

# TOWN OF HIGHGATE

## Development Review Board

September 11, 2014 @ 6pm

### Approved Minutes

*NOTE: All actions taken are unanimous unless otherwise stated.*

#### I. CALL TO ORDER

The meeting was called to order by chairman, Rick Trombley at 6:04pm.

Present at this meeting:

- DRB members: Rick Trombley, Chairman; Tim Reynolds, Vice-Chairman; Woody Rouse; Julie Rice; Pauline Decarreau
- Staff: Heidi Britch-Valenta, Planning & Zoning Administrator; Wendi Dusablon- Planning & Zoning Clerk
- Applicants: Roger Wright
- Public: George E. Spear II Esq; Andy Hoak, Ruggiano Engineering; James Wetherby, neighbor

#### II. PUBLIC HEARINGS

- Roger Wright  
Violation Hearing  
High Density Residential District  
Lamkin Street

George Spear (attorney) and Andy Hoak (engineer) approached the table with evidence and testimony with regard to the violation at 372 Lamkin Street. Rick Trombley, chairman, swore them in. Rick began by expressing sympathy on behalf of the board to Mr. Wright on the recent loss of his mother. Heidi noted that she was not sure how to warn this meeting, whether it was a boundary line adjustment or a violation hearing. This case has been in front of the board over an extended period of time. The issue tonight is specifically pointed toward the setback violation of the newly constructed home at 372 Lamkin Street. The sandpit is no longer in violation. The last remaining piece is how to fix the deficient setback on the home. Mr. Spear and Mr. Hoak had a presentation on how they feel is the best and simplest way to remedy the current situation. Mr. Spear had sent a memorandum to the board members prior to this evening, but wanted to give a little background. He has been practicing law for 46 years and wanted to note the history of zoning and why it exists and why it came to be. He gave some history with regard to Modesto, California and also noted the first comprehensive zoning bylaws were in the year 1915 in the city of New York. These bylaws operated fine until 1926. Mr. Spear also referenced the city of Euclid, Ohio vs. Ambler Realty, a case that went all the way to the US Supreme court in 1926. Fast forward to today and the town of Highgate, Vermont. Like most municipalities, Highgate established zoning bylaws, referring to page 2 of our bylaws, which set forth the purpose of zoning bylaws, and represent the same basic purposes as back in 1926 – health, safety and the welfare of its inhabitants. It has morphed into protecting values and much more. Mr. Spear turned the conversation over to this particular case involving the setback violation with Mr. Wright and the newly constructed home at 372 Lamkin Street. This property is on the boundary of high and medium density residential districts. Mr. Wright purchased the surrounding property from Pike back in 1999 and acquired some in-holdings from the Thompson's and also from relatives. He acquired the residential lots personally and the Pike

property is in the name of WRB as a limited liability company. Referring to maps presented, Mr. Spear noted that Mr. Wright owns property up to the Wetherby property, and 35' of it is owned by WRB LLC. There are two residential lots titled to Roger Wright, the balance of 98 acres and the cross hatched area noted on the maps are titled to WRB LLC. When Mr. Wright put this new home on lot #2, it encroaches on WRB's property, which is not good. WRB has a small strip of land which is of no use to it and was willing to be able to give Mr. Wright a permanent exclusive easement and right of way, so he can exercise all indices of ownership. This is the easiest and simplest way to get around the conundrum without a subdivision permit or a boundary line adjustment because you don't need permission to execute an easement. Mr. Spear made reference to William Occam (Occam's Razor), which basically states that when you have two or more solutions to a problem that the simpler one is better. This was refined by Einstein and we manage it today as the "KIS principle" – keep it simple. Occam's Razor is an elegant solution and the simplest and easiest way to accomplish this. In the DRB packets is a copy of the easement deed which was provided by Mr. Spear. This easement was executed by WRB, conveying to Roger Wright personally. It is an exclusive and permanent right of way for Mr. Wright to use for all legal and lawful purposes. No one else can use it without his permission. So basically, Roger Wright does not own the "fee" but he exclusively controls it, no one else, not even WRB, without his knowledge or permission. Mr. Spear noted that the bylaws do not define what property lines or boundaries are. We need to go elsewhere for the info. He referred to a case in May of this year involving All Metals Recycling. AMR was not the owner of the property, they were a sub-leasee of a property and they had applied to the zoning board for a permit. They were denied because they were not the owner. The VT Supreme Court ruled in favor of AMR because they took a broad interpretation of the word "owner". In our case with Mr. Wright, most certainly a permanent all encompassing easement is an equivalent of ownership interest. The easement goes with lot #2. If Mr. Wright were to sell lot #2, the easement would be sold with it. The easement deed was recorded in the Highgate Land Records in Vol. 171 Pages 191-192 on August 8, 2014. Anyone who would purchase the 98 acres would be buying it subject to this easement. Whomever owns the 98 acres owns the "dirt". Mr. Spear feels this is an elegant solution to the problem, it follows Occam's Razor and keeps it simple. The easement is 35' x 200'. Mr. Spear was open to any questions and noted that this solution also fits in with the history of zoning. Andy Hoak was also available for questions. Tim asked about the area that had recently been seeded. Rick asked if the easement deed shows in the land records – yes, in Vol. 171 Pages 191-192. Rick also asked if it was reflected that the easement is part of lot #2 – yes, they would have to read the deed. WRB pays the taxes on the dirt. Heidi asked if the easement would ever be calculated as part of WRB property for future subdivisions. Mr. Spear said technically, yes, it would. If there was a subdivision out back, the town would know he could not use the easement to enhance it. Lot #2 and the easement have to stand alone. Also, by adding the easement we are bringing the lot closer to 1 acre size, not quite, but close. Rick asked Mr. Wetherby if he had any questions. His only question was what if Mr. Wright decided to take the dirt out in the future? Mr. Spear said he can't. It's not economically feasible, plus WRB has conveyed all the rights to use the property to Roger personally. Roger personally does not have a permit to operate a pit on that piece of property. It could never be excavated (lot #2 or the easement). It isn't physically possible due to the setback requirements. Rick closed the hearing and stated that the board has 45 days to send a decision letter. Rick asked Mr. Spear if he is aware of the process once a decision is made, Mr. Spear said yes. Mr. Spear does not see any reason why their solution would not be accepted.

### III. APPROVAL OF MINUTES

Motion by Rick Trombley to accept the minutes from August 14, 2014 with one correction. Motion seconded by Pauline Decarreau – **APPROVED.**

There was some discussion regarding whether or not motions need to be included at the end of the minutes or if a decision letter that is a recorded document covers it. Heidi clarified that as a quasi-judicial board, if the motion is made in deliberative session, the decision letter will cover it. The decision letter contains all the information and is recorded as a public document.

**IV. OTHER BUSINESS**

o **DRB protocol draft**

There were no additional changes. Motion by Rick Trombley to adopt the Rules & Procedure and Conflict of Interest Policy for the Development Review Board. Motion seconded by Tim Reynolds. The DRB members signed off and Wendi will record the document. Heidi will forward it on to the Selectboard also.

o **Open Meeting Law Info**

Rick had nothing new to report, other than the hand outs he presented at the last meeting.

o **ACT250 updates**

There is an update on the ACT250 for the Franklin County Airport. Tim asked about the Deso ACT250, there are no updates yet. We will be notified when Roger Wright goes before ACT250. Tim also asked about Leduc and the other sand pit issue. That is in environmental court, and the first status conference is scheduled for the 29<sup>th</sup>.

o **Review & approve decision letters**

The board had previously seen both decision letters with regard to Spear / Dabrowski and Hilliker. Rick signed both letters.

**V. UPCOMING MEETINGS**

Planning Commission – 9/16/14 @ 6pm – CANCELLED  
Selectboard Mtg. – 9/18/14 @ 7pm

Heidi noted that someone from the DRB should plan to be at the November 6<sup>th</sup> Selectboard meeting to present the bylaw revision.

**VI. DELIBERATIVE SESSION**

Motion by Rick Trombley to enter deliberative session @ 7:13pm.

Motion seconded by Woody Rouse – **APPROVED.**

Motion by Rick Trombley to exit deliberative session @ 7:22pm.

Motion seconded by Woody Rouse – **APPROVED.**

**VII. ADJOURNMENT**

Motion by Rick Trombley to adjourn the meeting @ 7:24pm.

Motion seconded by Tim Reynolds – **APPROVED.**

Minutes respectfully submitted by:

\_\_\_\_\_, Planning & Zoning Clerk  
Wendi Dusablon  
Date \_\_\_\_\_

Minutes approved by:

\_\_\_\_\_, DRB, Chair  
Richard Trombley  
Date \_\_\_\_\_