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1/31/2024

RE: Response to Holts Questions

Overview:

The Applicants, Hillview Heights LLC, have an approved 7 lot subdivision located at 2427 Hillview Road. The Subdivision was approved by the Development Review Board in December of 2023. On January 16th 2024 the Applicants came before the Selectboard requesting approval of two access permits, a hammer head turn around, as well as approval of the road name Hillview Heights Way. During this meeting Bradley Holt presented a range of concerns about this subdivision. Many of these concerns have come up during previous Development Review Board hearings. The Selectboard opted to continue this conversation to the February 5th meeting. The focus of this memo will be to respond to the questions that Mr. Holt submitted in his January 21st letter. I will also note what the Selectboard has jurisdiction over and what is outside of the scope of their authority. I will also provide some closing thoughts for the Selectboards consideration.

Holts Questions:

Throughout the subdivision process Mr. Holt has raised a number of questions about Hillview's application. At the last selectboard meeting Mr. Holt again raised many of the same questions. They focused around 4 issues. These issues are the sight distance for lots 1&2, access for lot 3, the access for lots 4-7, the approval of the hammerhead turnaround, as well as the road name for the road serving lots 4-7. I will respond to this list below.

Selectboard Authority:

Before considering Mr. Holts points it is first important to have a better understanding of the Selectboards authority over land development. It is noted in 24 V.S.A 4460 that once a municipality establishes a Development Review Board and zoning regulations that body is the Appropriate Municipal Panel that has sole jurisdiction over land development as laid out in the municipal bylaws. Letter e. of 4460 notes that subdivision bylaws are regulated by the appropriate municipal panel, in Richmond's case this panel is the Development Review Board. In addition. 24 V.S.A 4463 notes that before a subdivision has been approved a public hearing shall be held by the appropriate municipal panel, in this case that is the Development Review Board. This subdivision followed all of the required steps of the subdivision regulations. It went through Sketch Plan Review, Preliminary Review and Final Subdivision approval, all of these meetings are open to the public. While I understand the Selectboard's desire to provide a thorough review of these access permits that review should be confined to what the Selectboard has jurisdiction over. In this case the Selectboards review is limited to the access permits

themselves, more specifically the specific dimensional standards noted in the Public Works Specifications and State B71 standards.

Sight Distance:

Mr. Holt expressed concern that the sight distance for Lots 1 and 2 does not meet the B.71 Standards. He does not feel that the 250 foot sight distance and early warning sign are sufficient to protect public safety. Mr. Holt noted that town Public Works specifications note a minimum sight distance of 385 feet. However, VTRANS B71 standard notes that for roads with a posted speed of 35 miles per hour the minimum sight distance is between 250-390 feet. He wants the Selectboard to deny the access permit for failing to meet the Public Works Specifications; barring that he would like the selectboard to require a minimum sight distance of 390 feet.

Response:

Mr. Holt is correct in noting that the sight distance, as originally presented, does not conform to town public work specifications. This issue stems largely from a conflict within the regulations themselves. Section 6.2.1.e of the Richmond Zoning Regulations notes the following, “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”, this is where the issues start. As previously noted, B.71 allows for a sightline range of 250-390 feet. The applicants presented a sight distance of 250 feet with their initial proposal and were in compliance with the B71 standards. However, our Public Work Specifications note a minimum sight distance of 385 feet for a road with a 35 miles per hour speed limit. After soliciting legal advice on the matter, it was advised that if there is ever a conflict between state and local regulations whichever is the stricter would apply. Given this advice the town site distance of 385 feet would apply. Based on this the applicants revised the sight distance for Lots 1 & 2 to achieve the minimum distance of 385 feet. The Applicants will need to go back to the DRB to amend their subdivision to show the grading required to achieve the required site distances. I would recommend the following conditions:

- The Applicant will update their HOA agreement to require that the site distance of 385 feet be maintained.
- Road Forman Peter Gosselin must issue a memo noting that he has measured the sight distance and it is 385 feet.
- This Access permit will not take effect until the applicants amend their subdivision to show the required work to clear and maintain a site distance of 385 feet.

Access For Lot 3:

Mr. Holt claimed that the applicants need to apply for an access permit for Lot 3. He notes that when the Selectboard originally approved access permit 21-17 they imposed two conditions on the access permit. The are as follows:

- For access to one primary and one accessory structure only. Applicants must reapply before this access may be used to serve additional structures.
- Landowner must close any pre-existing access.

He contends that the second condition on this permit closed any preexisting access on the lot. Therefore, the applicants need to reapply for a new access permit to allow access to Lot 3 of this subdivision. Mr. Holt also raised concerns with the wetland permits the applicants have received.

He contends that they do not have a wetland permit for the proposed work on the driveway on Lot 3.

Response:

There are two issues with Mr. Holts argument. The first point is his contention that the preexisting access was automatically closed once the Selectboard approved the new access. This is not stated in the permit conditions for Access Permit 21-17. It only states that any preexisting access has to be closed, it does not say when this must happen. Zoning permit 2021-83 was for the work to improve this access. If the applicants had completed the work as noted in permit 2021-83 then the condition that any preexisting access has to be closed could be enforced. However, once the applicants recorded the plat for their new subdivision permit 2021-83 and access permit 21-17 were voided as the underlying lot no longer exists. The only way the applicants can proceed with new work on the road and access to lots 4-7 is to pull a new zoning and access permit, which is before you today.

Mr. Holts second point is outside of the jurisdiction of the Selectboard. Work inside of wetlands and wetland buffers are under the sole jurisdiction of the state. The only thing the town can require of an applicant is that they receive a wetland permit. If Mr. Holt feels the applicants are in violation of their wetland permit then he would have to take that up with the state as it is outside of the towns jurisdiction.

Access for lots 4-7:

Mr. Holt also expressed concern about the access to lots 4-7. His principal concern is over what he terms piecemeal development. He argues that the applicants have deliberately tried to not disclose their development plans. He is particularly concerned with the fact that the access on what is now lot 3 was never closed. In his opinion the applicants did not make a good faith effort to complete work on permit 2021-83. He also feels that the roads is not in compliance with town regulations particularly Section 6.9.3 which notes that there can be no development inside of 50 ft class 2 wetland buffer unless the applicant has a wetland permit. He requested that the Selectboard denies the application or limit the approval to allow only one principle and one accessory structure per lot and require the applicants to amend the access to allow for more structures. Mr. Holt references 24 VSA4470a as the justification for this. This section deals with material misrepresentations in the appeal process.

Response:

Mr. Holt frequently refers to the term piecemeal development in his arguments against this subdivision. It is important to point out that piecemeal development is not a term that you will find in our zoning regulations. In fact, there is no prohibition of piecemeal development of any kind in either the Zoning Regulations or Subdivision Regulations. Applicants have the right to amend their applications at any time or choose to not follow through with a permit they have pulled if they change their mind. Circumstances change and sometimes applicants decide that they want to go a different way with their project.

To evaluate Mr. Holts concern about misrepresentation it is important to provide an example of what is and is not a material misrepresentation. In short, applying for one thing and doing something else without either amending the prior approval or seeking a new approval would be a

material misrepresentation. An applicant applying for a new permit is not a material misrepresentation. As I noted above an applicant can change their mind and amend their permit as many times as they want provided, they go through the proper channels to do so. It is true the applicants did pull permit 2021-83 to serve a single-family lot. However, it is also true that the applicants did not complete this work and instead filed for subdivision approval for a 7 lot subdivision. This is not a material misrepresentation this is applicants deciding on a new course of action for their property. They applied for and got subdivision approval and are now before you today to pull their new access permits. In addition, the new subdivision trumps any old approval the applicants have and requires them to get a new permit to build the new proposed accesses and road.

In short, applications are not set in stone. Applicants can and often do change their plans for a variety of reasons. As long as the applicant either amends an existing approval or applies for different approval for work on their property they would not be guilty of misrepresenting their project. It is impossible for me to see inside the head of an applicant and know what their true intentions are. Both the DRB and I have to take the applicant at their word as to what their development plans are. So long as the applicants follow the proper permitting pathways for the work they can make any changes to their application that they wish to.

It is also important to point out that the condition Mr. Holt is recommending in the event of the Selectboard approving the access for lots 4-7 is outside of the jurisdiction of the Selectboard. As noted above the Development Review Board is the appropriate municipal panel to evaluate subdivisions and other land development. Therefore, the Selectboard cannot impose conditions that would restrict land development. While the Selectboard could put conditions on the access to ensure compliance with the public works specs for a particular use the Selectboard cannot restrict the use itself.

Hammer Head Turnaround:

Mr. Holt also expressed concern about the hammerhead turnaround. He felt that it was not located at the end of the dead-end road. He wants to see the location of the Hammerhead turnaround relocated closer to the Lot 4 driveway. He feels this would limit the disturbance in the wetland.

Response:

Mr. Holt contends that the hammerhead turn around is not located at the end of the road. However, this is a misinterpretation of the applicants plan set. The location of the Hammerhead terminates by Lots 6 and 7. Both wings of the hammerhead turn into private driveways and only serve two lots. Lot 7 has a driveway and agricultural access on it and only serves Lot 7. Road specifications kick in when a driveway services 4 or more lots. The current location of the hammerhead is at the end of the road due to the fact that it only serves two lots (6 & 7) from that point onward. Moving the hammerhead to proposed Lot 4 would be a violation of the town of Richmond Rural Road specifications which notes that if a shared driveway serves 4 or more lots it must meet the Rural Road specifications. Pete Gosselin notes that the Hammerhead meets the dimensional requirements noted in the Richmond Public Work Specifications.

Road Name:

Mr. Holt had some objections to the proposed road name of Hillview Heights Way. He thinks that the road name is too similar to Hillview Road. He would like the Selectboard to require a different name.

Response:

Tyler Hermanson noted in his email that the name Hillview Heights way was possible. While he did note that it could be stronger, he did not say that this name could not be used. Generally, as long as the state does not say that a name won't work, I usually would defer to the applicant as to what name they would like for their project.

Conclusion:

Ultimately Mr. Holt does not want to see development on lots 1,2 & 3 because it will impact his view. In a letter dated April 10, 2023, Mr. Holt noted that among other things he was concerned about the negative impacts that this proposed subdivision would have on the view of the surrounding area. He noted in his letter that "We ask the developer to consider eliminating the proposed Lots 1, 2, and 3 and to find an alternative use of these lands that will not impact scenic views and pastoral landscapes". While I certainly understand Mr. Holts feelings on this matter the town cannot prohibit development of private property that complies with the zoning ordinances. So long as a type of use is allowed, and an applicant follows the proper procedures to have their work approved, they should get their permit. As noted above the Selectboard's role is to ensure that the access points and hammer head turnaround meet the dimensional requirements for their intended uses and that the road name is acceptable per E911 standards.

Sincerely
Tyler Machia
Zoning Administrator

