provided in compliance with all applicable municipal and state regulations.”

The Board recognizes that the State retains jurisdiction of the Wastewater System & Potable Water Supply permitting process; however, the lack of design prevents the Board from determining if the systems will meet the requirements of the Town’s regulations (e.g. setbacks). Additionally, the applicant has refused to identify on the floorplans (Exhibit SS, Pages 58-60) the number of bedrooms that will be contained in the completed multi-family dwelling. While the applicant has advised during various hearings that there will be 12 bedrooms, this assertion is unsubstantiated in the exhibits provided. The Board finds that convincing evidence submitted by the applicant and the engineer has not been presented attesting to the adequacy of the wastewater and water capacity since a finalized project (specifically the unit outline with bedroom allocation) and a wastewater system design plan have not been achieved at this time.

Both the applicant (Exhibit SS, Pages 13-17) and the engineer (Exhibit LL) attest that there is sufficient soil capacity to support an on-site leach field to serve the proposed four-unit project. However, the Board finds – specifically in regards to the engineer’s conclusions – that these conclusions are based on a document and resource review and constitute a preliminary determination only, as stated in his memorandum. The applicant asserts that the soils are excellent – advising that the soils are Adams and Windsor deep loamy sand (AdD). The board acknowledges that the Adams and Windsor (AdD) soil types are typically well drained sands with excellent characteristics for on-site wastewater disposal; however, the “D” attribute indicates a land slope of 12% to 30% to fall within the jurisdiction of steep slopes section outlined in the UULDR. The board finds insufficient evidence has been submitted in order to make a determination as to whether or not the area of development requires conformance with the steep slope criteria of the UULDR. The board is unable to conclude with positive findings with regards to the adequacy of the site to accommodate waste water disposal.

**ARTICLE IV, SPECIFIC USE STANDARDS**

**A. SECTION 4.12 – HOME BUSINESS (HOME OCCUPATION, HOME INDUSTRY)**

During the review of the application, the applicant alluded to home businesses being present within the proposed buildings. The applicant has since abandoned this idea and the proposal no longer contains any home business (Exhibit RR, Page 8).

**ARTICLE V, DEVELOPMENT REVIEW**

**A. SECTION 5.1 – APPLICABILITY**

The Board finds that Conditional Use Review is required, since the applicant is proposing to convert a single-family dwelling with an attached accessory dwelling, permitted uses under ULUDR Table §§ 2.4.B.4 & 2.4.B.5, to a multi-family dwelling, a conditional use under ULUDR Table § 2.4.C.11. As part of Conditional Use Review under Section 5.4, Site Plan Review is also required under Section 5.4.C.

**B. SECTION 5.3 – SITE PLAN REVIEW**

Section 5.3.A – Purpose: The Board finds that site plan review is required as part of conditional use review per Section 5.4.C.

Section 5.3.B – Standards: The Board has considered the following standards, and comments about the following standards/requirements:

SECTION 5.3.B.1 – Existing Site Features: The Board finds that the applicant submitted an adequate site plan depicting the proposed project. As discussed under Sections 3.18, 3.19 and 3.22 above, there are concerns about the proposed location of the leach field since parts of the project remain conceptual in nature (i.e. the lack of a definitive unit outline and lack of wastewater system design). Nevertheless, the existing site features enumerated in Section 5.3.B.1.a are not addressed – the most important being drainage patterns (Section 5.3.B.1.a.i), areas of steep and very steep slope (Section 5.3.B.1.a.iii); surface waters, wetlands, and associated buffers (Section 5.3.B.1.a.iv); and special flood hazard areas under Article VI (Section 5.3.B.1.a.v). The board finds that insufficient evidence has been submitted to make positive findings under section 5.3.B.1.b.

Section 5.3.B.2 – Site Layout & Design: The Board finds that the existing structure with the proposed additions (as depicted in Exhibits II – Exhibits CCC), as it relates to scale, setbacks, and height conforms with the general standards and Section 5.3.B.2.b. The applicant has proposed a structure that, when completed, would be of similar scale to those single-family dwellings along Pine Ridge Road, and satisfies the setback and height requirements of the Water Conservation District.

In regards to intensity, the Board finds that the proposed four-unit, multi-family dwelling does not conform with Section 5.3.B.2.b, as ~~the~~ a multi-family dwelling in Pine Ridge Road subdivision, a distinct area separate from Underhill Center, would **NOT** reinforce the rural character of the district. The Board notes that all of the lots in the Pine Ridge Road subdivision are single-family dwellings. The Board is unable to determine if the buffering requirements have been satisfied for the wastewater system. See Section 5.4.B.2 below for more detail.

Section 5.3.B.3 – Vehicle Access: The Board finds that the vehicular access point is existing. This Board typically defers to the Selectboard in regards to access permitting. See Section 3.2 above for additional information.

Section 5.3.B.4 – Parking, Loading & Service Areas: See Section 3.13 above for information regarding parking. The Board finds that the applicant has advised that trash storage will be

located inside the building (Exhibit RR, Page 8).

Section 5.3.B.5 – Site Circulation: The Board finds that the applicant has provided an exceptional pedestrian circulation plan, as residents have multiple means of accessing various parts of the dwelling. However, the Board is dissatisfied with the vehicular circulation plan for the reasons stated under Section 3.13 above.

Section 5.3.B.6 – Landscaping and Screening: The Board finds that the applicant has presented a site plan (Exhibit UU) that is inconsistent with the “walk along” videos (Exhibit VV – Exhibit CCC). The landscaping in the “walk along” videos contain a large number trees in the front yard setback (along Pine Ridge Road) that were not evidenced during the site plan on Sunday, December 3, 2017. In relation to the site plan (Exhibit UU), the applicant is proposing 15 trees – four (4) along the east side of the driveway and 11 along the west side property line. Therefore, the Board is unable to determine that the requisite screening techniques will be implemented to satisfy the requirements under this subsection and Section 5.3.B.6.

Section 5.3.B.7 – Outdoor Lighting: See Section 3.11 above for information regarding outdoor lighting requirements.

Section 5.3.B.8 – Stormwater Management and Erosion Control: The Board finds that the applicant was anticipating taking erosion control measures to minimize the project’s potential impact on erosion (Exhibit RR, Pages 8). The Board finds that the applicant did not submit sufficient information pertaining to stormwater management; however, the Board typically finds that the applicants shall conform to, and utilize the, Vermont DEC Low Risks Site Handbook for Erosion Prevention and Sediment Control.

#### C. SECTION 5.4 – CONDITIONAL USE REVIEW

Section 5.4.A – Purpose: The Board finds that conditional use review is required because the applicant is proposing to convert a single-family dwelling with an attached accessory dwelling, permitted uses under ULUDR Table §§ 2.4.B.4 & 2.4.B.5, to a multi-family dwelling, a conditional use under ULUDR Table § 2.4.C.11. The Board makes the following comments as they relate to the conditional use standards enumerated in this subsection:

Section 5.4.B – General Standards: Based on the incomplete/ insufficient information provided, the Board finds that it is unable to imposed conditions herein mitigating potential undue adverse effects, largely because of the unanswered questions that remain about the application. The Board makes the following comments about the general standards based on the information provided:

Section 5.4.B.1 – The Capacity of Existing or Planned Community Services or Facilities: The Board finds that the proposed project will not create an undue adverse impact on the Mt. Mansfield Modified Union School District (Exhibit W), and unlikely to cause an undue adverse impact on the Underhill-Jericho Fire Department. The Board notes that applicant has not provided a wastewater system plan design, and therefore, unable to confirm that the proposed project will not adversely affect the soils, surface waters, and groundwater in the vicinity (see Section 5.4.B.2 below and Section 3.22 above for more information).

Section 5.4.B.2 – The Character of the Area Affected: The Board finds that they are to evaluate the proposed project’s location, scale, type, density, and intensity “in relation to the character of the area affected, as defined by the zoning district purpose statements and specifically stated

and relevant policies and standards of the Underhill Town Plan.”

The Board finds that the applicable zoning district pertaining to the subject application is the Water Conservation District, which has the following purpose statement:

“The purpose of the Water Conservation District is protecting the important gravel aquifer recharge area in Underhill Center.” (Table 2.4, § 2.4.A)

The applicant contends that the Board is constrained to the Water Conservation District’s purpose statement only when reviewing the application under this subsection. The Board disagrees. However, should the Board review the application in relation to the Water Conservation District’s purpose statement, the Board finds that a wastewater system design plan has not been provided demonstrating that a wastewater system is possible that will not pollute the important gravel aquifer recharge area in Underhill Center (discussed in more detail under Section 3.22 above).

As stated above, the Board finds that the Water Conservation District’s purpose statement does not help the Board in evaluating if proposed development conforms to the scale, type, density and intensity in relation to the character of the area affected. Therefore, the Board turns to relevant policies and standards of the Underhill Town Plan as well as the specific standards under Section 5.4.D below. In addition, in evaluating the character of the area, the definition of “character of the area” under Article XI states:

“For purposes of these regulations, the “character of the area” or character of a neighborhood is the planned type, density and pattern of development for a particular area or neighborhood, as defined by zoning district purpose statements and clearly stated goals, policies, and objects of the Underhill Town Plan that are specific to that area and/or the physical circumstances of development. “

Since the Board finds that the purpose statement of the Water Conservation District does not provide the guidance needed to help evaluate the project under this subsection, the Board turns to the proposed development in a particular area or neighborhood (as provided in the definition above). The Board finds that the Pine Ridge Road subdivision to be a distinct area/neighborhood, drastically different and more contained than Underhill Center and other areas/neighborhoods in the Water Conservation District. The entirety of the Pine Ridge Road subdivision (with the inclusion of Evergreen Road) was created in the late 1970s/early 1980s as one subdivision under Act 250 Land Use Permit #: 4C0377-1 (Exhibit Z). As evidenced during the site visit, the lots accessed off of Pine Ridge Road may be adjacent to Underhill Center, but is separated by dense forestland, and topography. As a result, the Board finds that the Pine Ridge Road area to be its own distinct area within the Water Conservation District.

As initially proposed, the project’s scale was out place with the character of the area; however, the Board finds that the applicant had reduced the building mass from what was originally proposed (see Exhibits J & K) to what is currently proposed (see Exhibits II – CCC). The current revised building mass may be of a scale that conforms with the Pine Ridge Road neighborhood.

In regard to the type, density and intensity of project, the Board finds that the multi-family dwelling would be out of place on Pine Ridge Road. All of the lots accessed off of Pine Ridge

Road contain single-family dwellings. Moreover, while the Board understands the Act 250 Land Use Permit does not have any weight as part of this review, the permit shows that there was an overriding intent for the lots within the Pine Ridge Road and Evergreen Road Subdivisions to contain single-family dwelling – understanding the Act 250 process there is an opportunity to apply for approval that may allow landowners to convert their single-family dwelling to, or construct a multi-family dwelling. Due to the narrowness of the lot, the Board would be unable to impose mitigation measures to shield the facility from the surrounding area and neighbor.

See Section 5.4.D.1 below for information regarding the Town Plan.

Section 5.4.B.3 – Traffic on Roads and Highways in the Vicinity: The Board finds that McCain Consulting, Inc. has concluded that the four unit, multi-family dwelling will produce approximately 25 trip ends per day, thus result in excess of a 400% increase in traffic originating from the subject parcel. While the Board did advise the applicant to use ITE Trip Generation software to perform the analysis, the Board expresses some skepticism with the results since the applicant has not provided a definitive unit outline identifying the number of bedrooms within the multi-family dwelling. If the Board was to assume the applicant’s oral testimony proposing 12 total bedrooms, the Board finds 25 trips to be low. Nevertheless, since the Board advised the applicant to use ITE Trip Generation, the Board will defer to the results produced. As a result, the Board finds that the additional 25 trips will not result in adverse effects on the condition, capacity, safety, efficiency and use of Pine Ridge Road and the Underhill road network, bridges, intersections and associated highway infrastructure.

Section 5.4.B.4 – Bylaws in Effect: The Board finds that the proposed project would need to be approved as a conditional use to conform with the 2014 *Underhill Unified Land Use & Development Regulations*.

Section 5.4.B.5 – The Utilization of Renewable Energy Resources: The Board finds that the proposed conversion of use would not interfere with any sustainable use of renewable energy resources. The Board notes that the applicant’s proposed project would take advantage of many renewable energy resources and techniques.

Section 5.4.C – Site Plan Review Standards: The Board finds that the site plan review is required as a part of conditional use review. Analysis can be found under Section 5.3 above.

Section 5.4.D – Specific Standards: The Board finds that they may consider Subsections 5.4.D.1 through 5.4.D.4 as part of their application review process.

Section 5.4.D.1 – Conformance with the Town Plan: The applicant contends that the proposed project conforms with the Town Plan and is supported by the ECOS Plan (The Chittenden County Environment, Community, Opportunity, Sustainability Plan). While Staff has identified several passages within the Town Plan where he thinks the Plan supports the project (Exhibit DDD, Page 10 & 11), the Board interprets these sections as directing the Planning Commission on how to review and update affordable housing portions of the Town Plan. The Board finds that the passages in the Town Plan that Staff opined illustrating that the Plan does support the application (Exhibit DDD, Page 11 & 12) are more persuasive. Those passages in the Town Plan have been memorialized in this decision under Section 3.4 above. The Board finds that these passages are consistent with one another, with the common language of encouraging denser development – like multi-family dwelling – in the village centers – Underhill Flats

Village Center and Underhill Village Center.

In regards to the underlying zoning districts as described in the Town Plan, the Board finds that the applicant did not submit the requisite information needed to determine if the project meets the purpose statement of the Water Conservation District – specifically, the applicant did not submit a wastewater system design plan that would have illustrated that the project would not pollute the gravel aquifer recharge area for Underhill Center.

Section 5.4.D.2 – Zoning District & Use Standards: The Board finds that applicant did not submit enough information to determine that the wastewater system will not encroach upon the property’s setbacks (Exhibit UU), in addition to, convincing evidence illustrating that the wastewater system will not be placed in an area of very steep slopes (Exhibit UU in comparison with Exhibit R), or in a surface water buffer (Exhibit UU in comparison with Exhibits S & T).

Section 5.4.D.3 – Performance Standards: See Section 3.14 above for more formation regarding performance standards requirements.

Section 5.4.D.4 – Legal Documentation: The Board finds that the applicant is proposing a trail easement that would traverse the property from north to south – from Pine Ridge Road to Brown’s River (Exhibit SS, Page 11). The Board finds that the feasibility of this trail is low. First, the proposed trail is to bisect Crane Brook Trail with no means of crossing the brook – which would require the proper permits under Section 3.19.C (including addition review by this Board). Second, the applicant proposes that the trail terminate at Brown’s River, at which point, trail users would be able to connect with either River Road or Pleasant Valley Road via Brown’s River. And third, assuming the applicant is proposing the trail to continue across Brown’s River, the property immediately to the south of the River is private property (either 15 Pleasant Valley Road or 19 Pleasant Valley Road) not owned by him. Therefore, the applicant does not have the authority to continue the trail directly to Pleasant Valley Road unless he obtained the proper legal documentation from the applicable landowner(s). As a result, the Board finds that the utilization of the trail would be low, if not non-existent, as the Board does not foresee trail users crossing Crane Brook and Brown’s River without bridges, nor foresees trail users utilized Crane Brook or Brown’s River to access River Road or Pleasant Valley Road.

The Board finds that no other rights-of-way and easements are required. The applicant submitted a maintenance plan (Exhibit I) pertaining to trash removal, snow removal and landscaping, which is consistent with other maintenance plans submitted in previous conditional use review applications.

#### **D. SECTION 5.5 – WAIVERS & VARIANCES**

Section 5.5.A – Applications & Review Standards: The Board finds that it has the authority to waive application requirements and site plan or conditional use review standards under Sections 5.3 and 5.4 that it determines are not relevant to a particular application. The Board has not granted any waivers pertaining to application requirements. The Board finds that the applicant has requested one waiver – pertaining to the driveway – which falls under the purview of the Selectboard.

#### **ARTICLE VI, FLOOD HAZARD AREA REVIEW**

The Board finds that there are Flood Hazard Areas that encompass Crane Brook and Brown’s River

(Exhibit T) present on the lot; however, review under Article VI is not required because no development is proposed within this area.

### **III. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS**

Since the Board has not granted approval, no waivers, modifications or supplementations are to be granted. The Board finds that it does not have the jurisdiction to grant the request waiver in regard to the driveway width.

### **IV. DECISION AND RATIONALE OF DENIAL**

The Board finds that the application is incomplete, as all of the necessary materials have not been submitted (Section 5.2.B.2). The applicant has failed to provide the information needed to make an informed decision after repeated requests for various materials from the Zoning Administrator and this Board (explained in detail below). At the request of the applicant, the Board granted him a continuance at the December 4, 2017 hearing for him to supplement his application with more information. At the February 5, 2018 hearing – the continued hearing – the applicant failed to present additional information and asked for a continuance prior to the commencement of the evening's hearing. Shortly after the February 5, 2018 hearing, the Board provided a list of materials required to make a decision about the application (Exhibit EE). Upon submission of materials (Exhibit II – Exhibit CCC) at the May 21, 2018 hearing, the Board determined that the applicant failed to submit some of the basic information that had been requested throughout the process and in the memorandum (Exhibit EE). The Board finds that the applicant has used the development review process to formulate his project over the past six to seven months rather than coming to the Board with a finalized plan to be approved at the outset.

The applicant contends that the Development Review Board is not "design review." While the applicant is correct that this Board does not have the authority to conduct design review, the Board finds that there are design-related components of the project that relate to the conditional use review criteria necessary to grant approval of any conditional use review application.

After in-depth deliberation the Board finds that the some of the information provided far exceed the requirements of the regulations, while other information was sub-par at best, as the applicant failed to provide enough information to Board, resulting in an incomplete application. The Board thoroughly reviewed all aspects of the proposal under the evaluation of the 2014 *Underhill Unified Land Use & Development Regulations*, and concludes that based on the evidence submitted and the above findings, the application to convert a single-family dwelling with an attached accessory dwelling to a multi-family dwelling is denied for the following reasons:

1. The Board finds that key aspects of the application could not be reviewed because the application is incomplete. The Board notes that the applicant failed to provide all of the information requested in the February 15, 2018 (Exhibit EE) memorandum, specifically:
  - a. Request item 1 pertaining to the identification of areas of steep slope and very steep slope;
  - b. Request item 2 pertaining to erosion control techniques during & after construction;
  - c. Request item 3 pertaining to stormwater management techniques/design, during and after construction;
  - d. Request item 4 pertaining to septic system depiction – the location and layout of the primary & replacement systems;

- e. Request item 5 pertaining to the number of bedrooms in each unit;
2. Based on the information that was provided, the Board finds the applicant failed to satisfy numerous standards in the 2014 *Underhill Unified Land Use & Development Regulations*, specifically:
- a. **ARTICLE II, TABLE 2.4 – WATER CONSERVATION DISTRICT:** Due to the failure to submit a wastewater system design plan, the Board cannot confirm that the applicant’s project will conform to the purpose statement of this district, which is to protect the important gravel aquifer recharge area in Underhill Center.
  - b. **ARTICLE III, SECTION 3.13 – PARKING, LOADING & SERVICE AREAS:**
    - i. The Board is unable to determine if the provided number of parking spaces is adequate for the project since the applicant failed to identify the number of bedrooms within each unit.
    - ii. The Board finds that four of the parking spaces depicted on the site plan (Exhibit UU) failed to satisfy the “unobstructed access and maneuvering room” requirement enumerated under this section.
    - iii. The Board finds that vehicular circulation will likely encroach upon the handicapped parking space and vice versa.
    - iv. The Board finds that the applicant failed to accommodate landscaping for at least 10% of the total parking area.
  - c. **ARTICLE III, SECTION 3.17 – SOURCE PROTECTION AREAS:** The Board is unable to verify that active groundwater source protection area will not be adversely impacted. The submission of an ANR- Water Supply & Wastewater Disposal Permit or a wastewater system design plan would have created a presumption that this source protection area would not have been adversely impacted.
  - d. **ARTICLE III, SECTION 3.18 – STEEP SLOPES:**
    - i. The Board finds that the area depicted on the site plan (Exhibit UU) as “approximate proposed leach field area” is located on a slope that is unverified. The site plan depicts an area of unverified steep slope; however, when compared with the resources from the Agency of Natural Resources (Exhibit R), there is convincing evidence that the “approximate proposed leach field area” is located in an area of very steep slopes, where septic systems are prohibited.
    - ii. The Board finds that the applicant failed to submit the necessary materials in regard to the wastewater system (which is to be located on a steep slope according to the site plan – Exhibit UU) to evaluate that that the “existing vegetation and drainage materials will be maintained to the maximum extent physically feasible to avoid stream alterations and relocations, and increased storm water runoff due to vegetation removal, slope disturbance, re-contouring or site compaction.”
    - iii. The Board is unable to determine that no new drainageways will be created.
    - iv. Since the applicant has designated the area as approximate, determining that the wastewater system will satisfy the requirements of this section is not feasible with the information presented.
    - v. Assuming the “approximate proposed leach field area” will remain as shown on the site plan, the area will be within the east, side yard setback, thus not satisfying the requirements of Section 3.18.D.2.b
  - e. **ARTICLE III, SECTION 3.19 – SURFACE WATERS & WETLANDS:**
    - i. Due to the lack of certainty pertaining to the wastewater system, as well as the failure to illustrate Crane Brook on the site plan (Exhibit UU) the Board is

unable to say with certainty that the “approximate proposed leach field area” will meet the setback requirements from Crane Brook under Section 3.19.D.4.

**f. ARTICLE III, SECTION 3.22 – WATER SUPPLY & WASTEWATER SYSTEMS:**

- i. The lack of a wastewater system & potable water supply design prevents the Board from determining if the systems will meet the requirements of the Town’s regulations (e.g. setbacks).
- ii. The applicant has failed to identify on the unit outline (Exhibit SS, Pages 58-60) the number of bedrooms that will be contained in the completed multi-family dwelling. The Board finds that the applicant and his engineer did not present convincing evidence attesting to the adequacy of the water supply and wastewater disposal capacity.
- iii. The Board finds that the engineer’s conclusions pertaining to the wastewater disposal & potable water supply system are based on a document and resource review and are not adequate to provide positive findings (Exhibit LL).

**g. ARTICLE V, SECTION 5.3.B.6 – SITE PLAN REVIEW, LANDSCAPING AND SCREENING:** In regard to landscaping, the Board finds that the applicant has presented a site plan (Exhibit UU) that is inconsistent with the “walk along” videos (Exhibit VV – Exhibit CCC), and as a result, the Board is unable to determine that the requisite screening techniques that will be implemented.

3. The Board finds that the applicant did not submit sufficient evidence demonstrating that the project meets the character of area as it relates to the purpose statement of the Water Conservation District. The applicant failed to submit a wastewater system design demonstrating that the septic system will not pollute the gravel aquifer recharge area in Underhill Center.
4. In the alternative, should the Board use additional evaluation criteria, as explained in Section 5.4.B.2 above, the Board finds that Pine Ridge Road is a distinct area contained to the subdivision itself. The creation of a multi-family dwelling along this road would be contrary to intended use of the subdivision, as well as being contrary to existing uses along the road – all single-family dwellings. Moreover, the Board finds that a multi-family dwelling within the subdivision is contrary to the type, density and intensity of the neighborhood. Due to the reasons stated above under 5.4.B.2, the Board is unable to impose mitigation measures.
5. The Board finds the applicants’ project is not supported by the Town Plan, which encourages denser, compact development in the traditional village center areas. The board finds the Pine Ridge Road neighborhood is distinct and separate from the Underhill Village Center district, as explained under Sections 3.4 and 5.4.D.1 above.

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Dated at Underhill, Vermont this 29<sup>th</sup> day of June, 2018.

*Charles Van Winkle*

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Charles Van Winkle, Chairman, 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 29 July 2018.

**Andrew Strniste**

**From:** Peter Duval <pkduval@gmail.com>  
**Sent:** Friday, July 19, 2019 1:35 PM  
**To:** Andrew Strniste  
**Subject:** Re: 93-8-18 Vtec Remand Process  
**Attachments:** DUVL0001-SP-Details 1-30-19.pdf; ATT00001.htm

Hi Andrew,

I must preface this message with my continuing objection to the DRB's attempts to regulate wastewater systems:

- 1) The DRB does not have authority to regulate wastewater;
- 2) Giving specific attention to wastewater systems, the ULUDR are inconsistent with Vermont laws;
- 3) Vermont law is clear regarding municipal involvement in wastewater systems — only notice of certain events and coordination of permits is allowed by statute;
- 4) The DRB makes new demands for information that is well-beyond the allowed scope of its review, even after having already reached a final decision.

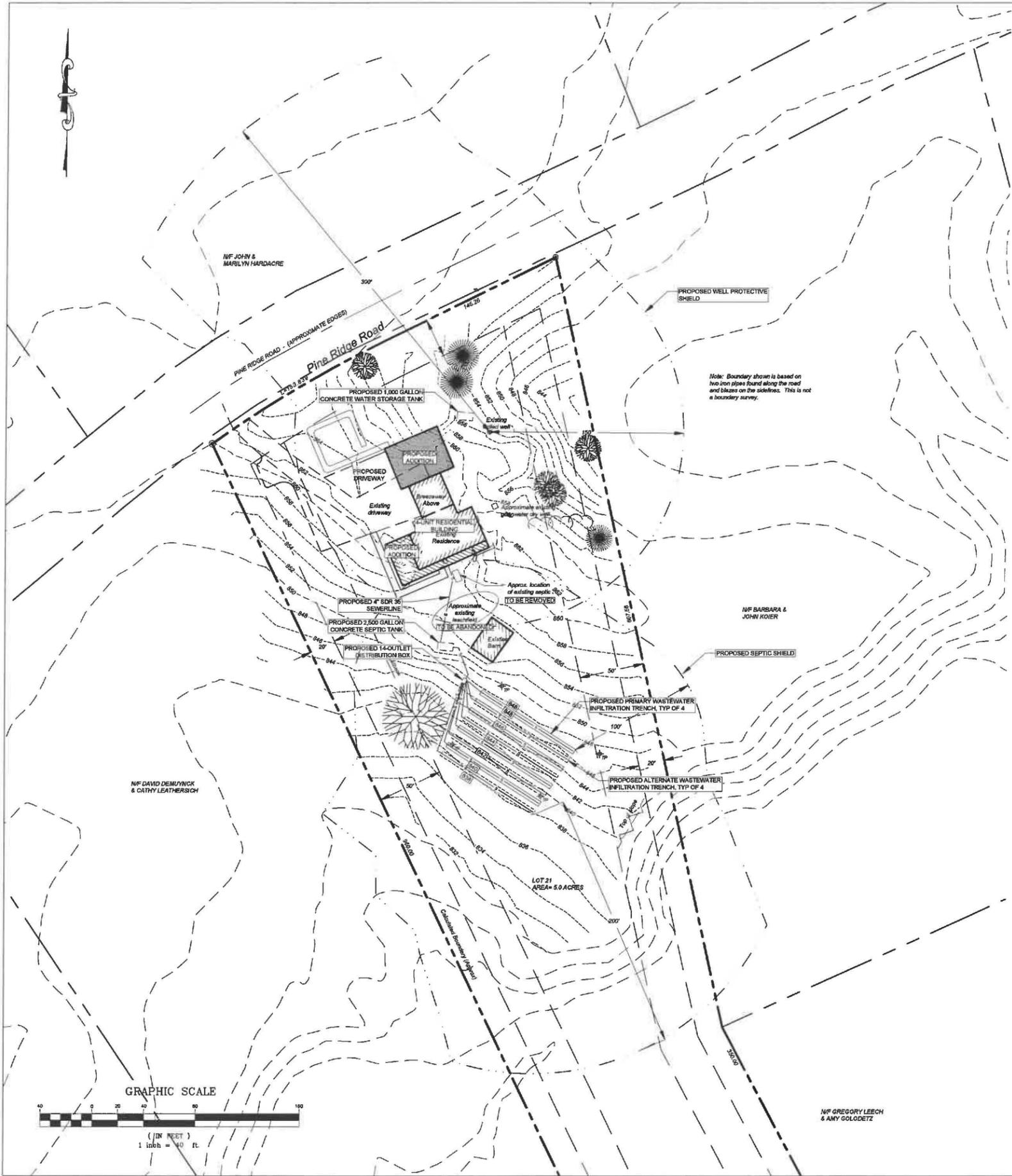
I filed my application with the DRB, November 2, 2017. The zoning ordinances that were in effect at that time are the ordinances that the DRB may use to review the project. I have provided an engineered drawing of a wastewater system design that I would like to build. The DRB asked for AFTER it made its final decision and well into the appeal process — an outrageous abuse of the process. The wastewater system design speaks for itself. When the DRB is finished with its attempt to regulate the design, I will make my application to ANR and they will determine whether it merits a Wastewater System and Potable Water Supply Permit.

With that out of the way, I have attached page 2 of the wastewater system design, which is merely an update of the system design that was presented at the May 7, 2018 DRB hearing. I hasten to point out that the only competent authority for reviewing wastewater system designs is the Agency of Natural Resources.

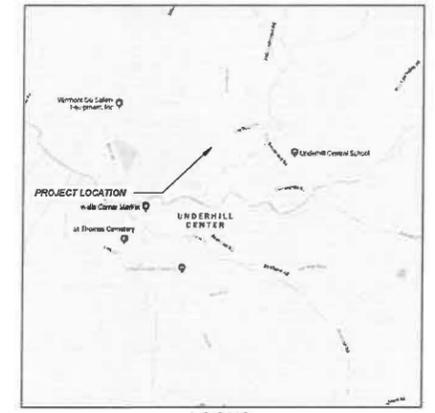
The multiple roles (ZA, Planner, DRB Staff, Recording Secretary) required of a single person when a small town like Underhill attempts the Development Review Board review model is a problem.

Best regards,

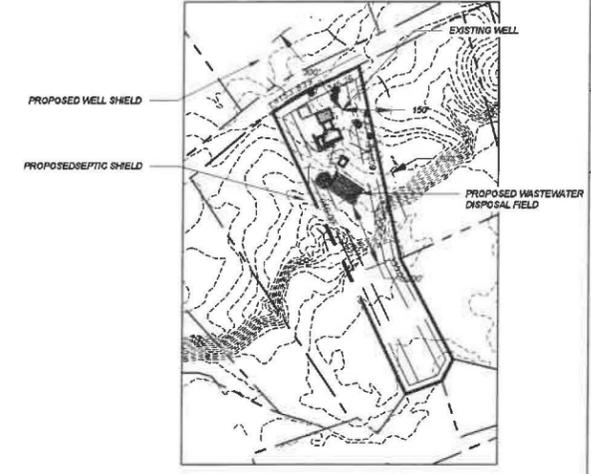
-Peter



93-8-18 Vtec 20190510  
 Applicant-Appellant Response to Town's Motion to Remand  
 Attachment D



LOCUS  
NOT TO SCALE



PLOT PLAN  
1" = 250'

**LEGEND**

	PROPERTY LINE
	ABUTTER'S PROPERTY LINE
	ZONING SETBACK LINE
	MAJOR CONTOUR
	MINOR CONTOUR
	BUILDINGS
	BUILDING OVERHANG
	ROADWAY CENTERLINE
	EDGE OF GRAVEL
	STONE WALL
	TREE LINE
	SEWER LINE
	WATER LINE
	TEST PITS
	SPOT GRADES
	POTABLE WATER WELLS

- GENERAL NOTES:**
1. TOPOGRAPHY, AND EXISTING FEATURES FROM SURVEY BY LITTLE RIVER SURVEY. PROPOSED BUILDINGS AND DRIVE FROM A PLAN BY BRADY CONSULTING.
  2. THIS DRAWING IS NOT INTENDED TO BE A BOUNDARY SURVEY
  3. CONTRACTOR SHALL CONTACT DIG-SAFE PRIOR TO ANY EXCAVATION

**EXHIBIT III**

**Wilcox & Barton, Inc.**  
 CIVIL - ENVIRONMENTAL - GEOTECHNICAL

1115 ROUTE 100B, SUITE 200  
 MORETOWN, VT 05660  
 802-496-4747  
 www.wilcoxandbarton.com

REVISION HISTORY

1.

Issued For:

ALL DOCUMENTS PREPARED BY WILCOX & BARTON, INC. ARE INSTRUMENTS OF SERVICE IN RESPECT OF THE PROJECT. THEY ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY OWNER OR OTHERS. ANY REUSE WITHOUT WRITTEN VERIFICATION OR ADAPTATION BY WILCOX & BARTON, INC. FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT OWNERS SOLE RISK AND WITHOUT LIABILITY OR LEGAL EXPOSURE TO WILCOX & BARTON, INC. OWNER SHALL INDEMNIFY AND HOLD HARMLESS WILCOX & BARTON, INC. FROM ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES ARISING OUT OF OR RESULTING THEREFROM.

Owner

**Peter & Ellen Duval**

Site

**25 Pine Ridge Road  
Underhill, VT 05489**

Drawing Title

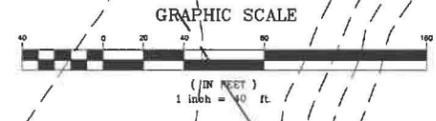
**Site Plan**

Scale	1" = 30'	Date	1/30/2019
Drafted By	DLF	Checked By	PCL
Project Mgr	PCL	Project Number	DUVL0001
Sheet Number			

**C-1**

ENGINEER: PETER C. LAZORCHAK, P.E.  
VT P.E. #9930

1 of 2



1115 ROUTE 100B, SUITE 200  
MORETOWN, VT 05660  
802-496-4747  
www.wilcoxandbarton.com

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Owner  
**Peter & Ellen Duval**

Site  
**25 Pine Ridge Road  
Underhill, VT 05489**

Drawing Title  
**Details**

Scale	1" = 30'	Date	1/30/2019
Created By	DLF	Checked By	PCL
Project Mgr	PCL	Project Number	DUVL0001
Sheet Number	<b>C-2</b>		

ENGINEER: PETER C. LAZORCHAK, P.E.  
VT P.E. #9920

2 of 2

**WATER/WASTEWATER NOTES**

- THIS PROJECT INVOLVES THE CONSTRUCTION OF AN IN-GROUND WASTEWATER DISPOSAL SYSTEM TO SERVE A PROPOSED 4 UNIT MULTI-FAMILY BUILDING. IT IS THE OWNERS RESPONSIBILITY TO BECOME FAMILIAR WITH THESE PLANS.
- THE OWNER IS RESPONSIBLE FOR ENSURING THAT ALL PERMITS ARE IN PLACE PRIOR TO CONSTRUCTION AND FOR CONSTRUCTING THE PROJECT IN ACCORDANCE WITH THE APPROVED PLAN.

**SEPTIC TANK/BUILDING SEWER NOTES:**

- TANK SHALL BE A CAMP PRECAST MODEL LD6-12-2500 OR APPROVED EQUAL
- INTERIOR TANK DIMENSIONS SHALL BE 12' L X 6' W X 5'-6" H, OR APPROVED EQUAL
- TANK SHALL BE PLACED A MINIMUM OF 10' FROM THE BUILDING
- 4" CAST IRON OR SDR 35 PVC FROM BUILDING TO TANK SHALL BE USED WITH ONE PIPE JOINT PLACED ON UNDISTURBED EARTH TO ABSORB SETTLING
- SLOPE PIPE FROM BUILDING TO TANK AT MINIMUM OF 1/4" PER FOOT
- CLEANOUTS SHALL BE INSTALLED AT BENDS IN PIPE

**WASTEWATER BASIS OF DESIGN - PRIMARY SYSTEM FOR NEW SINGLE FAMILY HOME**

DAILY FLOW OF PROPOSED 4-UNIT MULTI-FAMILY:  
3 Bedrooms/Unit 1,680 GPD

LOADING RATE CALCULATION:  
LR = 3 / (PERCOLATION RATE \* 0.5)  
PERCOLATION RATE 5 MNIN  
LR = 3 / (5 \* 0.5) 1.34 GPD/S.F.

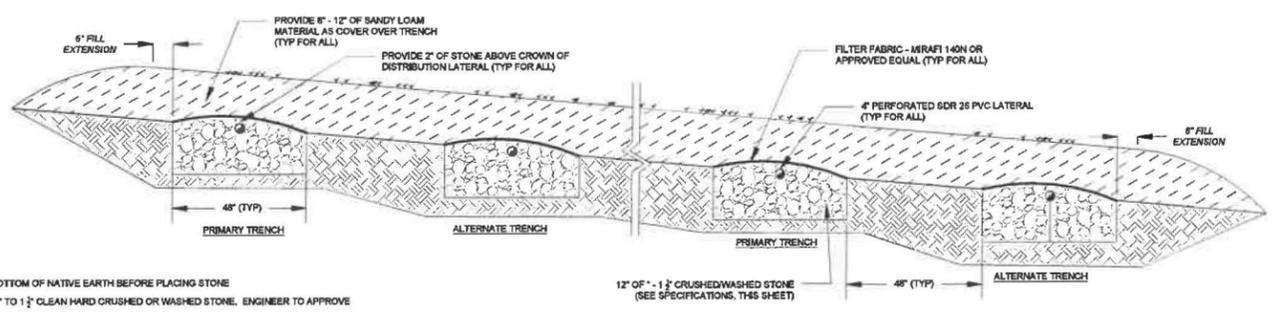
MINIMUM LEACH-FIELD AREA CALCULATION:  
DEPTH TO SEASONAL HIGH WATER TABLE (SHWT) > 72 INCHES  
MINIMUM TRENCH AREA (1,680 GPD / 1.34 GPD/S.F.) 1,254 S.F.

PROPOSED LEACH-FIELD AREA CALCULATION:  
TRENCH WIDTH (W) 4 FT  
TRENCH LENGTH (L) 85 FT  
NUMBER OF ROWS (R) 4  
LEACH-FIELD AREA = R X L X W 1,360 S.F.

POTABLE WATER BASIS OF DESIGN - see attached spreadsheet for calculations

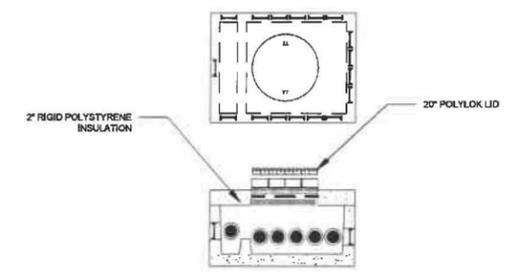
AVERAGE DAILY FLOW OF EXISTING # BEDROOM HOUSE:  
4 UNITS @ 3 BEDROOMS/UNIT @ 150 GPD \* 10% LOW FLOW FIXTURE REDUCTION 1,820 GPD

MAXIMUM DAY DEMAND 2.25 GPM  
INSTANTANEOUS PEAK DEMAND 20 GPM  
REQUIRED STORAGE 890 gallons



- NOTES:**
- SCARIFY SIDES AND BOTTOM OF NATIVE EARTH BEFORE PLACING STONE
  - PLACE 12 INCHES OF 1" TO 1 1/2" CLEAN HARD CRUSHED OR WASHED STONE. ENGINEER TO APPROVE MATERIAL PRIOR TO INSTALLATION.
  - INSTALL 4" PERFORATED SDR 35 PVC DISTRIBUTION LATERALS WITH HOLES POINTED DOWN
  - COVER DISTRIBUTION LATERALS WITH A MINIMUM OF 2" OF STONE
  - PLACE FILTER FABRIC ABOVE STONE
  - PROVIDE SIX TO TWELVE INCHES OF SANDY LOAM MATERIAL OVER STONE TRENCHES
  - PROVIDE 2 TO 4 INCHES MINIMUM OF TOPSOIL OVER FILL MATERIAL, SEED AND MULCH

**SHALLOW IN-GROUND TRENCH DETAIL**



**14-OUTLET DISTRIBUTION BOX**

- VARIANCES**
- NO VARIANCES ARE REQUESTED FOR THIS PROJECT
- CONSTRUCTION PHASE & INSPECTION REQUIREMENTS**
- CONTRACTOR AND/OR OWNER IS RESPONSIBLE TO CONTACT THE ENGINEER TWO (2) WEEKS PRIOR TO START OF WORK TO CONDUCT A PRE-CONSTRUCTION MEETING. THIS MEETING SHALL, AT A MINIMUM, DISCUSS THE FOLLOWING:
    - STAKEOUT OF LEACH-FIELD AND OTHER SYSTEM COMPONENTS
    - ENGINEER TO WITNESS SCARIFICATION OF SOIL PRIOR TO PLACING STONE
    - ENGINEER TO WITNESS FORCE MAIN PRESSURE TEST DESCRIBED BELOW (IF PUMP STATION IS USED)
    - ENGINEER TO WITNESS PUMP OPERATION AND VERIFY DISCHARGE TO DISTRIBUTION BOX (IF PUMP STATION IS USED)
    - ENGINEER TO WITNESS LEACH-FIELD PRIOR TO COVERING WITH TOPSOIL
  - THE CERTIFICATION OF CONSTRUCTION AS REQUIRED BY SECTION 1-309(A) OF THE ENVIRONMENTAL PROTECTION RULES WILL NOT BE PROVIDED BY THE ENGINEER IF THE PROCEDURES OUTLINED HEREIN ARE NOT FOLLOWED.
  - CONTRACTOR SHALL VERIFY ELEVATIONS AND LAYOUT OF HOUSE PRIOR TO START OF CONSTRUCTION AND PROVIDE ENGINEER WITH THIS INFORMATION TO CONFIRM THAT A GRAVITY SYSTEM IS FEASIBLE.
  - CONTRACTOR SHALL ATTEST TO THE FOLLOWING STATEMENT: "I HEREBY CERTIFY THAT INSTALLATION-RELATED INFORMATION PROVIDED TO THE ENGINEER IS TRUE AND CORRECT, AND THAT IN THE EXERCISE OF MY REASONABLE PROFESSIONAL JUDGEMENT, THE WASTEWATER SYSTEM HAS BEEN INSTALLED TO THE PERMITTED DESIGN, WITH ANY CHANGES MADE AS DIRECTED OR AGREED TO BY THE ENGINEER"

- MAINTENANCE**
- AT LEAST ONCE A YEAR, THE DEPTH OF SLUDGE AND SCUM IN THE SEPTIC TANK SHALL BE MEASURED. THE TANK SHALL BE PUMPED IF THE SLUDGE IS LESS THAN 12" TO THE OUTLET BAFFLE, OR THE SCUM LAYER IS LESS THAN 3" TO THE SEPTIC TANK OUTLET BAFFLE.
  - AT LEAST TWICE A YEAR, THE OUTLET FILTER ON THE SEPTIC TANK SHALL BE REMOVED AND CLEANED BY SPRAYING IT WITH WATER UNDER NORMAL HOUSEHOLD PRESSURE.
  - CAUTION: GARBAGE DISPOSALS, LAUNDRY BLEACH, ANTIBACTERIAL SOAP, HAZARDOUS MATERIALS, PHARMACEUTICALS AND HOUSEHOLD CLEANERS WILL REDUCE THE LIFE OF THE SEPTIC SYSTEM. THESE AND OTHER TOXIC SUBSTANCES SHALL NOT BE DISPOSED OF IN THIS SEPTIC SYSTEM.

**SOIL NOTES**

TEST PITS EVALUATED ON 11/21/2018 AND 12/7/18 BY PETER LAZORCHAK, BILL ZABLOWSKI, VT ANR PRESENT ON 11/21/18

TP-1  
0'-8" BROWN TOPSOIL LOAM  
8'-26" BROWN LOAMY FINE SAND  
26'-42" BROWN FINE SAND  
42'-70" GREY BROWN FINE SANDY LOAM LENSES OF FIRM SAND  
NO SHWT/LEDGE NOTED TO DEPTH

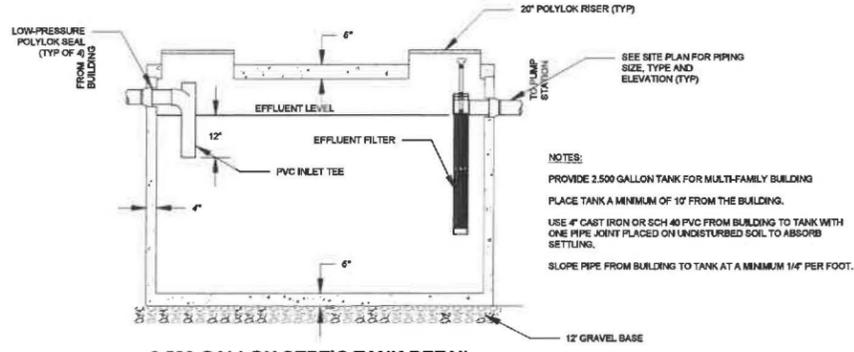
TP-2  
0'-8" BROWN TOPSOIL LOAM  
8'-27" BROWN FINE SAND  
27'-72" BROWN LOAMY FINE SAND  
SOME LENSES OF FIRM  
NO SHWT/LEDGE NOTED TO DEPTH

TP-3  
0'-8" BROWN TOPSOIL LOAM  
8'-28" BROWN LOAMY FINE SAND  
28'-72" GREY-BROWN LOAMY FINE SAND LENSES OF SILTY FINE SAND  
NO SHWT/LEDGE NOTED TO DEPTH

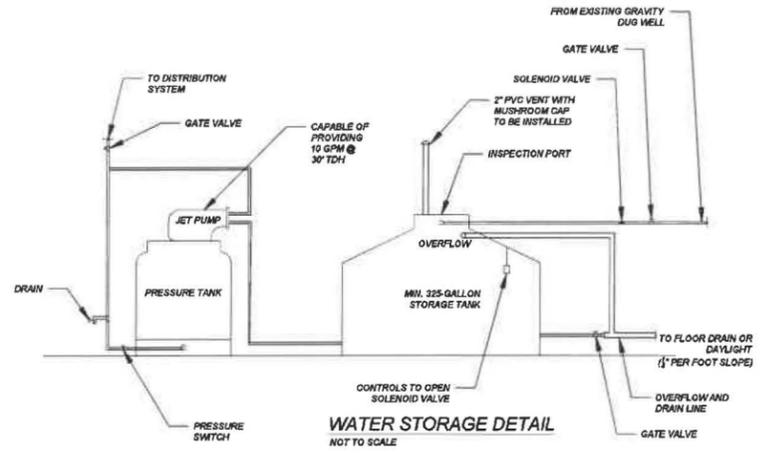
TP-4  
0'-4" DARK BROWN TOPSOIL LOAM  
4'-49" ORANGE BROWN FINE SANDY LOAM  
28'-39" GREY-BROWN VERY FINE SAND  
NO SHWT/LEDGE NOTED TO DEPTH

PERCOLATION TESTS 12/9/18

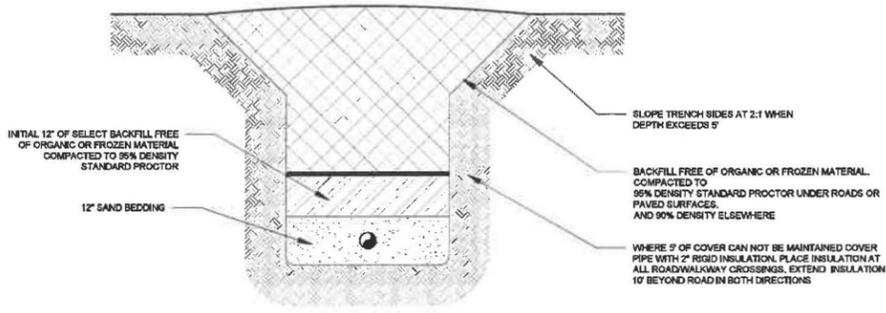
PT-1 4 MNIN @ 48 INCHES  
PT-2 15 MNIN @ 90 INCHES  
PT-3 1 MNIN @ 24 INCHES  
PT-4 2 MNIN @ 40 INCHES  
PT-5 5 MNIN @ 60 INCHES



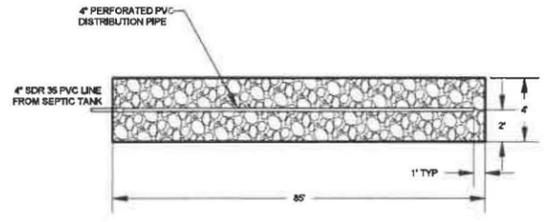
**2,500 GALLON SEPTIC TANK DETAIL**



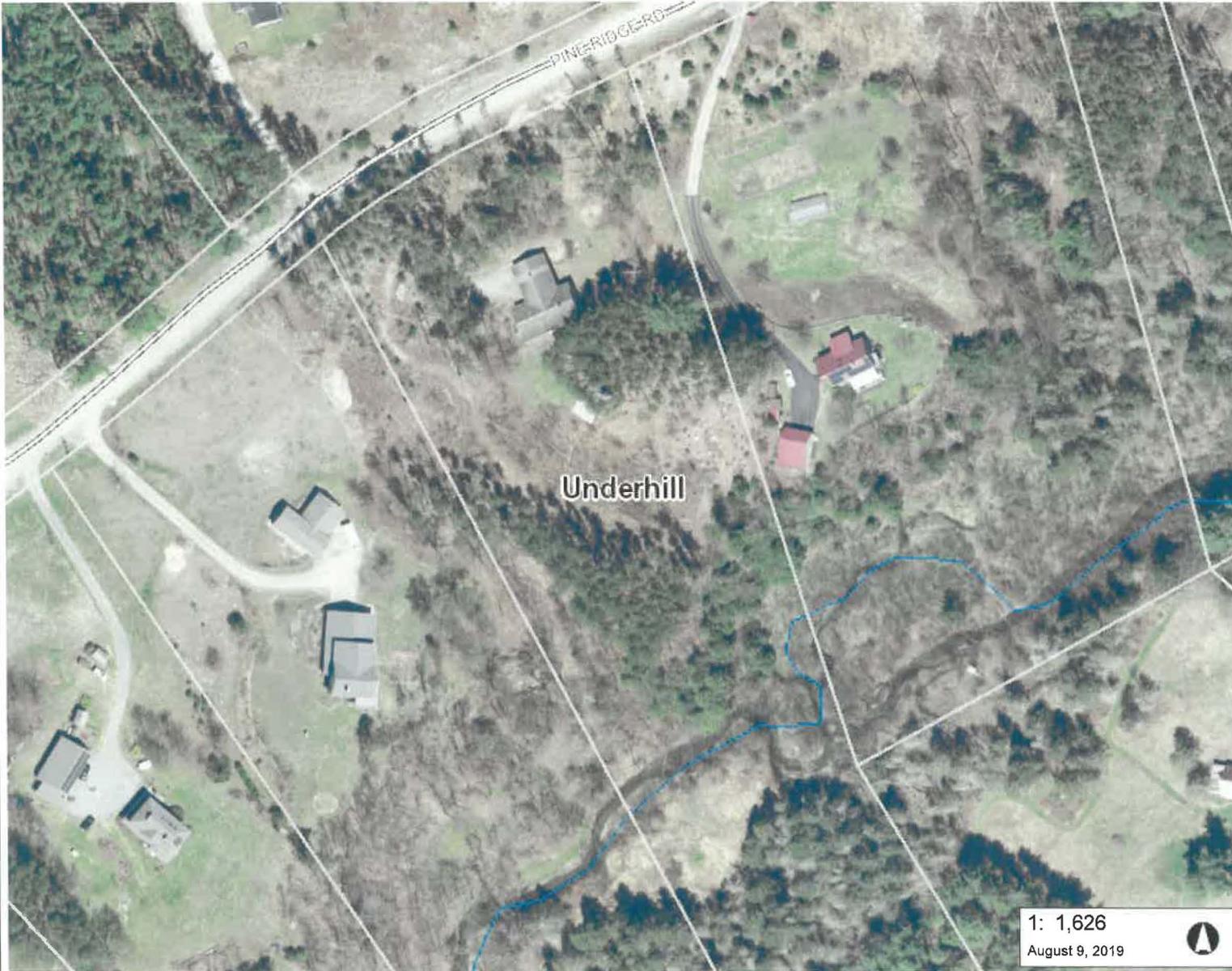
**WATER STORAGE DETAIL**



**SEWER TRENCH DETAIL**



**ABSORPTION TRENCH PIPING PLAN**



**LEGEND**

- Parcels (standardized)
- Parcels (non-standardized)
- Roads
  - Interstate
  - Principal Arterial
  - Minor Arterial
  - Major Collector
  - Minor Collector
  - Local
  - Not part of function Classification S
- Waterbody
- Stream
- Town Boundary

**EXHIBIT**  
LLL

1: 1,626  
August 9, 2019



83.0 0 42.00 83.0 Meters

WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere 1" = 136 Ft. 1cm = 16 Meters  
© Vermont Agency of Natural Resources THIS MAP IS NOT TO BE USED FOR NAVIGATION

**DISCLAIMER:** This map is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. ANR and the State of Vermont make no representations of any kind, including but not limited to, the warranties of merchantability, or fitness for a particular use, nor are any such warranties to be implied with respect to the data on this map.

**NOTES**

Map created using ANR's Natural Resources Atlas

only apply for the subdivision review process and not the conditional use review/site plan review process, and therefore, that Section does not apply as part of this review. Staff also notes that density bonuses pertains to the acquisition of extra lots not normally obtained when an applicant is proposing subdivision application, and not extra dwelling units within a multi-family dwelling. Section 3.7.A of the *Underhill Unified Land Use & Development Regulations* (ULUDR) states that a single lot shall only have one principal use or structure – structure being the key word for this particular application. Since the applicant is proposing a multi-family dwelling, that structure would be considered the principal structure. Per Table 2.1, as a conditional use, a multi-family dwelling is allowed up to eight (8) units in the Water Conservation District. Therefore, the applicant is permitted up to eight (8) dwelling units regardless of the energy strategies and techniques he is planning to incorporate as long as the application is approved as a conditional use.

However, the Board could analogize the applicant's proposal to Section 9.6, Density Bonuses, in their evaluation of, or when trying to determine, how many dwelling units should be permitted, as Section 9.6 illustrates the Regulation's intent to reward applicants proposing development utilizing the listed methods of that Section.

Staff also notes that some of the information provided is conceptual or has not been finalized. For example, the applicant has advised that the building footprints could potentially change, but are proposed roughly as he intends them to be. The applicant plans on elaborating on the floor plan during the hearing.

If the Board feels that applicant needs to provide more information, since this proposal is a conditional use application, and conditional use reviewing hearings do not have any subsequent hearings, Staff recommends that the Board should continue the hearing if necessary and allow the applicant to submit more information.

---

## **REVIEW OF RELEVANT SECTIONS**

### **ARTICLE II – ZONING DISTRICTS**

#### **ARTICLE II, TABLE 2.4 – WATER CONSERVATION DISTRICT (PG. 15)**

The purpose of the Water Conservation District is to protect the important gravel aquifer recharge area in Underhill Center.

Staff finds that the obtainment of a Wastewater System and Potable Water Supply Permit would provide sufficient evidence that the gravel aquifer recharge area in Underhill Center would be protected. To meet purpose of this district, Staff recommends that the Board continue their practice of requiring the obtainment of the wastewater/water permit as a condition of approval.

### **ARTICLE III – GENERAL REGULATIONS**

#### **SECTION 3.2 – ACCESS (PG. 27)**

The subject property contains one access points. If approved by the Development Review Board, the applicant will be required to obtain an access permit from the Selectboard due to the change of use from a single-family dwelling with an attached accessory dwelling to a multi-family dwelling (four dwelling units). See Section 3.B.iii, which states:

“This ordinance applies to (iii) a change of use of a development road or driveway.

**SECTION 3.22 – WATER SUPPLY & WASTEWATER SYSTEMS (PG. 65)**

The applicant has been advised by Staff to reach out to the Vermont Department of Conservation and explain the proposed project to them; however, not to begin the permitting process until he has obtained approval from the Development Review Board. If the Board votes to approve the submitted application, the obtainment of a Wastewater System and Potable Water Supply Permit should be a condition of approval, and shall be submitted and recorded prior to receiving a Certificate of Occupancy per Section 10.4.A.2.b of the *Underhill Unified Land Use & Development Regulations*.

**ARTICLE IV – SPECIFIC USE STANDARDS**

**SECTION 4.2 – ACCESSORY DWELLING (PG. 67)**

Since the applicant has not delineated the four dwelling units in the floor plans he submitted as part of this application (see Exhibit J & K), if approved, the Board should condition approval on no dwelling units being located in the barn, and all dwellings units being located within the existing dwelling and proposed new silo. As mentioned above in Section 3.7.A, only one principal structure is permitted per lot. Since the Barn is considered detached from the principal structure (as explained above), it is considered an accessory structure. If the Barn were to contain an dwelling units, Staff's interpretation of the Regulations is that both the Barn and the existing dwelling with the proposed new silo would both be considered principal structures, thus in conflict with Section 3.7.A.

In addition, if the applicant were to contend that any proposed dwelling in the barn should be considered an accessory dwelling, the Regulations do not support this argument, as Section 4.2.A states that accessory dwellings can only be permitted to a principal single-family dwelling, or within an existing accessory structure to the principal dwelling [*specifically noting that the word "dwelling" is singular*].

**ARTICLE V – DEVELOPMENT REVIEW**

**SECTION 5.1 – APPLICABILITY (PG. 105)**

Staff finds that conditional use review is required per Article II.

**SECTION 5.3 – SITE PLAN REVIEW (PG. 108)**

Section 5.3.A – Purpose (pg. 108): When reviewing a conditional use review application, site plan review is also required per Section 5.4.C.

Section 5.3.B – Standards (pg. 108): The Board may wish to consider and impose appropriate safeguards, modifications and conditions relating to any of the following standards:

Section 5.3.B.1 – Existing Site Features (pg. 108): A part of the proposing building is existing; however, the existing building as well as the proposed addition will likely cause minimal undue adverse impacts to significant natural, historic and scenic resources identified in the Underhill Town Plan, maps and related inventories. Moreover, Staff does not anticipate the proposed project will impact the criteria listed under section 5.3.B.1.a. If the Board finds that the proposed project will impact one of the criteria listed under Section 5.3.B.1.a, then they can take one of the measures listed under 5.3.B.1.b to avoid or mitigate

Area" as:

"For purposes of these regulations, the 'character of the area' *or character of a neighborhood* is the planned type, density and pattern of development for a particular area of neighborhood, as defined by the zoning district purpose statements and clearly-stated goals, policies and objectives of the Underhill Town Plan that are specific to that area and/or the physical circumstances of developments." *[Emphasis Added]*

As shown, the definition of "character of the area" seems to infer that the two terms ("character of the area" and "character of the neighborhood") are synonymous with one another; but nevertheless, the term that is more applicable for the subject application is "character of the area" since "character of the area" is the specific term used under the conditional use review evaluation criteria.

As follow-up to the December 4, 2017 hearing, Staff consulted with the Vermont League of Cities and Towns, as well as conducted research on the definition of "character of the area." A lot of the research has yielded that the Board should consider the "character of the area" in relation to other areas within the relevant zoning district (as alluded to in the definition directly above). As stated under Table 2.1, the purpose statement of the Water Conservation District is "to protect the important gravel aquifer recharge area in Underhill Center." Therefore, the obtainment of a Wastewater System and Potable Water Supply Permit indicates the applicant would satisfy the purpose statement of the Water Conservation District. The district's purpose statement appears to predominantly deal with geologic issues and is silent when providing a vision of the type of development that is anticipated for the district.

While the obtainment of a Wastewater System and Potable Water Supply Permit likely demonstrates that the proposed development ostensibly meets the district's purpose statement, this subsection indicates the Board shall perform an analysis regarding the proposed project's location, scale, type, density, and intensity relative to other development in the Water Conservation District, and as "defined by zoning district purpose statements and *specifically stated and relevant policies and standards of the Underhill Town Plan.*" *[Emphasis Added]* Therefore, the Board seemingly needs to determine which policies and standards of the Underhill Town Plan to evaluate the application under.

Similar to the Underhill Unified Land Use & Development Regulation, the 2015 Town Plan also states that the purpose of the Water Conservation District is "to protect the important gravel aquifer recharge area in Underhill" (see Section 3.5 of the Town Plan). In addition, this section of the Town Plan specifically states that multi-family dwelling are allowed in the district as a conditional use.

In Staff's opinion, of the stated context, goals, and policies mentioned in the Town Plan, the following provide support for the approval of this conditional use application:

- (Section 3.5 – Page 24) Goal  
"Land uses allowed within a zoning district should conform to the purpose of the zoning district and be approved by the community."
  - Assuming the applicant obtains a Wastewater System & Potable Water Supply Permit, the proposed development will satisfy the purpose statement of the district.

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**STITZEL PAGE & FLETCHER PC**

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ATTORNEYS AT LAW

Eric G. Derry - ederry@firm SPF.com - (802)660-2555

June 26, 2019

**VIA ELECTRONIC FILING**

Jennifer Teske, COM  
Vermont Superior Court, Environmental Division  
32 Cherry Street, 2nd Floor, Suite 303  
Burlington, VT 05401

Re: *Duval CU Denial*  
Docket No. 93-8-18 Vtec

Dear Jennifer:

Enclosed for filing with the Court in the above-referenced matter please find the Town of Underhill's Memorandum in Opposition to Appellant's Motion for Reconsideration, along with a Certificate of Service.

Please contact me with any questions. Thank you for your assistance.

Sincerely,



Eric G. Derry

EGD/tb

Enclosures

cc: *Please see attached Service List*  
Andrew Strniste, Underhill Planning Director & Zoning Administrator

UNL19-006 (Duval) EGD to Court- 19-06-26 cor.docx

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION  
DOCKET NO. 93-8-18 Vtec

IN RE: DUVAL CU DENIAL

CERTIFICATE OF SERVICE

I certify that I have today delivered a copy of the Town of Underhill's Memorandum in Opposition to Appellant's Motion for Reconsideration to all other parties to this case as follows:

- By first class mail by depositing it in the U.S. mail;
- By personal delivery to \_\_\_\_\_ or his/her counsel;
- Other. Explain:

The names and addresses of the parties/lawyers to whom the mail was addressed or personal delivery was made are as follows:

*Please See Attached Service List*

DATED at Burlington, Vermont, this 26<sup>th</sup> day of June 2019.



Signature: \_\_\_\_\_

Eric G. Derry, Esq.

Counsel for: Town of Underhill

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION  
DOCKET NO. 93-8-18 Vtec

IN RE: DUVAL CU DENIAL

SERVICE LIST

Mr. Peter Duval, Appellant  
25 Pine Ridge Road  
Underhill, VT 05489

Ms. Barbara P. Koier, Pro Se  
15 Pine Ridge Road  
Underhill, VT 05489

Mr. John C. Koier, Pro Se  
15 Pine Ridge Road  
Underhill, VT 05489

Ms. Dianne Terry, Pro Se  
34 Pine Ridge Road  
Underhill, VT 05489

Mr. Steven Coddington, Pro Se  
34 Pine Ridge Road  
Underhill, VT 05489

Mr. John M. Hall, Pro Se  
31 Pine Ridge Road  
Underhill, VT 05489

Ms. Nancy Hall, Pro Se  
31 Pine Ridge Road  
Underhill, VT 05489

Ms. Cathy A. Leathersich, Pro Se  
27 Pine Ridge Road  
Underhill, VT 05489

Mr. David Demuynck, Pro Se  
27 Pine Ridge Road  
Underhill, VT 05489

Ms. Cathy McNamara, Pro Se  
7 Pine Ridge Road  
Underhill, VT 05489

Mr. John McNamara, Pro Se  
7 Pine Ridge Road  
Underhill, VT 05489

Mr. John Hardacre, Pro Se  
26 Pine Ridge Road  
Underhill, VT 05489

Ms. Marilyn Hardacre, Pro Se  
26 Pine Ridge Road  
Underhill, VT 05489

Ms. Susann T. May, Pro Se  
P.O. Box 138  
Underhill Center, VT 05490

Mr. Thomas A. May, Pro Se  
P.O. Box 138  
Underhill Center, VT 05490

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION  
DOCKET NO. 93-8-18 Vtec

IN RE: DUVAL CU DENIAL

TOWN OF UNDERHILL'S MEMORANDUM IN OPPOSITION  
TO APPELLANT'S MOTION FOR RECONSIDERATION

The Town of Underhill ("Town") opposes the Appellant's motion for reconsideration of this Court's Entry Regarding Motion, dated May 21, 2019, granting the Town's request to remand this matter to the Underhill Development Review Board ("DRB").

Having failed in his efforts to oppose the Town's motion to remand, Appellant now raises the same facts and arguments a second time – based on his same apparent misunderstanding of the Town's zoning authority as it relates to wastewater systems. This Court's Entry Regarding Motion at page 2 squarely addressed that issue, and Appellant's motion fails to identify any manifest errors of law or fact upon which the Court's judgment is based, fails to present newly discovered evidence, fails to identify any intervening change in the controlling law, and fails demonstrate any manifest injustice. See *Lathrop Ltd. P'ship I*, Nos. 122-7-04 Vtec, 210-9-08 Vtec, and 136-8-10 Vtec, slip op. at 10–11. (quoting 11 Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d* § 2810.1) (discussing the standards for granting motions for reconsideration, subject to the Court's discretion). Indeed, Appellant's present motion merely rehashes the same arguments he advanced in his response to the Town's motion to remand. Because

Appellant offers no valid basis for the Court to reverse its well-reasoned judgment, the motion for reconsideration should be denied.

Finally, Appellant's motion for reconsideration also raises the issue of discovery and whether it was appropriate for the Court to refer to the DRB's decision in granting the Town's motion for remand. This is ironic in that the predominant motivation behind the Town's remand request was that the Town still has not had the opportunity to consider in the first instance a complete set of application materials from Appellant – the same materials it has been requesting since at least February 15, 2018. It is unfair to the Town that it should have to incur the expense of obtaining those materials through discovery that should already have been provided during the DRB review process.

For the foregoing reasons, and those outlined in the Town's prior motion to remand, Appellant's motion for reconsideration should be denied.

DATED at Burlington, Vermont, this 26<sup>th</sup> day of June 2019.

TOWN OF UNDERHILL  
By: Stitzel, Page & Fletcher, P.C.  
Its Attorneys



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Eric G. Derry  
P.O. Box 1507, 171 Battery Street  
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(802) 660-2555  
[ederry@firmspf.com](mailto:ederry@firmspf.com)  
ERN: 5528

STITZEL, PAGE &  
FLETCHER, P.C.  
ATTORNEYS AT LAW  
171 BATTERY STREET  
P.O. BOX 1507  
BURLINGTON, VERMONT  
05402-1507

UNL19-015 (DUVAL) MEMOOPP 19-06-26 LIT.DOCX

31 Pine Ridge Road  
Underhill, VT 05489

July 31, 2019

Andrew Striste  
Planner & Zoning Administrator  
Underhill Town Hall

Dear Mr. Striste:

We received your Notice of Public Meeting agenda for Aug 19, 2019, which includes Peter Duval's Conditional Use Review of Wastewater System Design.

We will be unable to attend the Aug 19 meeting.

We do wish to notify you of our continued opposition to Mr. Duval's proposed project of converting a single family dwelling into a multi-family dwelling.

Thank you,

Nancy Hall

Nancy Hall

John Hall

John Hall



To: Burlington Free Press  
Classifieds/Legals  
legals@bfp.burlingtonfreepress.com  
860-5329

From: Town of Underhill  
Zoning & Planning  
P.O. Box 120  
Underhill, VT 05489

LEGAL AD

*\*Please e-mail to confirm receipt of this ad.\**



Release Date: NO LATER THAN 08/03/2019



# NOTICE OF PUBLIC MEETING

Town of Underhill Development Review Board (DRB)  
Monday, August 19, 2019

At the Underhill Town Hall, 12 Pleasant Valley Road, Underhill, VT

The DRB will hold a court ordered hearing on the Conditional Use Review Application by Peter Duval for the purpose of reviewing the wastewater system design as it relates to conditional use standards. As initially proposed, Mr. Duval seeks to convert an existing single-family dwelling to a multi-family dwelling. The subject property is located at 25 Pine Ridge Road (PR025) and is located in the Water Conservation zoning district. The hearing will be held at Underhill Town Hall at 6:50 PM on Monday, August 19, 2019.

Additional information may be obtained at the Underhill Town Hall. The hearing(s) are open to the public. Pursuant to 24 VSA §§4464(a)(1)(C) and 4471(a), participation in this local proceeding is a prerequisite to the right to take any subsequent appeal. If you cannot attend the hearing(s), comments may be made in writing prior to the meeting and mailed to: Andrew Strniste, Planning Director & Zoning Administrator, P.O. Box 120 Underhill, VT 05489 or to [astrniste@underhillvt.gov](mailto:astrniste@underhillvt.gov).



***Please call Andrew Strniste at the Planning & Zoning Administrator's office at 899-4434 x106 with any questions concerning this ad and to confirm receipt. Please remit bill to: Town of Underhill, RE: 08-19-19 DRB Hearing, P.O. Box 120, Underhill, VT 05489. Thank you.***



## Town of Underhill Development Review Board

P.O. Box 120, Underhill, VT 05489  
www.underhillvt.gov

Phone: (802) 899-4434, x106  
Fax: (802) 899-2137

### Certificate of Service

I hereby certify that on this 1 day of August, 2019, a copy of the following documents were delivered to the below recipients and corresponding addresses by United certified mail, return receipt requested.

Documents:

Notice to Abutting Neighbors and Interested Parties (Court) Regarding the Court Ordered Conditional Use Review Application pertaining to the review of the wastewater system design as it relates to conditional use standards, submitted by Peter Duval who owns land at 25 Pine Ridge Road, Underhill, Vermont.

Recipients and Corresponding Address: \$6.<sup>80</sup>

✓ **25 PINE RIDGE ROAD (PR025)**  
Peter K. & Ellen M. Duval  
25 Pine Ridge Road  
Underhill, VT 05489

✓ **15 PLEASANT VALLEY ROAD (PV015)**  
Michael & Emily Diffenderffer  
P.O. Box 42  
Underhill Center, VT 05490

ABUTTING NEIGHBORS

✓ **15 PINE RIDGE ROAD (PR015)**  
Barbara & John Koier  
15 Pine Ridge Road  
Underhill, VT 05489

✓ **19 PLEASANT VALLEY ROAD (PV019)**  
Trustees of David A. & Carla N. Osgood  
David & Carla Revocable Trust  
P.O. Box 81  
Underhill Center, VT 05490

✓ **26 PINE RIDGE ROAD (PR026)**  
John D. & Marilyn O. Hardacre  
26 Pine Ridge Road  
Underhill, VT 05489

✓ **29 PLEASANT VALLEY ROAD (PV029)**  
Gregory M. Leech & Amy E. Golodetz  
29 Pleasant Valley Road  
Underhill, VT 05489

✓ **27 PINE RIDGE ROAD (PR027)**  
David A. Demuynck  
Cathy A. Leathersich  
27 Pine Ridge Road  
Underhill, VT 05489

INTERESTED PARTIES (COURT)  
✓ Steven Coddling & Dianne Terry  
34 Pine Ridge Road  
Underhill, VT 05489

✓ John M. & Nancy Hall  
31 Pine Ridge Road  
Underhill, VT 05489

✓ John & Cathy McNamara  
7 Pine Ridge Road  
Underhill, VT 05489

✓ Thomas A. Susann T. May  
P.O. Box 138  
Underhill Center, VT 05490



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Andrew Strniste  
Planning Director & Zoning Administrator  
12 Pleasant Valley Road  
P.O. Box 120  
Underhill, VT 05489

Date: 8/1/2019