

Hardwick Development Review Board
Major Subdivision Review
Bruce Kaufman and Judy Jarvis
Pumpkin Lane, East Hardwick, VT
Application #2018-014
May 30, 2018

To consider a Major Subdivision Request by Bruce Kaufman and Judy Jarvis to subdivide 179.6 acres into three lots – Lot #1 has 173.40 acres, Lot #2 has 3.1 acres, and Lot #3 has 3.1 acres. A ROW access over Lot #1 is requested for Lots #2 and #3. Property is located in the Rural Residential Zoning District.

The application requires a Major Subdivision Review under the following sections of the Hardwick Unified Development Bylaws: 2.6 Rural Residential Table; 3.3 Access and Frontage Requirements; 6.3 Major Subdivision Review; 6.4 Application of Subdivision Standards; 6.5 General Standards (applicable to all Major Subdivisions); 6.6 Transportation Facilities & Infrastructure; and 6.7 Facilities and Utilities.

Warnings were posted on May 8, 2018 at the Hardwick Memorial Building, the Hardwick Post Office and the East Hardwick Post Office. The warning was sent to the following neighboring property owners: Belynda and Paul Lussier; David Ring Rev. Living Trust; Dean Hill; Karen Gosselin; Anne McPherson and Charles Emers; and Helmut and Nancy Notterman on May 8, 2018. It was also published in the Hardwick Gazette on Wednesday, May 9, 2018.

Development Review Board members present: Edward Keene; Helm Nottermann (Abstained from final vote due to his status as a neighbor of the property); Ruth Gaillard; John Page, Acting Chair; Cheryl Michaels; and Kate Brooke.

Development Review Board members absent: John Mandeville, Chair

Others present: Bruce Kaufman, applicant; Kristen Leahy, Zoning Administrator; David Ring and Jennifer Manna, Neighbors.

During the course of the hearing the following exhibits were submitted:

- Exhibit #1: Copy of Natural Resources Atlas regarding Wetlands, Floodways, and River Corridors.
- Exhibit #2: Copy of Vermont Conservation Design with lots drawn by applicant at hearing.
- Exhibit #3: Copy of Natural Resources Atlas regarding rare plants, deer overwintering, bat locations, and habitat blocks.
- Exhibit #4: Copy of subdivision survey with draft rendering of house site.
- Exhibit #5: Copy of wastewater system and potable water supply permit from State of Vermont.

Summary of Discussion

Acting Chair John Page began the hearing at 7:15 PM. He noted the hearing was quasi-judicial, explained the procedure for the hearing, and swore in all those who wished to speak at the hearing. Mr. Page then asked Bruce Kaufman, the applicant, to present his Major Subdivision proposal.

Mr. Kaufman testified that he owns a 179 acre parcel. The development rights to this parcel have been sold and there is a conservation easement in place. The terms of the easement allow him to sell an additional house lot. His co-worker's parents wish to purchase a piece of land to build a single family home. Mr. Kaufman sought to place this new lot outside of the working lands/agricultural section of his parcel. He is purposing to create two new lots accessed from a ROW to Pumpkin Lane. The first lot (Lot #2) is essentially an existing lot with existing single family dwelling and water and sewer sources (3.1 acres) and the second lot (Lot #3) would be a new lot which would be sold as a house site. The driveway which currently exists for Lot #2 would be extended to Lot #3 and would be established as a deeded 50' R.O.W. for both parcels.

Exhibits 1-3, copies of the conservation maps, were introduced and examined by the board, the applicant and the attending neighbors. Mr. Kaufman indicated the location of the proposed lots, the location of the ROW and noted the field which would remain in agricultural use. The conservation maps indicate that these lots do not have wetlands, river corridors, floodways, rare or significant natural communities, deer wintering areas, Indiana bat hibernation location or high priority habitat blocks.

The discussion then focused on the Findings of Fact statutory discoveries (which follow this discussion).

Mr. Kaufman clarified that the residual 173.40 acres can be used to create one additional affordable housing lot. This restriction was not created by the zoning bylaws but rather by the conservation easement.

During the building envelope discussion, the survey map was reviewed (Exhibit #4) with the possible house site noted by the applicant. The building envelope will be dictated by the location of the wastewater system and the potable water system which will be installed prior to the construction of a single family dwelling. The State of Vermont has issued a Wastewater and Potable Water Supply permit (Exhibit #5) and this permit has a site plan with the proposed house location (the site plan was included in the original application).

During the facilities and utilities examination, Mr. Kaufman testified that underground lines will provide power to the new lots. Neighbor David Ring requested that he be contacted if the electric lines need to go above-ground. He has concerns about the location of poles and guide wires. Mr. Kaufman agreed to contact his neighbor if the power will be above ground.

The hearing ended at 8:00 pm. Helm Nottermann made the motion to enter deliberative session. Ed Keene seconded the motion. The Board went into deliberative session at 8:05 pm.

Findings of Fact:

Based on the application and testimony, the Development Review Board makes the following findings:

2.6 Rural Residential District – (minimum lot size 3 acres, minimum frontage 200') – all lots and proposed uses for the lots will be in keeping with the stated purpose of the Rural Residential District.

3.3 Access & Frontage Requirements – (needs permanent easement, right-of-way or fee simple ownership of at least 50 feet in width) (access permit from Town). Access will be from Pumpkin Lane. Conveyance of Lots #2 and #3 will need a deeded 50 foot right-of-way. See conditions.

6.3 Major Subdivision Review

6.5 General Standards shall include:

(A) Development Suitability. All land to be subdivided shall be suitable for the intended use and proposed density of development, and not result in undue adverse impacts to public health and safety, natural resources identified in the Hardwick Town Plan, or the character of the surrounding neighborhood in which it is located. Proposed subdivision is in the Rural Residential district which specifically permits residential structures. Intent of the subdivision is residential. Applicant seeks to retain agricultural land by not creating lots on Pumpkin Lane, in the current working lands.

(B) Hardwick Town Plan & Regulations. Subdivisions shall conform to the *Hardwick Town Plan*, other provisions of these regulations, capital budget and programs, and all other municipal bylaws, ordinances and regulations in effect at the time of application. Proposal conforms or is not applicable.

(C) District Settlement Patterns. A subdivision shall be designed to achieve the purpose, objectives and desired settlement patterns of the zoning district(s) in which it is located, as defined in Article 2. To the extent feasible, new subdivisions of land shall:

- (1) maintain and extend desired settlement patterns, including lot areas and configurations, building locations, and road networks;
- (2) maintain contiguous tracts of open land with adjoining parcels; and
- (3) connect and extend existing road, sidewalk, path, and utility corridors.

The proposed subdivision does not have a deer overwintering community, nor is it host to a vulnerable habitat. The layout encourages the retention of the agricultural lands on Lot #1.

(D) Lot Layout. Lot layouts shall:

- (1) be consistent with the suitability of land for development, as defined under Subsection (A); Accomplished.
- (2) conform to desired district settlement patterns, as required under Subsection (C); Accomplished
- (3) meet zoning district minimum lot size and density requirements under Article 2, except as modified for planned residential developments under Article 5.4; Lots meet all requirements.
- (4) conform to lot and yard requirements under Section 3.8; and Lots meet all requirements.
- (5) avoid irregularly shaped lots (e.g., with curves, jogs, dog-legs, etc.), unless warranted due to topographic constraints, or to minimize the fragmentation of natural, scenic or cultural features. Lot configurations do not have any unwarranted irregularity in shape as per survey.

(E) Survey Monuments. The locations of all proposed permanent surveying monuments and corner markers, as required under the Rules of the Board of Land Surveyors, shall be identified on the final subdivision plat. Monuments noted on Russell Brown map. Surveyor confirmed existence of markers on site and in place to the Zoning Administrator.

(F) Building Envelopes. The Development Review Board may require the designation of building envelopes to limit the location of structures, parking areas, and associated site improvements to one or more portions of a lot. The size and shape of each building envelope shall be established in accordance with these regulations. The Board also may require the identification of specific building footprints if, in its judgment, such information is needed to determine conformance with these regulations. Lots #1 and #2 have existing single family dwellings. Lot #3 has a proposed building site created by the necessity of the wastewater and potable water locations as noted on the site plan for the Wastewater System and Potable Water Supply Permit issued by the State of Vermont (#WW-7-4899).

(G) Natural, Scenic & Historic Resource Protection. Subdivision boundaries, lot lines, and building envelopes shall be located and configured to avoid adverse impacts to significant natural, historic and scenic features identified in the *Hardwick Town Plan* or through site investigation. For purposes of these regulations, these shall include wetlands, surface waters, and associated buffer areas (Section 3.12); flood hazard areas (Section 5.3); prominent ridgelines and hilltops, rock outcroppings, and slopes in excess of 25% (Section 3.14); critical wildlife habitat areas; and historic sites, structures and features (e.g., buildings, cellar holes, stone walls). Accordingly:

- (1) lot lines shall be configured to avoid the fragmentation of significant natural or cultural features, including designated buffer areas; No natural or cultural features were identified on this parcel.
- (2) building envelopes shall be located and sized to exclude such features; N/A
- (3) roads, driveways and utility corridors, to the extent feasible, shall be shared, located to follow existing linear features (e.g., farm roads, stone walls, tree and fence lines), and to avoid significant natural and cultural features; Subdivision proposal includes a single 50' ROW with access points to both parcels.

- (4) **lot lines and building envelopes shall be located to ensure that no buildings are placed on steep slopes, or extend above the height of land (highest point) of any prominent ridgeline or hilltop;** No steep slopes exist in the portion of the parcel.
- (5) **historic sites and structures shall be incorporated in subdivision design and layout;** No historic aspects were identified.
- (6) **subdividers may be required to incorporate buffers, landscaping or screening in subdivision design, and/or submit management plans to protect significant natural, scenic and historic resources.**
Proposed Subdivision is not located within the Flood Hazard area and does not have any wetlands or other natural vulnerable community on site.

(H) Stormwater Management & Erosion Control. Subdivisions shall incorporate temporary and permanent stormwater management and erosion control practices appropriate for the type and density of proposed development. Accordingly:

- (1) **All stormwater management systems shall be designed to:**
 - a. **use natural drainage systems to the extent feasible, and minimize the need for maintenance,**
 - b. **maximize on-site infiltration and treatment of stormwater, and minimize surface runoff,**
 - c. **accommodate anticipated storm events,**
 - d. **provide storage areas and treatment to manage flow and protect water quality, and**
 - e. **avoid damage to adjoining or downstream properties.** Not applicable in this review.
- (2) **The Development Review Board may require the submission of stormwater management and erosion control plans, prepared by a licensed professional. Such plans shall incorporate acceptable stormwater treatment practices and sizing criteria set forth in the *Vermont Stormwater Management Manual* as most recently amended.** No testimony was received to indicate the necessity of this requirement.
- (3) **The DRB also may require an evaluation of the effect of the subdivision on existing downstream drainage capacity outside the area of subdivision. Where the DRB finds that increased runoff from the subdivision will exceed the capacity of downstream storage, drainage or treatment systems, it may request that the subdivider delay construction until such capacity exists, or to install necessary off-site improvements as needed to increase capacity.** Not applicable in this review.

(I) Landscaping & Screening. The preservation, planting and maintenance of trees, ground cover, or other vegetation, of a size and type deemed appropriate by the Development Review Board, may be required to:

- (1) **preserve existing trees, tree lines, wooded areas of particular natural or aesthetic value to the site, or critical wildlife habitat areas;**
- (2) **provide an undisturbed vegetated buffer between developed and undeveloped portions of the site to protect water quality, or other natural or scenic features.**
- (3) **provide screening to increase privacy, reduce noise or glare, or establish a barrier between incompatible land uses; and/or to**
- (4) **establish a tree canopy along roads or pedestrian walkways where the Development Review Board deems it appropriate.**

No testimony was received to indicate the need of this requirement. Attending neighbors indicated that the new lot would not have visual impact on their property.

(J) Energy Conservation. Subdivision design and layout, to the extent feasible, will encourage energy efficiency through:

- (1) **the siting and orientation of development (e.g., building envelopes), to take advantage of southern exposures and natural vegetative or topographic buffers;**

- (2) **the clustering of development (e.g., lots, building envelopes) to minimize road and utility line extensions and reduce travel distances; and**
 - (3) **the effective use of landscaping to provide wind barriers and shading, and to reduce heat loss.**
- No testimony was received to indicate the need of this requirement.

Section 6.6 Transportation Facilities & Infrastructure

Access will be from Pumpkin Road. Primary function of the proposed subdivision will be residential. No concerns were brought to the Development Review Board

Section 6.7 Facilities and Utilities

(A) Public Facilities. The Development Review Board shall find that the proposed subdivision does not create an undue burden on existing and planned public facilities. The Development Review Board may consult with appropriate municipal and school officials to determine whether adequate capacity exists to serve the subdivision.

The DRB finds that this proposed subdivision will not create an undue burden on existing and planned public facilities.

(B) Fire Protection. The Development Review Board, in consultation with the Hardwick Fire Department, may require that the subdivder provide adequate water storage and distribution facilities for fire protection. The subdivider shall install fire hydrants, dry hydrants, or fire ponds as required by the DRB. No specific fire protection requirements were imposed by the DRB in this particular subdivision review. No concerns were expressed by the Hardwick Fire Chief.

(C) Water Systems. The subdivider shall demonstrate to the satisfaction of the Development Review Board that adequate potable water supplies exist on and/or off site to serve the subdivision. In addition:

- (1) **On-site systems, including individual or community water supply systems, shall be designed in accordance with all applicable state and municipal regulations. The Development Review Board may require that all water sources be identified on the final subdivision plat.**
- (2) **The location of structures and in-ground wastewater disposal systems will be reviewed to ensure such locations do not encroach upon existing water supply isolation distances, as defined by applicable state regulations.**

Water will be provided by an on-site system. State has approved plan – WW -7-4899.

(D) Wastewater Systems. All other on-site systems, including individual and community (clustered) systems, shall be designed in accordance with applicable state and municipal regulations. The Development Review Board may require that sewage disposal areas be identified on the final plat.

Wastewater capacity will be provided by an on-site system. State has approved plan – WW-7-4899.

(E) Utilities. All existing and proposed utilities, including but not limited to electric, telephone, and cable television utilities, shall be shown on the final plat. In addition:

- (1) **All utilities within the subdivision shall be located underground, unless the Development Review Board determines that burial is not necessary to preserve the scenic character of the area, or that it is prohibitively expensive.**
- (2) **The subdivider shall coordinate subdivision design with utility companies, including the Hardwick Electric Company, to ensure that suitable areas are available for above ground or underground installation, within and adjacent to the proposed subdivision. Utility easements of sufficient width shall be provided to serve both the proposed subdivision, and future service extensions to adjoining properties. Such easements shall be identified on the final plat.**

(3) Utility corridors shall be shared with other utility and/or transportation corridors where feasible, and be located to minimize site disturbance, adverse impacts to significant natural, cultural and scenic features, and to public health.

Utilities will be underground, as per testimony of the applicant.

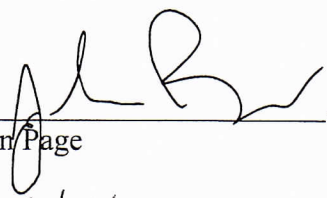
Decision and Conditions

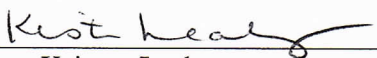
Based upon these findings, the Development Review Board voted 5-0 with one abstention to approve the application as presented with the following conditions.

Conditions:

- 1. All necessary permits will be obtained from the State of Vermont prior to the conveyance of each lot.
- 2. The deeded right-of-way to Lots #2 and #3 will be at least fifty (50) feet in width.
- 3. Within 180 days of receipt of final subdivision approval, the subdivider will file 3 copies of plan and final mylar plat for recording in the land records.
- 4. Best erosion control management practices will be utilized in the construction of the Right-of-Way.
- 5. Electric utilities will be underground as per the testimony of the applicant.

Signed:


_____, acting chair
John Page
date 6/4/18


_____, acting clerk
Kristen Leahy
date 6/4/18

NOTICE:

This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding (in person or in writing) before the Development Review Board. Such appeal must be made 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.