

*Via E-mail only*

April 11, 2023

Richmond Development Review Board  
C/O Tyler Machia, Zoning Administrative Officer  
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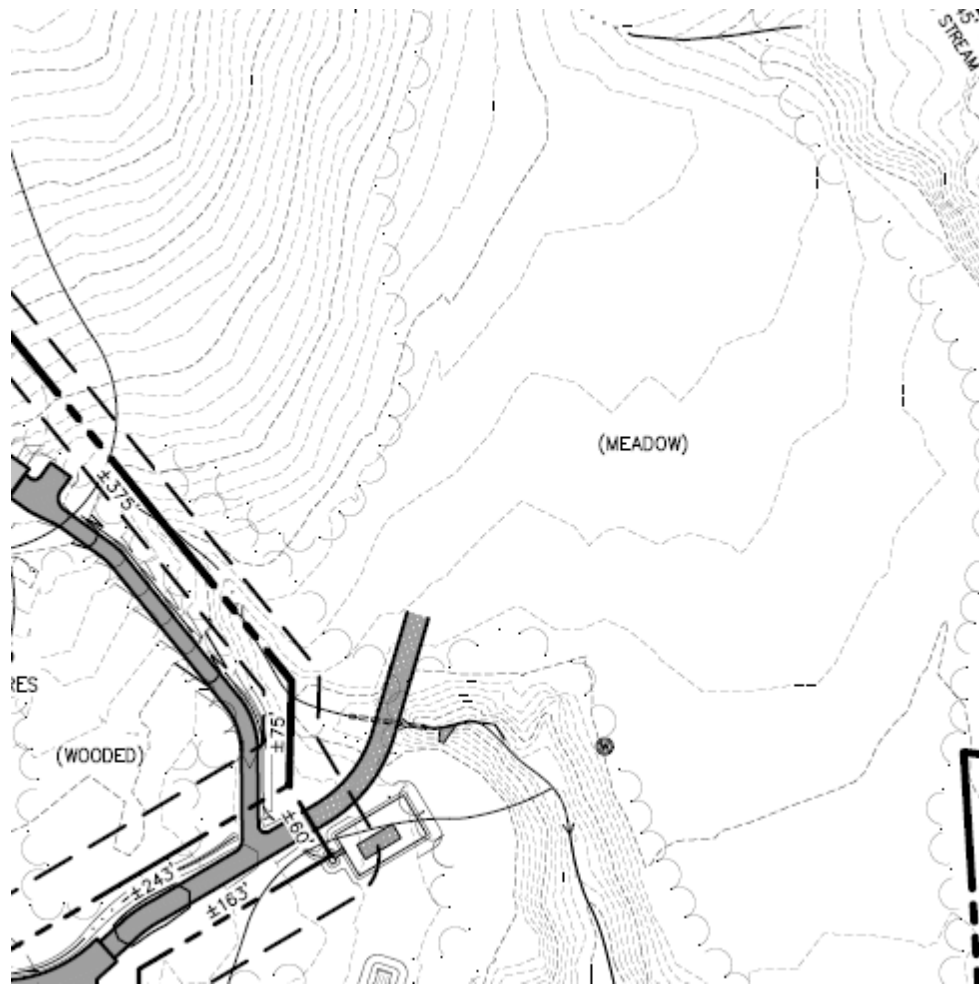
Re: PRESUB2023-04, Hillview Heights LLC Subdivision

Dear Members of the Richmond Development Review Board,

I write on behalf of Bradley Holt, Jason Pelletier, David Kauck, Rebecca Butterfield, Sarah Volinsky and Nat Merrill. These neighbors all reside nearby the proposed development on parcel HV2427. They can all see the proposed development from their properties and therefore will suffer an aesthetic impact from the development. They also enjoy the environment in their neighborhood and are concerned that the proposed development will have impacts on water quality and natural resources they enjoy such as wetlands, steep slopes, wildlife habitat and agricultural meadows. They and their fellow neighbors have serious concerns about the proposed development. While they all recognize a need for housing in the State of Vermont, and agree that Richmond needs more housing, they have concerns that the proverbial ball remains hidden with this project and a comprehensive and substantive review as to all issues is not being conducted.

For some time, the neighbors have had reasonable suspicions that the project before the DRB is just phase I of a multi-phase project. It is only being broken up into its current scale to avoid substantive Act 250 review (i.e. fewer than 10 units) and substantive subdivision impact review. Applicants support for their concerns comes from the fact that the Applicants have never gotten a clear and coherent picture of the application. Even to this day, the Applicants are not clear as to what is before the DRB. Their application states this is for a 7 lot subdivision. Their traffic study states “[t]he proposed development program includes the division of one lot into 9 lots: 8 residential lots, which range in size from two to 5.5 acres and a ninth lot that will remain open space. Access and egress to the future lots is provided via three proposed driveways onto Hillview Road, as seen in Figure 1.” The plans also *clearly* show an intended connection to other developable lands with an expectation of future development.

In the northern portion of the site, the driveway, past Lot 6 and past the spur to the house on lot 7 *continues on*.



This driveway does not conform to the Richmond Subdivision Regulations which state “dead end roads shall terminate in a circular turnaround with an outside radius of not less than sixty feet approved by the DRB or in a hammerhead approved by the Selectboard.” The fact that this driveway terminus does not conform to Richmond standards can only be assumed to be for one reason – to serve as a convenient point to connect to future development of lands owned by Applicants.

This DRB must therefore require a comprehensive review of the proposed plans. Piecemeal development is ill-advised and unfair. If the Applicants have any plans to develop more than the 7 proposed house lots, those plans need to be brought forward now. The purpose of zoning is to bring about orderly development. *Vermont Brick & Block, Inc. v. Village of Essex Junction*, 135 Vt. 481 (1977). That cannot be achieved when clearly contemplated future development is shielded from review. As the Environmental Division has articulated, full disclosure is important. “Full disclosure on an initial land use application is vital to the integrity of the permitting process. As this Court once observed in a slightly different context, misrepresentations on an initial application could enable an applicant to succeed in obtaining a permit without alerting potential opponents or the zoning administrator to problems with the project under the zoning ordinance.” *In re Hurlburt*, No. 27-2-98 Vtec, slip op. at 4 (Vt. Env'tl. Ct. Feb. 12, 1999) (Wright, J.). Thus the Vermont statutes provide municipal panels the

discretion to reject an application that contains a material misrepresentation. 24 V.S.A. § 4470a. *In re Donovan Conditional Use Permit Application*, No. 83612, 2013 WL 6143751, at \*3 (Vt.Super. Nov. 04, 2013). Thus this DRB must demand that Applicants make a full and complete disclosure as to any future plans. If the DRB believes that the Applicants are not forthcoming or if the DRB concludes as the neighbors have that this current 7 lot development is just “phase I” the DRB should reject the application.

Aside from the concern that the DRB is getting a very limited view of the overall eventual project, the proposed subdivision has some substantial failings. First, there is no proof that it complies with critical environmental protection standards. Under the Richmond Subdivision regulations, the Applicant must establish that their development will not cause harm to the sensitive environment. That includes preventing erosion control and runoff. Section 600 of the Regulations provides that the Applicants design a drainage system that can accommodate a so-called 25-year storm. This is a storm *greater* than the standard metrics used by the State of Vermont stormwater permitting office in measuring water quality and preventing erosion. Under the State regulations, as to water quality and channel protection (the erosion standard), the so-called “1 year” storm is used as a measurement. *See* 2017 Vermont Stormwater Management Manual (VSSM), Sections 2.2.4, 2.2.5. As to downstream run-off to address “overbank flood protection” the manual still just uses the 10-year storm. *Id.* at VSSM 2.2.6. The 25-year storm is greater than both of these storms by a large degree and a system’s ability to handle that size storm is not measured when getting a stormwater permit. Thus the Applicants’ stormwater permit is not proof that the application complies with Section 600 of the Subdivision Regulations.

This is not merely an irrelevant technical point either. Hillview is, well, a hill. There are steep slopes all over the property and on abutting properties. Excessive flow and an undersized drainage system results in erosion, flooding risk, and harm to abutting properties and the Town’s road.

The Applicant just posted documents dated today showing how its system performs under the 25 and 100 year storms. My clients have not had any reasonable time to review this document with their engineers and thus ask that the DRB provide them the time to do so. It is all but impossible to review such a highly technical document within 24 hours.

The Project as proposed currently does not meet necessary setbacks. The term “setback” means “the distance from a lot line or, if applicable, from the center line of the road or highway right-of-way, to the edge the building footprint or of any structure on the lot, including the edge of a deck, cantilevered area, on ground patio or parking area. The setback provisions of these Zoning Regulations do not apply to fences, walls of 3 feet or less in height, roof overhangs that extend no more than three (3) feet from the structure, or signs outside a road right-of-way, except where specifically provided. Setbacks for septic systems shall be dictated by state law.” The term “structure” means “an assembly of materials for occupancy or use, including, but not limited to, a building, mobile home or trailer, sign, wall or fence and storage tanks for liquid, gas, oil, propane, or other fuel that are principally above ground. The term structure does not include tanks that are fully underground, septic system components, and impervious surfaces such as driveways or parking areas.” The Applicants propose a large stormwater management system

with forebay and detention basin. This stormwater system and concrete forebay is not a septic system component. It is a “structure.” It is therefore regulated by the term “setback.”

In the Ag/Residential District, all structures shall be set back at least “thirty (30) feet from each front lot line, or fifty-five (55) from the center line of each public or private Road or Highway right of way contiguous to the lot, whichever is greater.” The stormwater detention pond does not meet these standards. It must be relocated.

In reviewing this application, the DRB is instructed by Section 500 to prevent harm to “surrounding areas, due to flooding, improper drainage, steep slopes, rock formations, topography, utility easements or other features; and to ensure that there are not undue adverse impacts on existing historical resources or natural features, trees, brooks, rock outcroppings, water bodies, ground water, or other natural and/or historical resources.”

As my clients detail there are substantial natural resources on this site. The steep hillside serves as an important habitat block of unbroken woods. Within those woods lies a marked significant natural community – a rare Dry Red Oak-White Pine Forest. There are highly valuable state Prime-Agricultural soils on site – some of which are being lost due to the location of homes and lots. The steep slopes themselves are a critical resource that the Town of Richmond Town Plan marks as a Significant Natural Area to be protected and suggests restricting development on or near such steep slopes.

Here, the development creates undue adverse impacts on these features. It could be better clustered to lower the impact on the forest habit and critical steep slope areas. Moreover, to protect these areas the DRB should impose conditions that require the remaining areas of undeveloped Lot 7 – the wooded hillside, the steep slopes, the “Meadow”, the “stream” and the ”Special Flood Hazard Area” be marked as “not for development” and protected with a condition that states there shall be no future development on these lands. Such is essential to achieve the intent of the Regulations.

My clients also do not agree with VHB’s conclusion that there are safe stopping distances. This DRB is tasked with determining whether the proposed project will cause unreasonable highway congestion or unsafe conditions with respect to the use of roads and highways in the Town. VHB asserts that the project does not cause unsafe conditions because it meets the VTrans standards for safe stopping distances. Meeting VTrans standards is not equal with meeting the Town standard. Rather the Town standard is non-specific and requires that the DRB take a look at the actual on-the-ground conditions and reach its own conclusions. My clients ask that the DRB consider the stopping sign distances in light of the actual traveled speed on Hillview and the specific nature of Hillview.

Hillview is a steep gravel road where people regularly travel 40+ miles per hour. There are limited sight lines given the turns in the road and vegetative screening. At those speeds, the stopping sight distances need to be much greater than what is proposed here. This is particularly relevant because the whole of Hillview’s edge of road is wooded. Unlike an open field where parties can see cars on driveways and roads easily, with wooded screening along the edge of the

road, driveways appear out of nowhere. The DRB must take this into consideration and reduce the number of proposed curb-cuts.

In addition, the DRB is required to determine that the proposed density and sighting of lots and homes is appropriate for the character of the area whether sensitive environmental areas are adequately protected. The zoning Regulations and the Town plan indicate that this area is appropriate for “low density residential development, agriculture and forestry uses.” Further it states that development may negatively impact “scenic views and pastoral landscapes.” Lots 1, 2 and 3 are smaller than any lots in the neighborhood and result in a clustered “tract” housing appearance. The visual impact of these lots is increased because they are clustered near Hillview Road and are located in a very scenic and open area of the property. They also developed right around sensitive Class II wetlands in a manner that greatly increases the risk of harm to the wetland. If these lots were reduced and re-located the number of curb cuts could be reduced and the scenic wetland area conserved.

The DRB also should consider implementing conditions that any homes in the subdivision are limited in scale and scope. The applicant notes that typical homes are expected to be 2400 square foot homes. This inclusion of a “typical” home note is common but creates confusion. Years from now when somebody proposes a 7500 square foot home the successors to this proceeding will be left fighting about what “note” means. The size of a home *is* a relevant consideration as to the impacts of a subdivision. Larger homes have a greater impact than smaller ones. Thus here, the DRB should limit any home and accessory dwelling unit (as allowed by State law) to cumulatively 3,000 above grade square feet by way of a specific condition of approval. This matches the “note” on the plans and allows for reasonable future development and growth. Further the DRB should instruct that all lights used for any residence are downcast, dark-sky compatible in accordance with the Vermont Municipal lighting standards.

In general, my clients ask that this DRB take a strong look at the area. This is not a heavily developed area. This is both a byproduct of the natural features onsite – wetlands, farmland, steep slopes, streams, flood hazard areas – and a byproduct of the type of development desired in Richmond. Richmond is desirable because of its pattern of development – which really strives to protect natural features and scenic views. This development strains the nature of the Richmond’s pattern of development. It proposes a relatively intense development in, and around, sensitive features that should be protected. It introduces a level of use inconsistent with what exists today. While my clients want more housing and welcome some development in the area, seven additional lots clustered as they are around a sensitive wetland, resulting in the loss of farming soils and potentially increasing erosive forces is too much. The DRB should strongly consider limiting the scope of development to a more reasonable number of lots. Certainly substantial profit still exists with four or five well-sited lots as opposed to seven clustered lots.

Thank you for your consideration,

  
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