

**TOWN OF WARREN
CONDITIONAL USE RESIDENTIAL
PERMIT APPLICATION**

2014-64-CU

Permit Application No. Renewal for 2010-01-CU

Parcel ID #023003-600

Application Requirements: The applicant shall submit to the Administrative Officer, at least 15 days prior to a regularly scheduled Development Review Board meeting, a **Conditional Use** Application, and associated fee. The application shall include, with the required fee, 1 original and 5 copies of a **Conditional Use** application, and 1 original and 5 copies of the proposed sketch plan, if required, that include the information for CU applications specified in Table 5.1. Copies of the proposed sketch plan, if required, shall be 11" X 17" or smaller. Applicants are strongly urged to review the Town of Warren Land Use & Development Regulations Articles 5, *Development Review* before submitting an application.

1. Name of Landowner(s): Susan S. Underhill, Trustee
Address: 9 Pebble Beach Drive, Bedford, NH 03110 Telephone: 603-785-7850

2. Applicant(s), if other than Landowner: _____
Address: _____ Telephone: _____

3. Property Locations: 1695 Fuller Hill Road
Zoning District: _____

4. Does the proposed development contain Steep Slopes as outline in Article 3, §3.4, *Erosion Control & Development on Steep Slopes*? Yes No
Is the proposed development within the Meadowland District? Yes No
Is the proposed development within the Flood Hazard District? Yes No

5. Project or Development sought under **Conditional Use**: Renewal for driveway in meadowland and new residential construction, single-unit dwelling.

7. Attached evidence of written notification to all adjacent property owners, together with a copy of the documentation sent to adjoining to explain the project (see Section 9.8).

8. Attach a narrative describing the proposed **Conditional Use** (see Articles 5).

9. Attach a complete sketch plan (see Table 5.1) of the project.

10. To facilitate the subdivision, **Conditional Use** approval process, the applicant should consult the any related Town of Warren Departments, if required, before the meeting with the Development Review Board.

Susan S. Underhill

Signature(s) of Landowner(s) of Record

Signature(s) of Applicant(s)

| FEE SCHEDULE RESIDENTIAL: | |
|---|----------------------|
| CONDITIONAL USE: | |
| ORIGINAL OR AMENDED | \$250/EA. |
| VARIANCE | \$250/EA |
| CHANGE OF USE | \$250 |
| APPEAL OF ZONING ADMINISTRATOR'S DECISION (NOT APPEAL OF VIOLATION) | \$150 |
| APPEAL OF VIOLATION | \$100 |
| Publishing Fees: | |
| Residential | \$100. EA /insertion |

Date Application Received: 9/16/2014

Fee Received: 350.00

TOWN OF WARREN

CONDITIONAL USE PERMIT

GRANTED TO: Keith & Susan Underhill PERMIT NO.: 2010-01-CU

FOR THE PURPOSE OF: Renewal for driveway in meadowland
RENEWAL OF 2007-08-CU
New Residential Construction, Single-unit Dwelling
[New sq. feet =]

PROPERTY OWNER: UNDERHILL KEITH & SUSAN

PROP. DESCRIPTION: FULLER HILL ROAD
11.7 ACRES:

PARCEL ID: 023003-600

THIS PERMIT IS ISSUED IN ACCORDANCE WITH THE ZONING REGULATIONS OF THE TOWN OF WARREN. CONSTRUCTION MUST BE SUBSTANTIALLY COMPLETE WITHIN TWO YEARS OF THE DATE OF ISSUE. ALL WORK DONE MUST CONFORM TO THE INFORMATION AS REPRESENTED IN YOUR APPLICATION DATED 1/23/2010. DEVIANCE FROM THE PERMIT AS ISSUED MAY RESULT IN FINE AND/OR OTHER REMEDIAL ACTIONS.

THE FOLLOWING CONDITIONS ARE A PART OF THIS PERMIT:
FINAL RENEWAL OF 2007-08-CU

DATE OF ISSUE: **1/23/2010**

EFFECTIVE DATE: **1/23/2010**


WARREN ZONING ADMINISTRATOR

ANY INTERESTED PARTY MAY APPEAL THE ADMINISTRATIVE OFFICES DECISION WITHIN 15 DAYS OF THE SIGNING OF THIS DECISION. NO CONSTRUCTION SHALL TAKE PLACE UNTIL THE END OF THE PERIOD.

COPY TO:

- APPLICANT
- LISTERS
- POSTED
- FILE

POST IN A CONSPICUOUS PLACE

TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
FINDINGS OF FACT & NOTICE OF DECISION
CONDITIONAL USE REVIEW
UNDERHILL #2007-08-CU

The applicants, Keith and Susan Underhill, Trustees, seek approval to construct a development road in the Meadowland Overlay District. This request was previously approved May 22, 2002, however a zoning permit to build the road was never obtained and the Condition Use approval has since expired.

A duly warned hearing was held on Wednesday June 20, 2007. Members in attendance were: David Markolf, Chris Behn, Bob Kaufmann, Virginia Roth, Lenord Robinson and Peter Monte. Others in attendance were: Bill Nedde, Bill Maclay, Kathy Beyer, Dave Olenick, Erin Post, William Senning, Susan Hemmeter, Alec Newcomb, Don Swain, Charlie Snow, Jim Caffrey, Miron Malboeuf and Ruth Robbins. A site visit was conducted the same day, June 20, 2007, and attended by: Mrs. Roth, Mr. Robinson, Mr. Kaufmann, Mr. Behn, Mr. Markolf, Mr. Olenick, Mr. Senning and Mr. Malboeuf.

Findings of Fact and Conclusions of Law:

1. The applicant submitted a completed application, notice to abutters, certificate of mailing, and a site plan showing the proposed road, wastewater design and approximate proposed house site, prepared by McCain consulting and dated 6/12/07
2. The file contains two letters submitted by an abutter, Mr. Michael Barker, who expressed concern that the Meadowland Overlay District must not be infringed on in any way and also some concern about drainage from the subject property. The two letters are dated June 9, 2007 and June 15, 2007.
3. The Vermont Agency of Natural Resources issued a wastewater permit, case # WW-5-4227 on 5/3/07.
4. At the site visit the members measured the distance from what was assumed to be the northerly edge of the leach field to the spring box and well head of the neighbor to the north and found that the distance to the spring box was 160 feet and to the well was 230 feet.
5. Discussion took place over whether or not the board's review was limited to just that section which was in the Meadowland Overlay District, or the entire parcel.
6. The possibility of the Underhill parcel sharing the existing drive of their neighbors was discussed and if it had been thought of years ago when those parcels had been formed it would have been a good thing but at this point it can't be insisted on.
7. Prior to any construction the Board *strongly encourages* the owner to discuss the possibility of a shared drive with the land owner to the east.

Notice of Decision:

The Development Review Board, finding that the proposed development road meets the standards of Article 2, Table 2.13 Meadowland overlay District as is required by Article 5 § 5.3 Conditional Use Review Standards (C) (3), hereby approves the application subject to the following conditions:

**TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
PO BOX 337
WARREN, VT 05674**

Monday January 28, 2008

TO: The Warren Select Board

RE: Barker vs. Underhill

Attached you will find the Settlement Agreement from the Appeal by Mr. Barker of the Underhill Conditional Use Decision #2007-08-CU rendered by the DRB July 18, 2007.

At our meeting on January 23, 2008, the DRB reviewed the Settlement and the following motion was made:

MOTION by Mr. Monte to approve in principal the settlement agreement with the condition that the revised site plan be done by an engineer with the proper dimensions on a mylar for filing in the Warren Town Clerk's office. **SECOND** by Mr. Robinson.
VOTE: three *YEAS*, one *NAY*, the motion passed three to one with a majority of the Board.

As stated in the attorney's cover letter on page three, next to last paragraph, they are looking for approval, in writing from the Select Board.

LAUREN S. KOLITCH

ATTORNEY AT LAW

TELEPHONE (802) 496-2081
TELEFAX (802) 496-6490
E-Mail: Lkolitch@madriver.com

MAILING ADDRESS:

502 MIKHAL DRIVE
WAITSFIELD, VT 05673

OFFICE LOCATION:

174 MAD RIVER GREEN
WAITSFIELD, VT 05673

ADMITTED TO PRACTICE
IN VERMONT AND COLORADO

December 30, 2007

Select Board, Chair
Developmental Review Board, Chair
Town of Warren
Town Clerk's Office
P.O. Box 337
Warren, VT 05674-0337
Facsimile: 802-496-2418

Re: Keith and Susan Underhill / Appeal of Michael Barker
Docket No.: 163-8-07Vtec

Dear Gentle persons,

Enclosed please find the following documents:

1. Copy of Settlement Agreement dated December 11, 2007;
2. Copy of modified Site Plan of Gunner McCain dated August 9, 2007 (with yellow marker showing modifications and signatures of parties);
3. Copy of updated Site Plan of Gunner McCain dated August 9, 2007 per Settlement Agreement and in conformity with the yellowed mediation site plan;
4. Copy of 2002 DRB Decision re Conditional Use permit; and
5. Copy of 2007 DRB Decision re Conditional Use permit.

I provide the following brief explanation of the history of this case, and ask that the Town Select board and/or Development Review Board act with all due haste in the review of the enclosed documents.

My clients, Keith and Susan Underhill, purchased their property several years ago. It is approximately 11.7 acres and is undeveloped. The property is located on Fuller Hill, and lies partially in the meadowland district. At time of purchase, there was a Conditional Use permit

that the Town granted in 2002. See attached May 22, 2002 Conditional Use Permit.

The 2002 Conditional Use permit was based upon a complete application with an "amended site plan" of May 8, 2002 and a hearing of even date. At that time, the Town granted the "Amended and Submitted, 5/8/02" site plan. No appeal was taken, and the permit was recorded in the Town of Warren on May 24, 2002 at Book 145, Pages 542 - 543. The permit provided that "When the property owner/applicant submits a zoning application to construct a dwelling, if the dwelling is sited outside the meadowland, no DRB review will be required."

In or around April 27, 2007, David Olenick, then counsel for the Underhills, submitted a one (1) page Conditional Use application along with a letter to the Zoning Administrator, Miron Malboeuf. In his letter, David specifically asked for a "formal decision" on the question of whether the 2002 "permit remains valid", and further stated that if the Town renders a "decision" that the permit has expired, then the application for conditional use submitted on that date should be considered¹

On May 23, 2007, the Town heard from David Olenick. The Minutes reflect that "technically no application" was filed. The Minutes also say that David was "appealing to the DRB for clarification" of the ordinance and that David disagreed with Mr. Malboeuf's interpretation. No action was taken by the DRB. No motion was made, and no vote cast. Subsequent to that, the matter was duly noticed, and a hearing held on June 20, 2007, as to an "application." The 2007 site plan was slightly different than the 2002 site plan. However, it moved the house far into the wooded area, thus complying with the 2002 Conditional Use permit that required construction not occur in the meadowland.

On July 18, 2007, the DRB granted a second Conditional Use Permit to the Underhills. See attached Conditional Use Permit. They did so with no Decision or Finding as to Attorney Olenick's request as to the validity of the 2002 permit.

Following issuance of the second Conditional Use permit, Mr. Michael Barker, neighbor of the Underhills, appealed the Town's permit to the Environmental Court. Another interested

¹It is my opinion that the second permit, that upon which this appeal is based, was unnecessary. Further, I believe the 2002 permit remains valid and enforceable as the enabling statute for conditional use review, 24 VSA §4414, does not include any authorization for time limit imposition. There is a second, related issue in that a formal request for a Decision on the issue of the validity of the 2002 permit was made on April 27, 2007, and no decision was timely issued denying Attorney Olenick's interpretation. The request is, therefore, "deemed approved", by statute. I say this only so that there is no misunderstanding should the Settlement Agreement, for any reason, not fully and finally settle the appeal. To my belief, this would only occur should the Town not accept the parties Settlement Agreement and modify the 2007 Conditional Use permit as set forth in the Site Plan of August 9, 2007.

party, Mr. Burke, became involved in the appeal. Mr. Burke's counsel, Will Senning, of Darby Loudon Law Offices represented his interests during the below mediation. Mr. Burke's concern focused primarily on screening and landscaping.

The parties participated in court ordered mediation in November, 2007, which resulted in the enclosed Settlement Agreement. The Town was invited, by the Court, to participate in mediation, although no Town member participated.

The parties' Settlement Agreement resolved all disputes between the parties. The agreement includes location of the proposed house site *outside* of the Meadowland District. It includes two (2) proposed alternative house sites, limitations on construction in delineated areas (no construction zone), screening and tree thinning requirements (vegetative and meadowland buffers), driveway location(s), and conservation of an old spring box area.

A review of the 2007 Conditional Use permit illustrates that the Settlement Agreement and modified Site Plan provides for a compromise as to all issues of concerns to the parties. It includes a specific plan as to clearing and landscaping that was identified in paragraph 3 as requiring a return by the Underhills (or successors in interest) to the DRB for screening and landscaping at time of request for building permit. This was *expressly* not a condition of the 2002 Conditional Use permit.

As part of the Settlement Agreement, the parties agreed to designated screening and buffer zones in order to address future concerns respecting the removal of trees in the immediate view of the Town road. As a result, the Settlement Agreement also provides that no future conditional use review or town approval is now necessary.

In summary, if the Town finds the enclosed terms of the Settlement Agreement, as also reflected in the amended Site Plan to be acceptable, the permit amendment will result in a final and unreviewable conditional use permit with no further review necessary or required as to any construction or development issues, including landscaping and buffer areas. Thus, upon Order of the Court, the Underhills will have a final conditional use permit that will only require their application for a building permit. Assuming minimum district set-back requirements, building height requirements, and the like are met, the zoning permit would and should issue without further review.

It is my understanding that the Town of Warren Select Board must approve of the enclosed Settlement Agreement, and must indicate so in a written approval or decision indicating acceptance. The parties are requesting that the Town approve the enclosed documents. As there are time deadlines imposed within the Settlement Agreement, I ask that this matter be reviewed by the Town as soon as possible.

On behalf of the Underhills, I would be pleased to appear before either the Select Board or the Development Review Board at any time in order to further clarify or review the terms of

the Settlement Agreement.

Please do not hesitate to contact me at your earliest convenience.

Very Truly Yours,

A handwritten signature in black ink, appearing to be 'L. Kolitch', written over the typed name.

Lauren S. Kolitch

cc: Keith and Susan Underhill
Will Senning, Esq.
Michael Barker
Mr. Gunner McCain

Enc.

COPY

SETTLEMENT AGREEMENT

Following mediation with the assistance of Michael Marks, Esq., the signatories below have reached the following settlement agreement in *In re Appeal of Underhill Conditional Use Permit*, Vermont Environmental Court Docket No. 163-8-07Vtec, which addresses property owned by the Underhills on Fuller Hill Road in Warren Vermont as depicted on the attached plan:

1. Upon satisfaction of the contingencies described in this Agreement, the parties stipulate that the Vermont Environmental Court shall enter a final order amending the permit that is the subject of this appeal to add the conditions described in this Agreement, which permit shall become the final permit that cannot be appealed. If the contingencies are not satisfied, this Agreement shall be null and void and the parties shall resume their litigation in the Environmental Court, or shall, as they may mutually agree in writing, to modify this Agreement for approval by the Environmental Court.

2. The Amended Permit shall have the following additional conditions, which are reflected on the attached plan that is incorporated in this Agreement:

- a) The "Approximate Approved House Site" (i.e., House Site Number 1) shall have its eastern boundary moved fifty feet to the west as depicted on the attached plan.
- b) The area labeled House Site Number 2 shall be located as depicted on the attached plan, with its easterly boundary a minimum of twenty-five feet from the boundary line with the neighboring property to the east.
- c) House Site Number 1 or House Site Number 2 shall be approved building envelopes within which there may be constructed a single four-bedroom residence and authorized accessory buildings. (Construction may not occur on both House Sites; this permit authorizes only one residence built on either approved House Site.)
- d) Construction of the driveway for House Site Number 2 shall be in the location depicted on the attached plan.

KGU
MA
WAS

- e) There shall be a natural vegetative buffer maintained in the area depicted on the attached plan beginning at the intersection of the edge of the tree line and the adjacent property to the west owned by Mr. Barker, and having a width of sixty feet, and continuing in that width to the north along the Barker-Underhill property line to the limit depicted on the attached plan. This First Natural Vegetative Buffer area shall be maintained in a natural vegetative state, except that the owner of the Underhill property may clear vegetation to the extent reasonably required for the septic system on the Underhill property. Clearance may be required for items such as, but not limited to, setbacks and improved drainage.
- f) If any blasting is required for this project, it must be performed by an insured contractor.
- g) Any exterior lighting on the Underhill property shall be downcast and shall be designed to directly illuminate the area intended to be illuminated.
- h) There shall be a "No Construction of Buildings Zone" in the area along the Barker-Underhill line. The area shall be on the portion of the Underhill property south of the Tree Line to the intersection with Fuller Hill Road, and shall cover the sixty feet immediately adjacent to the Barker property line for this entire strip. The area is depicted on the attached plan. There shall be no construction of buildings in this zone, although removal of vegetation and/or construction of fencing is permitted.
- i) In the area labeled "Approximate Existing Reservoir," there is an existing spring structure. Underhill may clear the area ten feet around the edge of this structure.
- j) There shall be a Second Natural Vegetative Buffer maintained in the area adjacent to the easterly property line for the length of the proposed driveway from the intersection with Fuller Hill Road northerly along such boundary line to a point parallel to where the woods line turns at a left angle to the east between the

KW
WAS

boundary line and the existing Tree Line. The area is depicted on the attached plan. This Second Natural Vegetative Buffer area shall be maintained in a natural vegetative state, except that the owner of the Underhill property may clear vegetation to the extent reasonably required for the drainage and construction of the driveway and the installation of utilities on the Underhill property.

- k) There shall be a Meadowland Buffer Zone established along the Tree Line from the edge of the First Natural Vegetative Buffer, and continuing along the Tree Line to the edge of the Second Natural Vegetative Buffer. In this Meadowland Buffer Zone, natural vegetation shall be maintained to a minimum depth of fifteen feet along or on either side of the Tree Line. Provided, however, that Underhill may uniformly thin such vegetation by no more than fifty percent of the vegetation. (Uniformly means that vegetation thinning, but no clear cutting of any specific area will occur except for driveway and or utility improvements. Thinning will be of no more than fifty percent of the vegetation in the area that has been thinned.)
- l) The landscaping and buffer conditions of this Agreement and subsequent Final Permit issued in accordance with this Agreement shall supercede paragraph three of the Notice of Decision and Findings of Fact, dated July 18, 2007; no additional conditional use review or permit by the Warren Development Review Board shall be required.

3. This Agreement is subject to the following contingencies. 1) The Town of Warren Selectboard must approve this Agreement and support the entry of an order by this Court in conformance with this Agreement no later than January 31, 2008, or, if due to Town inability, no later than ninety days after certification under subparagraph two herein. 2) The technical consultant for Underhill must certify to the satisfaction of the Underhill's no later than December 31, 2008 that the house sites depicted on the attached plan meet the requirements of the Warren Zoning Regulations and applicable State regulations, if any. 3)

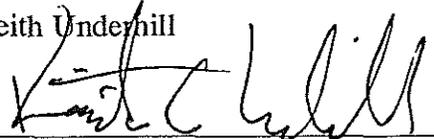
The Underhills, in their discretion, following consultation with their consultants, must determine that the House Sites are viable. In the event any of these three contingencies are not satisfied, and the parties cannot reach an amended agreement to address the contingency, the parties shall proceed with the pending litigation in this docket.

4. Upon satisfaction of these contingencies, the Underhill's technical consultant shall prepare a detailed plan that faithfully incorporates all of the details of the attached plan for filing with the Environmental Court in connection with the final approval of the amended permit described in this Agreement.

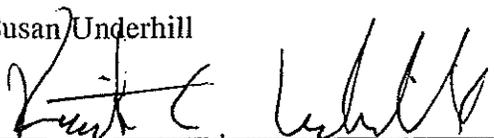
5. Miscellaneous. This Agreement represents a compromise to avoid further litigation. By making this Agreement, no party makes any admission concerning the strength or weakness of any claim. This Agreement is a comprehensive agreement; all prior understandings and discussions are merged into this Agreement. The parties shall execute such additional documents as are reasonably requested to implement this Agreement. This Agreement shall be interpreted under the laws of the State of Vermont. The presumption against the drafter shall not apply to the construction of this Agreement. Any assistance provided by the mediator in the drafting of this Agreement was in his capacity as mediator, and does not constitute legal advice to any of the parties. All of the parties are either represented by legal counsel or freely chose to proceed without advice of legal counsel.

Dated at Montpelier, Vermont, this 11th day of December, 2007.

Keith Underhill

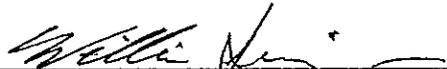


Susan Underhill



By Her Duly Authorized Agent

James E. Burke

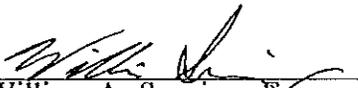

By His Duly Authorized Agent

Michael Barker



Approved as to form:


Lauren S. Kolitch, Esq.
Counsel for Keith and Susan Underhill


William A. Senning, Esq.
Counsel for James E. Burke

EXISTING HOUSE

DRIILLED WELL

EXISTING SHEDS (NOT CURRENTLY IN USE)

SHED

TP-99

HOUSE SITES

NO CONSTRUCTION OF BUILDINGS

FIRST & SECOND NATURAL VEGETATIVE BUFFERS

MEADOWLAND BUFFER ZONE

APPROXIMATE PROPERTY LINE

LOT 1
11.7± ACRES

GRAPHIC SCALE



(IN FEET)
1 inch = 30 ft.

Topography by Total Station
Contour Interval 2'
Assumed Datum

TP-10

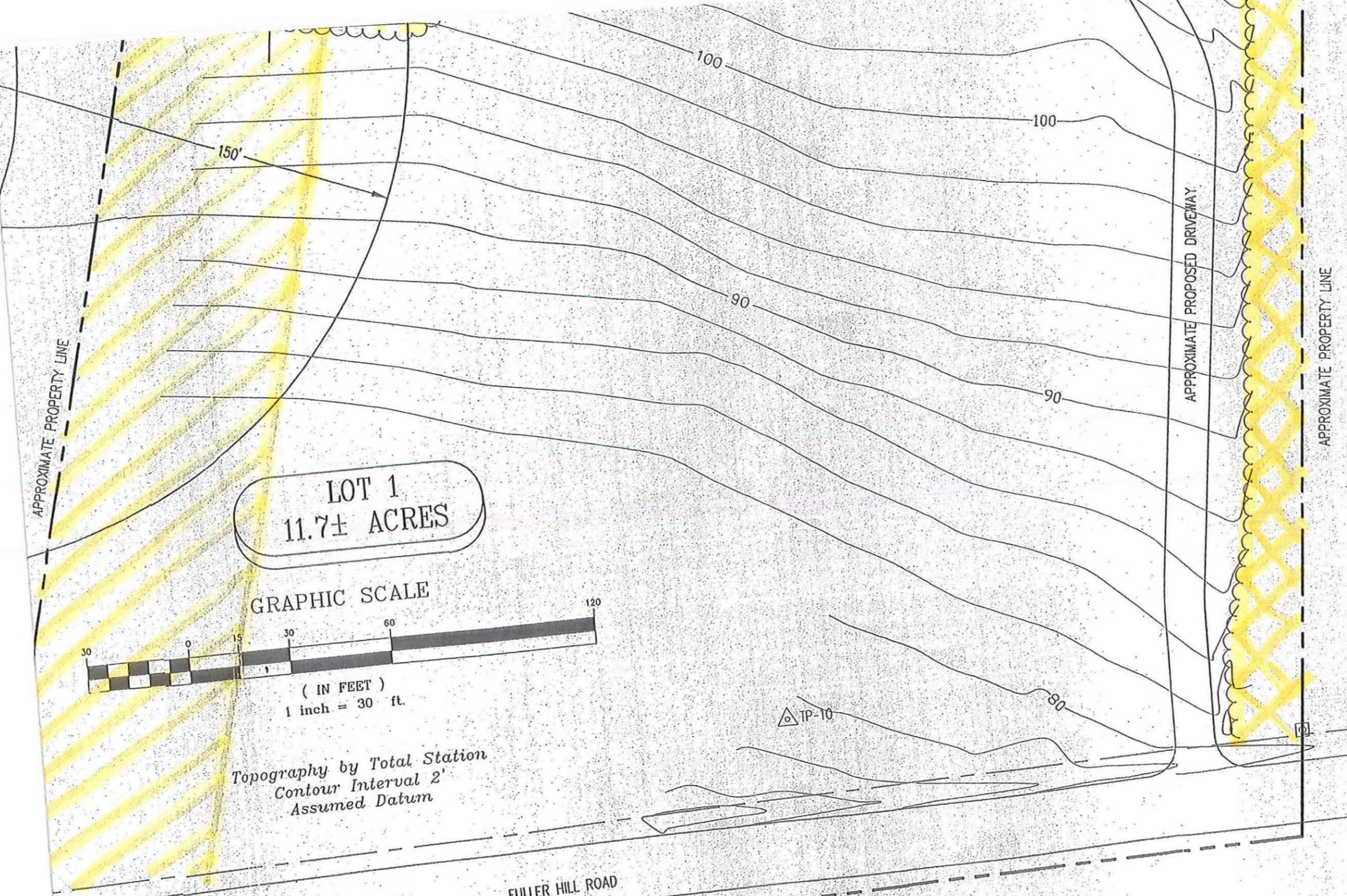
FULLER HILL ROAD

TO WARREN VILLAGE

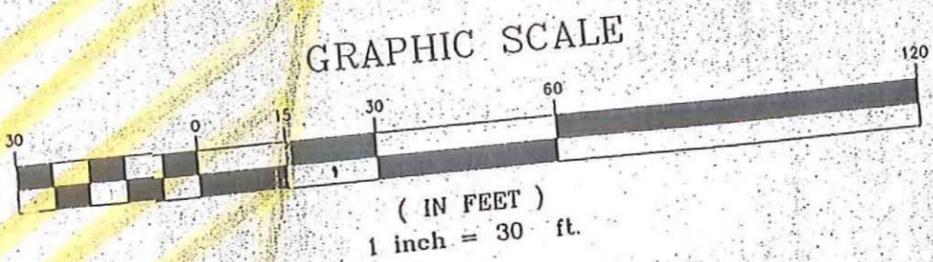
William J. ... *Richard B. Baker* *Paul C. ...*

the permitting authority and/or the required setback distances and the

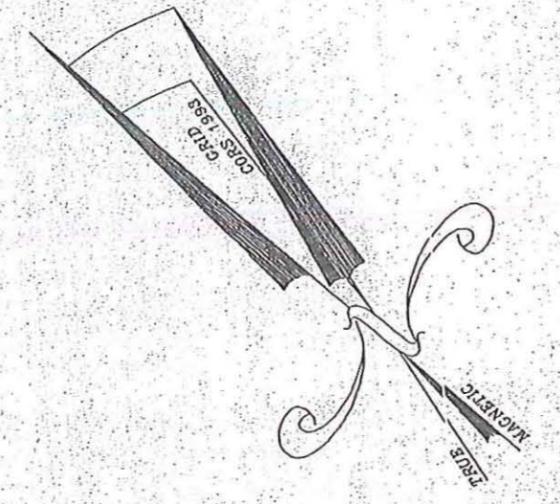
- ITEM
- DRILLED WELL
- SPRING
- LAKES, PONDS, IMPOUNDMENTS
- RIVERS, STREAMS
- PROPERTY LINE
- ROADWAY, DRIVEWAY, PARKING LOTS
- TREES
- SERVICE WATER LINE



LOT 1
11.7± ACRES



Topography by Total Station
 Contour Interval 2'
 Assumed Datum



THE CONTRACTOR SHALL REVIEW ALL CONSTRUCTION ACTIVITIES, COMPONENT LOCATIONS, SPECIFICATIONS, AND DETAILS PRIOR TO COMMENCEMENT OF WORK AND SHALL NOTIFY MCCAIN CONSULTING OF ANY DISCREPANCIES THAT ARISE FROM THAT REVIEW.

THIS IS NOT A SURVEY. THIS PLAN DOES NOT MEET THE REQUIREMENTS OF 27 VSA SEC. 1403 FOR THE PREPARATION OF SURVEY PLATS.

FULLER HILL ROAD

Michael B. Baker

Paul C. White

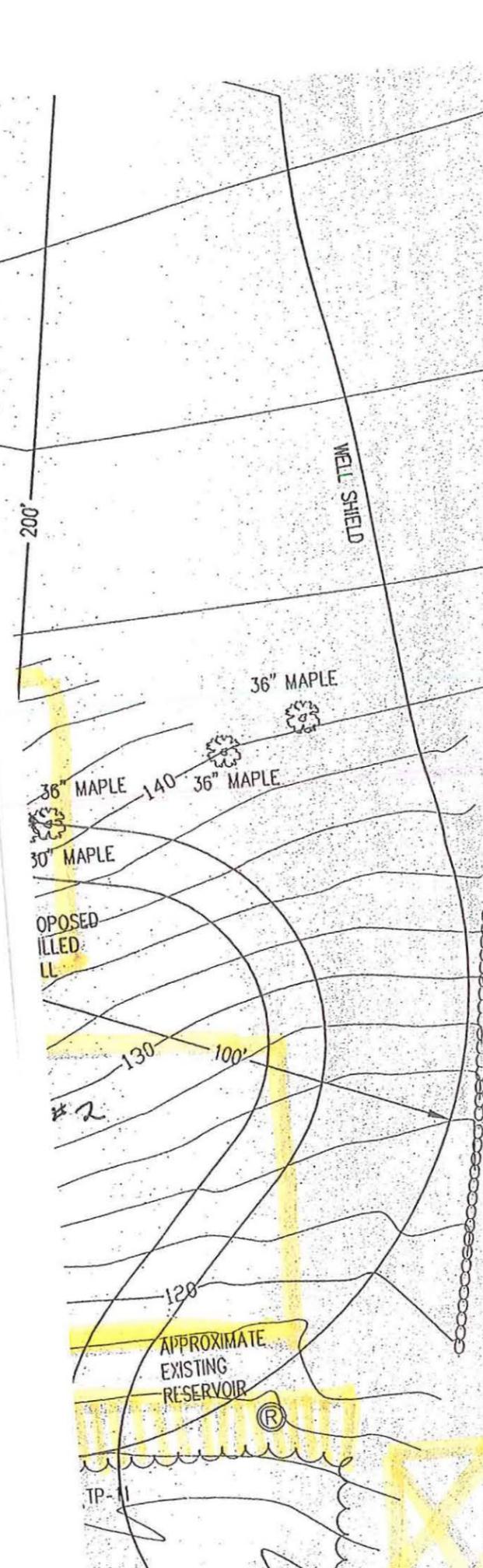


LEGEND

- TP-1 Traverse point
- SB-1 Test pit
- PT-1 Percolation test
- IRF Iron rod found
- PP Utility pole
- Concrete monument
- Tree
- Proposed well
- Latitude/Longitude point
- 10' contours
- 2' contours
- Tree line
- Property line
- Right of way line
- Curtain Drain
- Exposed rock

DRIVEWAY LOCATION TO BE ADJUSTED AS NECESSARY TO SAVE LARGE MATURE HARDWOOD TREES.

DRIVEWAY AVERAGE GRADE
 FROM FULLER HILL ROAD TO EDGE OF TREES - 10.8%
 FROM EDGE OF TREES TO HOUSE SITE - 14.2%



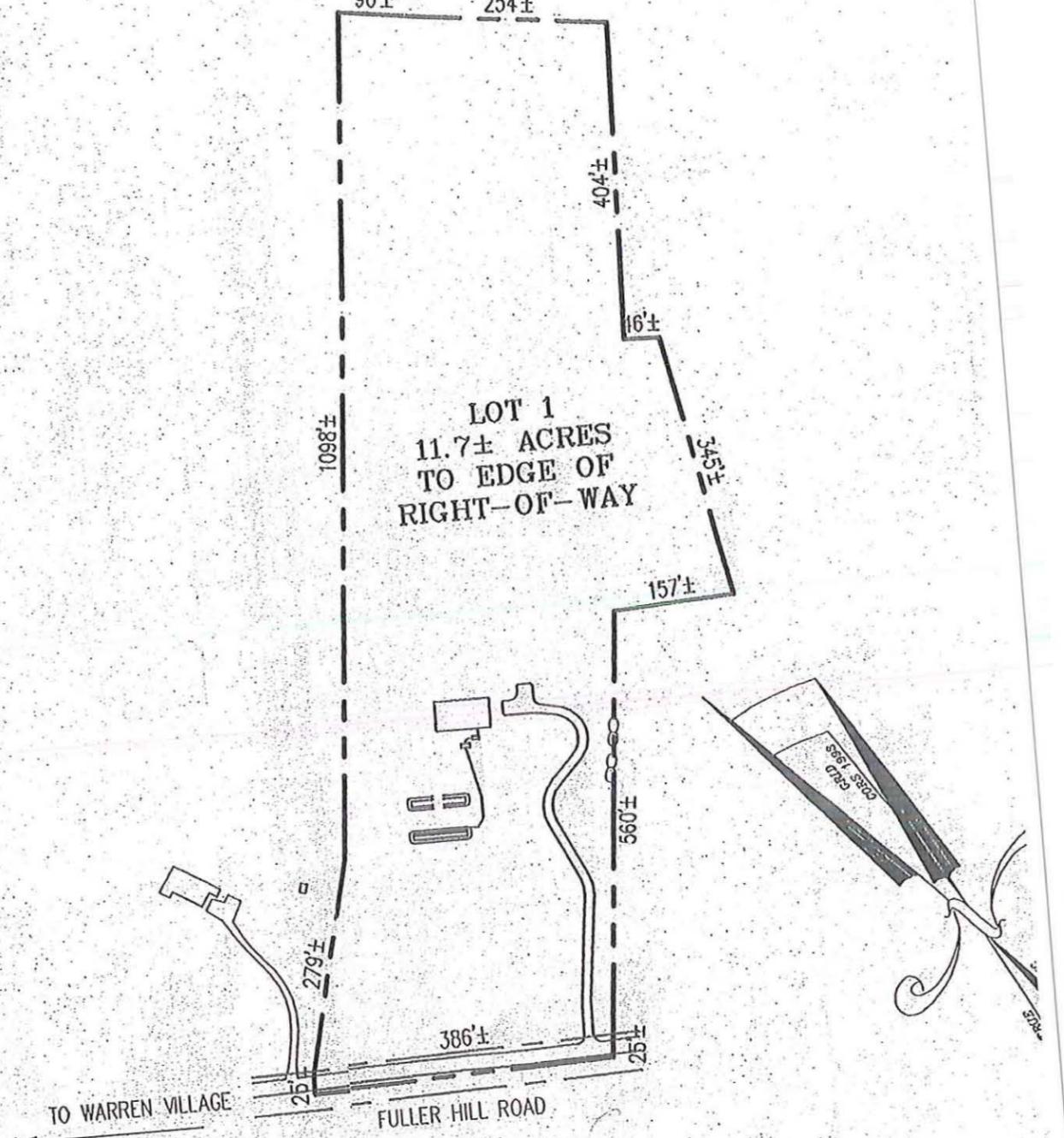
LEGEND

- △ TP-1 Traverse point
- ⊕ SB-1 Test pit
- PT-1 Percolation test
- ⊙ IRF Iron rod found
- ⊗ PP Utility pole
- ⊠ Concrete monument
- ⊞ Tree
- ⊕ Proposed well
- ⊙ Latitude/Longitude point
- 100' 10' contours
- 2' contours
- ~ Tree line
- - - Property line
- - - Right of way line
- - - Curtain Drain
- ⊞ Exposed rock

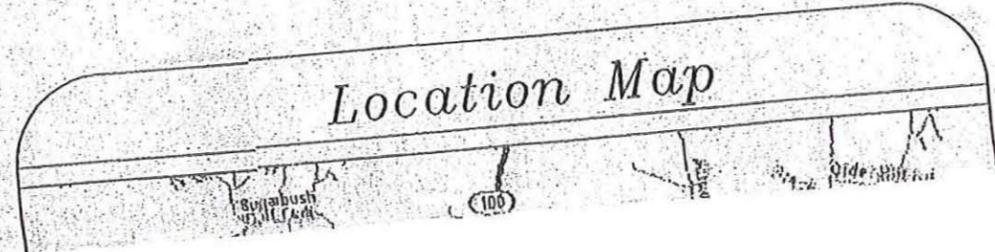
DRIVEWAY LOCATION TO BE ADJUSTED AS NECESSARY TO SAVE LARGE MATURE HARDWOOD TREES.

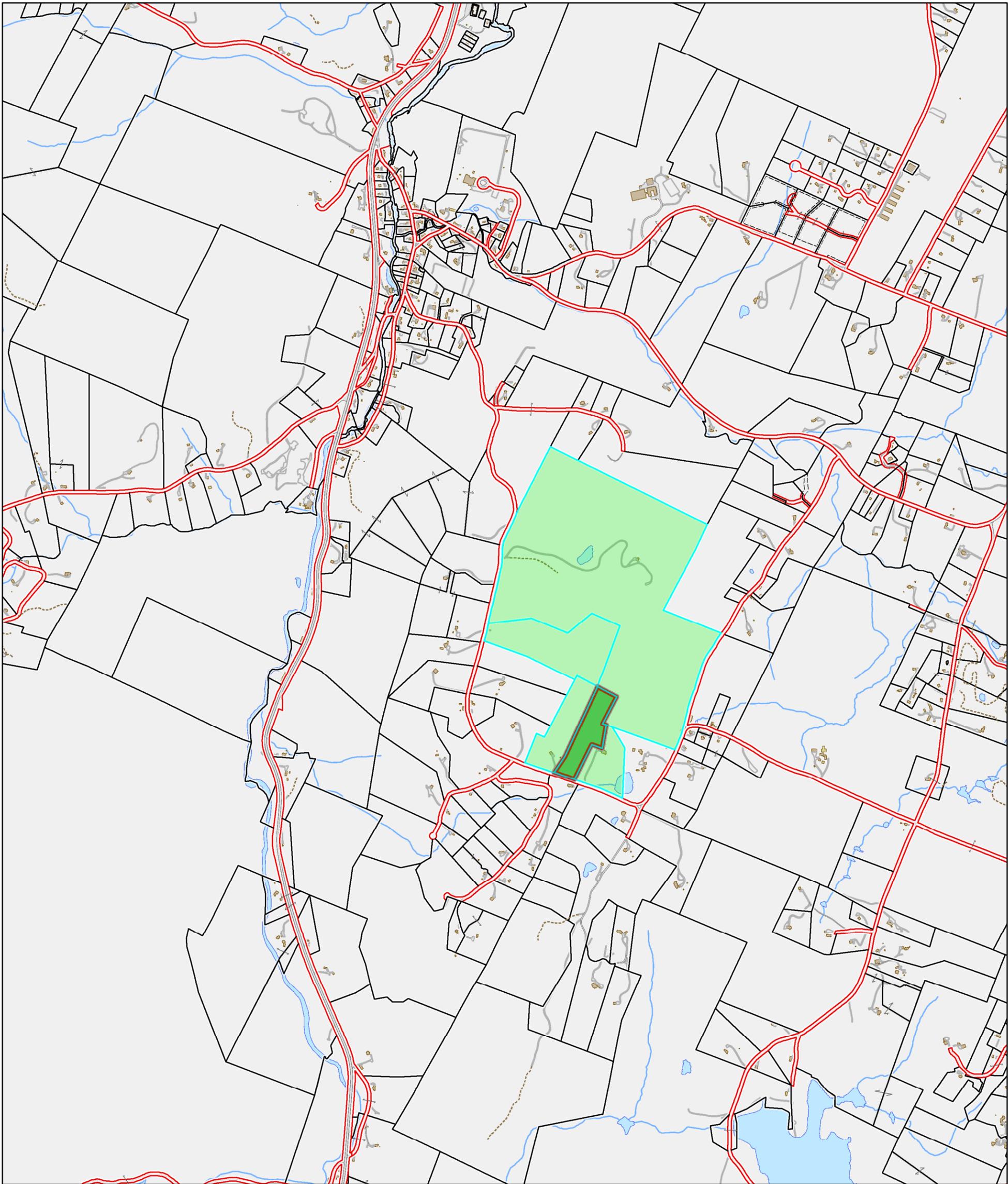
DRIVEWAY AVERAGE GRADE
 FROM FULLER HILL ROAD TO EDGE OF TREES - 10.8%
 FROM EDGE OF TREES TO HOUSE SITE - 14.2%

DRIVEWAY TO BE CONSTRUCTED



PLOT PLAN
 SCALE 1" = 200'





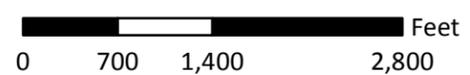
Legend

**Town of Warren, VT
SUSAN UNDERHILL REVTR :**

Disclaimer

This map is a public resource of general information. The Town of Warren shall assume no liability for:

1. Any errors, omissions, or inaccuracies in the information provided regardless of how caused; or
2. Any decision made or action taken or not taken by the reader in reliance upon any information or data furnished hereunder.



1 inch:1,352 Feet