

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
DOCKET NO. 23-ENV -00063

In re. Hillview Heights LLC Preliminary
Subdivision Approval

NOTICE OF APPEAL

NOW COME Neighbors Bradley Holt and Jason Pelletier of 1931 Hillview Heights Road and David Kauck and Rebecca Butterfield of 2212 Hillview Heights Road (“Appellants”), by and through their counsel, MSK Attorneys, and hereby appeals, pursuant to 24 V.S.A. §4471 and 10 V.S.A. Ch. 220 to the Vermont Superior Court, Environmental Division, the Town of Richmond’s Development Review Board’s May 23, 2023 decision issuing preliminary plat/preliminary subdivision approval to Hillview Heights LLC for a 7-lot subdivision of property located at 2427 Hillview Heights Road. A copy of the DRB’s decision is attached hereto.

Appellants have a right to appeal pursuant to 10 V.S.A chapter 220 as the applicants are interested persons. Appellants are neighbors to the proposed subdivision and reside in the immediate vicinity of the subdivision. They can see the proposed development and will impacted by traffic, and run-off impacts from the proposed development. Appellants participated n the Richmond proceedings.

TO ALL INTERESTED PERSONS: In order to participate in this appeal, you must enter an appearance in the Vermont Environmental Court within twenty-one (21) days of receiving this Notice of Appeal. Notices of Appearance should be mailed to Jennifer Teske, Court Office Manager, Vermont Superior Court—Environmental Division, 32 Cherry Street, Suite 303, Burlington, VT 05401.

DATED at Burlington, Vermont this 16th day of June, 2023

Respectfully submitted,

MSK ATTORNEYS

By: /s/ Alexander LaRosa
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Town of Richmond Development Review Board Final Decision

RE: PRESUB2023-04 The Applicant (Hillview Heights LLC) is seeking preliminary subdivision approval for a 7-lot subdivision located at 2427 Hillview Road. The subdivision would create 6 new residential lots with one existing residential lot. The existing residential lot is also currently used for agricultural purposes and will continue to be used as such

PARCEL HISTORY:

1. Sketch Plan Application 1/14/21
2. Zoning Permit for driveway 2021-083 Approved 11/2/21
3. Notice of Intent to Build a Farm Structure 12/20/21
4. Notice of Intent to Build a Farm Structure 5/5/22
5. Zoning Permit for well 2022-53 approved 7/11/22
6. Zoning Permit for a sign 2022-62 approved 7/28/22
7. Notice of Intent to Build a Farm Structure 7/29/22
8. Notice of Intent to Build a Farm Structure 8/29/22
9. Notice of Appeal APE2022-02 9/28/22
10. Notice of Intent to Build a Farm Structure 11/17/22

LIST OF SUBMISSIONS:

- A. Site Plans
- B. Sight Distance
- C. Traffic Study Response
- D. Holt Pelletier Comments
- E. Preliminary Subdivision Plat
- F. Storm Water Summary
- G. Gosselin Memo
- H. Staff Notes Hillview Heights LLC
- I. DEC Email

PROCEDURAL INFORMATION:

1. Application submitted on 3/24/23
2. Agenda placed in Seven Days 3/27/2023
3. Notice placed on town website and at three locations in town on 3/27/2023
4. Abutters notified on 3/27/2023
5. Notice sent to Applicant 3/27/2023

FINDINGS OF FACT:

1. The Applicant (Hillview Heights LLC) is seeking preliminary subdivision approval for a 7-lot subdivision located at 2427 Hillview Road. The subdivision would create 6 new residential lots

with one existing residential lot. The existing residential lot is also currently used for agricultural purposes and will continue to be used as such

2. The project is located inside of the Agricultural Residential zoning district and is subject to Section 3.1 of the Richmond Zoning Regulations
3. The Applicants narrative notes that they are proposing a 7 lot subdivision with 6 new single family residential lots
4. Lots size and coverage is as follows:
 - a. Lot 1-1.89 Acres 5% Coverage
 - b. Lot 2-8.66 Acres 2% Coverage
 - c. Lot 3-4.60 Acres 4.5% Coverage
 - d. Lot 4-4.15 Acres 3.5% Coverage
 - e. Lot 5-2.06 Acres 4.5% Coverage
 - f. Lot 6-3.35 Acres 4.5% Coverage
 - g. Lot 7-60.78 Acres 1.5% Coverage
5. Single family residences are an allowed use per Section 3.1.1 of the Richmond Zoning Regulations
6. Section 3.1.3 notes the following dimensional standards
 - a. No lot shall be less than one (1) acre. The purchase of additional land by the owner of such lot from an adjacent lot owner shall be permitted, provided such purchase does not create a lot of less than the minimum lot area required in the Zoning District for the lot on the part of the seller
 - b. Each lot must contain a point from which a circle with a radius of fifty (50) feet can be inscribed within the boundary of the lot
 - c. No lot having frontage on a public or private road shall have less than one hundred (100) feet of continuous uninterrupted length of said frontage or the lot must have access to a public or private road with approval by the DRB pursuant to Sections 4.2, Required Frontage, and 4.3, Approval for Interior Lots with No Frontage
 - d. The total amount of ground on a lot that can be covered by any structure or impervious material shall not exceed 30%.
7. The Applicants site plan notes that all lots will be greater than 1 Acre
8. The Applicants site plan notes that all lots will have less than 30% impervious coverage
9. Section 3.1.4 goes over the Dimensional Limitations for structures in the Agricultural Zoning district
 - a. The height of any structure shall not exceed thirty-five (35) feet, except as provided in Section 6.6, Taller Structures, of these Zoning Regulations
 - b. 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
 - c. A principal structure shall be set back at least twenty (20) feet from each side lot line. An accessory structure shall be set back at least ten (10) feet from the side lot line
 - d. A principal structure shall be set back at least twenty (20) feet from a rear lot line. An accessory structure shall be set back at least ten (10) feet from the rear lot line
10. Section 3.1.5 of the Richmond Zoning Regulations notes the following:
 - a. Parking requirements shall be regulated as provided in Section 6.1
 - b. Signs shall be regulated as provided in Section 5.7
 - c. Access shall be regulated as provided in Section 4.1 through 4.4
 - d. Traffic shall not exceed 10 vehicle trip ends during the peak evening hours
11. Section 4.1 notes that all vehicular accesses shall comply with the 2000 Public Works Specifications, or the most recent version of Public Works Specifications at the time of application
12. Section 4.4 notes that no more than one curb cut shall be allowed onto a public or private road or highway right of way affording access to a lot
13. The Applicants site plan and narrative notes one curb cut per lot

14. 6.1.6 notes that parking areas associated with single or two family dwellings are exempt from review by the Zoning Administrator and do not require site plan review
15. Applicants site plan and narrative notes that each lot will have a minimum of 2 off street parking spaces
16. Section 6.2.1 notes the following standards for driveways:
 - a. Unless specifically approved by the DRB there shall be a maximum of one driveway per lot accessing a public Road or Highway. This provision shall not disallow a shared driveway between two or more lots, or dual driveways where one lane is marked for entering traffic and one lane for exiting traffic
 - b. Driveways shall meet the following standards unless a different size is required by the DRB due to special circumstances: Residential - 12 feet minimum width, 36 feet maximum width; Commercial - 20 feet minimum width, 36 feet maximum width
 - c. The DRB may require installation of acceleration and/or deceleration lanes on the adjacent public Road or Highway if it deems necessary
 - d. Driveways shall be located more than 100 feet from signalized Road or Highway intersections (measured between the near edges of the driveway and intersection. Greater distances may be required on Roads or Highways with high traffic volumes
 - e. The intersection of the driveway to the public or private road shall conform to the standards in the Public Works Specifications. The driveway shall meet the Vermont Agency of Transportation's B71 Standards for construction
 - f. For the length of the driveway, the driveway grade shall not exceed twelve (12) percent except that the last 200 feet from the foundation of the primary structure being served shall not exceed fifteen (15) percent. In measuring the compliance of a driveway, the maximum grade may not be exceeded along the driveway center-line
17. The Applicants narrative and site plan indicates that each lot will have one driveway
18. The Applicants narrative and site plan indicates that each driveway will meet the minimum width requirement of 12 feet
19. The Applicants narrative and site plan indicates that grade of all driveways will not exceed 12%
20. The Applicants site plan notes Class 2 wetlands
21. Section 6.9 notes that any land development on a lot containing a known or suspected wetland identified by the Vermont Significant Wetlands Inventory, the Wetlands Advisory Layers, or the Wetlands Screening Tool shall require a zoning permit issued by the Administrative Officer
22. 6.9.2. No land development shall occur within a Class I or II wetland, or wetland buffer, unless approved or exempted by the Vermont Wetlands Program
23. Applicants have obtained a state wetland permit from the Department of Environmental Conservation
24. 6.9.3. Wetland Buffers. All Class I and II wetlands shall be surrounded by a buffer of the following widths:
 - a. a) 100 feet for a Class I wetland
 - b. b) 50 feet for a Class II wetland
25. The applicants plan set notes a 50 foot buffer
26. 6.9.4. Applications for development within Class I or II wetlands, and wetland buffers shall provide the following:
 - a. A wetlands delineation and assessment of the wetland prepared by a professional wetlands ecologist in accordance with the Vermont Wetlands Rules put forth by the Agency of Natural Resources
 - b. A site plan indicating the location of the proposed land development in relation to the wetland and the wetland buffer
 - c. A permit approving such development issued by the state Wetlands Program
 - d. An erosion prevention and sediment control plan in accordance with the current Vermont Standards and Specifications for Erosion Prevention and Sediment Control
27. Wetland Permit provided and included in the application packet
28. 6.9.6. The creation of new lawns or areas of pavement, including for parking, within wetlands or wetland buffers is prohibited unless approved by the state Wetlands Program. Supplemental

- planting within a wetland or wetland buffer with appropriate native vegetation to restore and enhance the function of the wetland is allowed
29. 6.9.7. New on-site septic systems, including septic tanks and leach fields, are prohibited in wetlands and wetland buffers. Replacement systems may be allowed with the appropriate state and federal permits
 30. Subdivision applications also have to comply with the Richmond Subdivision regulations
 31. Section 300 covers regulations for preliminary subdivisions
 32. Section 310.1 notes the following requirements
 - a. Subdivision name or identifying title, tax map number and the name of the Town
 - b. Name and address of the owner of record of the property, and of the subdivider if different
 - c. Location map showing the relationship of the proposed subdivision to adjacent property and surrounding areas within two thousand (2,000) feet of any property line of the proposed project. Such location map may be shown on a USGS map at a scale of 1 inch equals 2,000 feet
 - d. Boundaries of the proposed subdivision and the names of the owners of record of all adjoining properties, to the proposed existing easements within the proposed subdivision
 - e. The zoning district, including overlay districts, in which the property is located and the relevant zoning regulation provisions applicable to the site
 - f. The location, names and widths of existing roads, easements, and building setbacks
 - g. The location of any bridges, drains, drainage ways or culverts which are proposed in the subdivision
 - h. Proposed LOT lines with dimensions and planned locations and uses for buildings, any stream and wetland buffer zones, and any overlay (s) applicable to the proposed subdivision
 - i. Potential layouts for the subdivision showing all roads, pedestrian ways, recreational trails, utilities, and all proposed access to the subdivision
 33. Culverts noted on the site plan
 34. Wetlands noted on plat and site plan. Lot lines and dimensions notes. Building envelopes noted on plat and site plans
 35. Roads and utilities noted on plans
 36. Section 310.2 notes that the preliminary subdivision plan shall include the following information:
 - a. Name of the designer of the subdivision
 - b. Number of acres within the proposed subdivision, buildings, water courses and other noteworthy physical features
 - c. The location of all natural features or resources on the site such as streams, ponds, wetlands, flood plain, floodway, forest stands, established large animal habitat
 - d. Designation of each segment of adjoining property boundaries of all adjoining properties common with the proposed subdivision the location of known archaeological sites such as cellar holes, building foundations, wells, or known fences
 - e. The location and dimensions of any existing wastewater disposal systems, water supplies, culverts, drains, drainage ways, or underground cables on the site. The location, names and widths of parks, public open space, trails, etc. on the site as well as similar information regarding adjacent properties
 - f. Contour lines, at intervals of twenty (20) feet, of existing
 - g. Means of providing water supply to the proposed subdivision
 - h. General information regarding the location(s) of potential wastewater systems and potable water supplies in the proposed subdivision proposals for maintaining open spaces, natural features and resources on the
 - i. As specified in Section 6.10.1, a Master Development Plan prepared by an engineer, land use planner, or other professional acceptable to the DRB
 - j. A list of waivers, if any, which the SUBDIVIDER requests from the requirements of these Subdivision Regulations, and the justification for the request
 - k. Written authorization appointing a representative, if appropriate
 37. The applicants narrative notes that each lot will have its own well
 38. Wastewater and water system information noted in plan sets and site plan

39. Section 600.1 notes that the subdivider shall construct all roads to meet the of the Town of Richmond Public Works Specifications standards and specifications for public infrastructure, including roads. Specifications for driveways must meet the requirements established in the zoning regulations
40. The Applicants narrative notes that roads will be built to Richmond public works specifications. Curb cuts will be built to B-71 Standards
41. Section 600.4 notes that the access points to public or private rights-of-way shall be consolidated to minimize multiple curb cuts
42. The Applicants site plan indicates that the driveway for Lots 1 and 2 will be merged
43. Section 600.6 notes that 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
44. The Applicants proposed a hammerhead turnaround for the road serving lots 4,5,6 and 7
45. Section 600.8 notes Emergency and service vehicles must have access to all lots and buildings
46. Section 600.9 notes that sight distances at all intersections should be consistent with anticipated traffic speeds, terrain, alignments and climatic extremes
47. Section 600.10 notes that all roads shall be adequately shaped and drained, with adequate ditches or other storm water system
48. The applicants plan set shows road design and shape. It also shows plan set for storm water system
49. Section 600.11 notes that road names shall be approved by the Selectboard prior to the submittal of the final subdivision plat application
50. The Applicants have proposed the road name Hillview Heights Way for the road serving lots 4,5,6 and 7
51. Section 610.1 notes the layout of all lots and their setback requirements shall conform to the requirements of the zoning regulations and these subdivision regulations to achieve the desired settlement pattern for the zoning district, area, and neighborhood in which the subdivision is located, including associated overlay districts. All lots must have the required frontage. If the subdivision meets the requirements and is approved as a Planned Unit Development or as a Planned Residential Development, the DRB may waive or modify specific requirements of the zoning regulations as provided in the PUD or Residential PUD sections of the zoning regulations. For any portion of the parcel or LOT not proposed for land development in the subdivision as of the application date, a master development plan is required. The master development plan shall conceptually show future roads, future stormwater infrastructure, future building areas, future open areas, and future uses on such remaining land, including those that the subdivider expects to offer to the town of Richmond
52. Section 610.2 notes that the subdivider shall design LOTS and building envelopes consistent with topography, existing vegetation, drainage, soil conditions, and aesthetic considerations
53. Section 650.1 notes that the subdivider shall provide a design for a drainage system which will remove any water and storm run-off which may traverse the site. The drainage system may include pipes or open drainage ways, and shall be located in road rights-of-way or in unobstructed easements not less than twenty (20) feet in width. The design of the drainage system shall utilize natural waterways and drainage ways to the extent possible. The drainage system shall identify all waterways into which water exiting the site will flow
54. Applicants have provided a data sheet on storm water plans for the property
55. Section 650.2 notes that drainage facilities shall accommodate all existing surface water and run-off, plus run-off anticipated from the proposed development
56. Applicants plan set shows state stormwater permit approval for the designed storm water system
57. The subdivider shall demonstrate that existing drainage facilities below the grade of the subdivision will accommodate the anticipated additional run-off from the proposed subdivision. If the additional run-off will overload down gradient facilities so that there will be undue drainage onto other property, or an increase in expenditure of public funds, the DRB shall require the subdivider to design and implement facilities to correct such overloads within the subdivision or offsite with associated easements or agreements with one or more adjoining property owner

58. Section 650.4 notes that the drainage system and all easements shall be designed to accommodate water from a twenty-five (25) year storm
59. The Applicants noted in their application materials that the storm water system has been designed for a 25 year storm event
60. Section 650.5 erosion control: The smallest practical area of land shall be bare at any one-time during development. Any exposure shall be kept to the shortest practical period of time. The DRB may require temporary vegetation, mulching, and/or structural measures to protect exposed areas. The subdivider shall install and maintain appropriate sediment basins during development to remove silt and to control runoff. The subdivider shall install permanent vegetation and erosion/runoff control measures as soon as practical. There shall be adequate permanent measures at culvert outfalls to prevent erosion and disruption of drainage ways
61. Section 650.6 notes that the subdivider shall not use stumps, wood, roots or other fibrous materials or refuse as fill, except in areas stipulated for no development. The DRB shall require the subdivider to submit evidence of boring and/or other soil investigations to determine the depth, composition and stability of the subgrade within road sections or on the site of structures
62. Section 660 notes all land development shall be located to prevent contamination of any water supply or water resource by run-off or leachate from wastewater disposal systems. 14 land development may be serviced by private or community potable water supply and/or wastewater systems which shall be designed, installed, and maintained in accordance with all applicable State of Vermont regulations and standards. The subdivider shall provide the Town of Richmond with a copy of any required state or federal permits, including a Wastewater System and Potable Water Supply Permit, before any zoning permit for land development will be granted
63. Applicants Plan set notes the technical specifications for the wastewater systems in the subdivision. Each lot is serviced by its own wastewater and well. The applicants have also received their wastewater and storm water permits from the state
64. Section 670 notes that the final subdivision plat shall show all utility systems, existing and proposed. The subdivider shall coordinate subdivision design with the utility companies to ensure adequate and suitable areas for installation, both for proposed subdivision and for areas adjacent to the subdivision
65. Section 670.2 notes that all utility systems, including but not limited to electric, gas, telephone and cable television, shall be located underground throughout the subdivision
66. The Applicants site plan notes above ground utilities on Lot 3
67. Section 670.3 notes that all easements shall be of sufficient width to serve the proposed subdivision, existing development, and planned development outside of the subdivision. The final subdivision plat shall show all easements
68. The Applicants narrative notes several proposed easements
69. Section 680 notes that the DRB may require that a subdivision creating six or more lots be divided into two or more phases to ameliorate, avoid or mitigate any undue adverse impacts of the subdivision on existing or planned community facilities or services, in accordance with the town's adopted capital budget and improvement program. Any phasing decision shall be based on the timing of construction or implementation of planned facilities and services, but shall allow at a minimum the development of five lots per year. The DRB may require phasing to avoid or mitigate undue, adverse impacts on the community's schools, roads, bridges, transportation infrastructure, police, fire, rescue, municipal services or the local economy. Any DRB decision requiring phasing shall describe the specific circumstances that warrant phasing under these standards
70. Section 701 notes that the subdivider shall provide a draft of all restrictions which will run with the land and become covenants with the final application. The DRB may require the subdivider to provide a certificate of title for all property to be conveyed to the town as part of the subdivision. The DRB may require the filing of such other legal data (including rights-of way, easements, road agreements, etc.) as it deems appropriate to enforce these subdivision regulations
71. Section 702 notes that the subdivider, and the subdivider's successors and assigns, including the organization or trust required by section 703, shall continuously maintain to the condition when originally installed, all facilities (as defined in Section 600) and other improvements (as defined

in article vi), including all required subdivision landscaping, diseased, dying, or dead landscaping shall be replaced with landscaping of a size equal to that as of the time of replacement, but in no event to exceed the size the landscaping would have reached by ten years after installation. the obligations of this section 702: (1) shall not apply to facilities or landscaping which have been accepted by the town: and (2) shall only apply to an individual lot owner as to landscaping on the owner's lot

72. Section 703 notes that the subdivider shall provide for and establish an organization or trust for the ownership and maintenance of any common facilities or open space: the organization or trust shall not be dissolved or revoked nor shall it dispose of any common facilities or open space, by sale or otherwise, except to an organization or trust conceived and established to own and maintain the common facilities or open space, without first offering to dedicate the same to the Town or other government agency to maintain those common facilities or that open space

CONCLUSIONS:

1. All the land is assigned to a parcel and shows potential development
2. The lots in this proposed development conform to the dimensional requirements for the underlying district
3. The Applicants application is in compliance with Section 3.1 of the Richmond Zoning Regulations
4. The Applicants application is in compliance with Section 4 of the Richmond Zoning Regulations
5. The Applicants application is in compliance with Section 6 of the Richmond Zoning Regulations
6. The Applicants application is in compliance with Section 610 of the Richmond Subdvsion Regulations
7. The Applicants application is in compliance with Section 620 of the Richmond Subdvsion Regulations
8. The Applicants application is in compliance with Section 630 of the Richmond Subdvsion Regulations
9. The Applicants application is in compliance with Section 640 of the Richmond Subdvsion Regulations
10. The Applicants application is in compliance with Section 650 of the Richmond Subdvsion Regulations
11. The Applicants application is in compliance with Section 660 of the Richmond Subdvsion Regulations
12. The Applicants application is in compliance with Section 680 of the Richmond Subdvsion Regulations

DECISION: The Development Review Board Approves PRESUB2023-04 as presented by the applicants with the following conditions

1. All utilities will be located underground for all lots
2. Prior to applying for Final Subdvsion approval the Applicants will provide copies of the easement and maintenance agreement for the shared driveway for Lots 1 and 2
3. Prior to applying for Final Subdvsion approval the Applicants will provide copies of rules and regulations of the Home Owners Association

Any other applicable zoning regulations not expressly waived in this decision must be complied with.

This decision shall not relieve the applicant from any obligation to obtain all other applicable required federal, state and local permits, including wastewater permits.

The application as approved shall be in conformance with the decision, referenced items, the findings of facts, and conditions. The Applicants' and interested parties are hereby notified that if they disagree

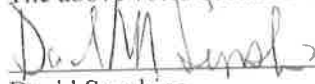
with this decision, they have the right, under 24 V.S.A. 4471, to appeal to the Vermont Superior Court – Environmental Division.

The appeal must be filed within thirty days of the date of this decision, and be in accordance with the governing rules of procedure and rules of the Vermont Superior Court - Environmental Division. Title 24 Vermont Statutes Annotated, Section 4471 provides that “An interested person who has participated in a municipal regulatory proceeding authorized under this title may appeal a decision rendered in that proceeding by an appropriate municipal panel to the environmental court. Participation in a local regulatory proceeding shall consist of offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding.”

DRB VOTING ON THIS MATTER (circle one for each member):

David Sunshine, Chair	in FAVOR	AGAINST	ABSTAINING	RECUSED	ABSENT
Mathew Dyer, Vice-Chair	in FAVOR	AGAINST	ABSTAINING	RECUSED	ABSENT
Padraic Monks, Member	in FAVOR	AGAINST	ABSTAINING	RECUSED	ABSENT
Roger Pedersen, Member	in FAVOR	AGAINST	ABSTAINING	RECUSED	ABSENT
David Schnackenberg, Member	in FAVOR	AGAINST	ABSTAINING	RECUSED	ABSENT

The above votes occurred at a DRB meeting on the 10th day of May, 2023.



DATED May 23, 2023

David Sunshine
Richmond Development Review Board Chair