

TOWN OF HIGHGATE
Development Review Board
March 12, 2020 @ 6pm
Approved Minutes

NOTE: All actions taken are unanimous unless otherwise stated.

I. CALL TO ORDER

The meeting was called to order by Chair, Richard Trombley @ 6:00pm, noting there was a quorum of the board present.

Present at this meeting:

DRB members: Richard Trombley, Chair; Tim Reynolds, Vice-Chair; Woodbury Rouse, Jr; Michael Kravetz; Courtney Veeder

Staff: Wendi Dusablon- Town Clerk / Public Meetings Clerk; Samantha Derosia – Zoning Administrator

Public / Other: Brad Ruderman; Brendan Deso; John Lavoie; Donald Bessette; Lucas Cadieux; Mary Ellen Therrien; Michael Gervais; Chris Yates; Jessica Stevens; Dale Godfrey; Denise Godfrey; Sara & Phil Menard; Shawn & Tiffani Degree; Steven Scott

II. REORGANIZATION OF THE DEVELOPMENT REVIEW BOARD

- Nominations for Chair of the DRB: Motion by Tim Reynolds to nominate Richard Trombley as Chair of the DRB. The motion was seconded by Woody Rouse. There were no other nominations. **APPROVED.**
- Nominations for Vice-Chair of the DRB: Motion by Woody Rouse to nominate Tim Reynolds as Vice-Chair of the DRB. The motion was seconded by Michael Kravetz. There were no other nominations – **APPROVED.**

III. PUBLIC HEARINGS

Deso, Brendan – applicant

Nolan, Dennis / Kemp, Joyce / Timura, Jacqueline – owners

9-Lot Subdivision – Preliminary Plan Review

**Lamkin Street – south side of Lamkin Street after Quail Drive on right traveling east
Medium Density Residential District**

Brad Ruderman and Brendan Deso were present for this hearing, as well as Mary Ellen Therrien, Donald Bessette and Chris Yates. All were sworn in by Rick Trombley. Brad recapped the proposed project which is on an eleven-acre parcel with nine building lots for single family dwellings. There will be two shared driveways to access the four back lots. Tim Hawkins prepared draft deeds with regard to the driveway maintenance and they have requested language with regard to the septic system easements. Brendan pointed out where the gas lines and electrical lines will run. The minimum isolation distance is being met for wells and wastewater systems. Perk tests went very well, and the storm water will be permeated into the sandy soils on the property. The building sizes are overstated on the plans. Breezeways won't be constructed by Deso, but the homeowners may elect to do that on their own. They have not yet applied for wastewater permits. There will be a homeowner's association for the units with shared driveways. The road names for these shared drives have been submitted as 'Palmer Avenue' and 'Nicklaus Way'. Brendan referenced his love for the game of golf behind the name choices. Rick asked about the homeowner's documents, which will be available for the final hearing. Michael Kravetz had questions about individual deeds. Who is responsible for the maintenance of the shared drives and who owns them? They will be legally owned by the property underneath and there will be easement language to govern who has to maintain it. There will be two associations, one for each of the shared drives, each with two households per association. These will be laid out with bank accounts but won't be as formal as their current twelve lot project. There are no plans for screening and the driveways will be crushed stone. Lighting will be up to the individual owners. Brendan did speak to Mrs. Therrien after the first meeting about her concerns with lights. The power lines will be above ground and Comcast will use the same overhead service. VT Gas runs through there and will be available to anyone that wishes to have that service. Donald Bessette, abutting property owner was present. He had questions and concerns about the property line

and who determined the right of way post and boundary on that side. Brad Ruderman answered that they did not survey that line, that they go by existing documentation that is found and those checked out. Brad noted a buried 6" marker and pointed out where it was found on the plans. No markers were set by them on that side of the property. Pins are there from previous surveys. Brendan can get a copy to Mr. Bessette. Courtney Veeder recommended Mr. Bessette have it surveyed to determine if there is any encroachment. Mary Ellen Therrien, who lives directly across the road, expressed concern about the isolation areas encroaching on to her property and if this would create an issue with ponding water or creating cracks on her property. It was explained how the overshadowing distances are shown on the plans. Mrs. Therrien asked if she could erect structures in that isolation area – yes she can, but any new systems would not be allowed there. She also had questions about any other issues she may experience from the new lots across the road. Courtney answered that it would be highly unlikely and more likely to be quite the opposite, in fact. Mrs. Therrien asked for confirmation on the number of driveways – there will be a total of seven – five individual drives and two shared by the back four lots. Chris Yates is not for or against this project. He inquired about the following: 1) do the back lots need utility easements written up 2) he asked why the shared drives were being referred to as a road and 3) how many approved building lots are there on Lamkin Street that are not built yet – the road is deteriorating badly so why would the town approve more lots. The 911 board wants those shared drives named for identification purposes. We don't know exactly how many building lots have been approved vs. how many are yet to be constructed. Mr. Deso stated that is a Selectboard issue. Mrs. Therrien agrees with Mr. Yates stating that all the traffic is taking a toll on the main road (Lamkin). Mr. Deso answered that all these new homes are occupied by people that are paying taxes and he is doing what our bylaws allow. If he did not meet the criteria he would not be approved, and that goes for everyone. There was a brief discussion on impact fees and how the town is beginning to explore that. Mr. Deso added that any conditions with regard to landscaping could be a condition of final approval by the board. He could work with H&B or the State of VT / Agency of Ag. With regard to lighting, Mr. Deso would like that to be at the discretion of the owner but he will do what is required. The neighbors need to be considered with regard to additional lighting. Mr. Deso will be working with Duane and Dianne at Swanton Village with regard to placement of the poles. Rick read through the criteria for preliminary plan review from the development regulations. Motion by Tim Reynolds to move this to final review. The motion was seconded by Woody Rouse – **APPROVED**. Mr. Deso believes they will be ready for next month.

**Gagne, Fernand & Patricia
Boundary Line Adjustment
638 Rheaume Road
Medium Density Residential District**

Michael Gervais, Barnard & Gervais, was present for this hearing and was sworn in by Rick Trombley. Courtney Veeder recused himself and moved to the audience. Rick noted there was still a quorum of the board present to continue with this hearing. There was no one from the public present for this hearing. The proposal is to eliminate the existing boundary line, shown in blue on the plans. The lots will change from 69.85 acres to 66 acres and 1.15 acres to 5 acres. The trailer slab is being abandoned and the home is being moved. The proposal is very simple. Michael Kravetz asked if there was anything being proposed for the garage. The garage will not be torn down, so it can still be used. The 50' right of way will remain, and Mr. Gagne will be putting in a driveway to get to his ag fields in the back. The current well will continue to be used. Mr. Gervais does not yet have the draft deeds, but he will get them. There were no further questions from the board. Mr. Gervais pointed out one boundary line that should be red and he will fix that for the final mylar. Rick read through the criteria for a boundary line adjustment from the development regulations. Motion by Tim Reynolds to close the hearing. The motion was seconded by Woody Rouse – **APPROVED**.

**Gervais Properties, LLC
5-Lot Subdivision – Sketch Plan Review
Meadow Lane
Medium Density Residential District**

It was noted for the record that Courtney Veeder recused himself and remained in the audience for this hearing. Rick noted there was still a quorum of the board present to continue with this hearing. Michael Gervais was here to represent his project, a 5-lot subdivision off Meadow Lane. Also present for this hearing were several residents of the Meadow Lane community: Chris Yates; Jessica Stevens; Dale Godfrey; Denise Godfrey; Sara Menard; Phil Menard; Shawn Degree; Tiffani Degree; Steven Scott. All were sworn in by Rick Trombley. Michael Gervais presented his proposal which is a 5-lot subdivision. He is proposing to extend Meadow Lane with a cul-de-sac and three new homes. He numbered the lots with an "A" to differentiate between this project and his other subdivision on Maizefield Drive. The extension of Meadow Lane will be up to A76 standards and have agreements in place with the owners of the lots. Any future development could also flow through there, but that may never happen. Everything will be on site with no easements other than the shared road. The plan is for power to be underground. There are two sites that Swanton Village is looking at to bring power in. The Town of Highgate owns the existing road. He plans to set up the extension piece to dedicate it to the town, but it is up to the town if they want to take it over. Lot #5 will own that portion of the road in the mean-time. This development is not so large that it will need an association, but he can look into that if the town feels necessary. The required paving is 3" so for three houses that should last for some time. Rick Trombley had questions about the cul-de-sac itself. Lighting will be up to the individual homeowners. Any lighting will be downward facing. As far as landscaping he noted that the area will not be clear cut. Lot #4 will be deferred. The first three lots are what he is concentrating on now. Rick Trombley asked for comments and questions from those in the audience. Chris Yates wanted his earlier comments (Deso hearing) noted here about Lamkin Street deteriorating. Chris also wanted to talk about the road, known as Meadow Lane. He had with him a copy of a recorded document in the town land records called "Irrevocable Offer of Dedication" that had a warranty deed attached to it as an exhibit. The offer was signed, but the deed was not. Chris referred to a map and noted that there are 5.19 acres that the five houses on the Meadow Lane cul-de-sac sit on. This was completed as a PUD (Planned Unit Development) not as a subdivision. They needed the land under the right of ways (Sandy Acres and Meadow Lane) to keep above five acres to get five building permits. They are still being taxed on 5.19 acres. There was never another subdivision done to take out the acreage and deed anything to the town. In his mind, the town does not own it. So how could the town approve a subdivision off a private road? Mr. Gervais said there are more maps than what is being discussed. He said the deed to the town is the irrevocable offer and acceptance by the town is what makes it valid. He presented the second survey with regard to the development. Mr. Yates said if there was a subdivision to be done to take out that acreage that the town would have been violating their own subdivision bylaws by dropping under five acres for five units. There was never a subdivision done to remove the land to create a deed to give it to somebody. The map Mr. Gervais was reading from was approved by the Highgate Planning Commission in December 2004. Mr. Yates stated that was way before and that if this is true, all five deeds would have changed, their acreage lowered and their taxes lowered, and none of that happened. There is another right of way to the Gervais property from another Gervais property through the Laroche property and Mr. Gervais was asked why he doesn't use that. Mr. Gervais replied that there is a town road (Meadow Lane) that goes to the property. Mr. Yates asked about the two deferred lots and the plans for those. Mr. Gervais said they are available to purchase, and if he continues to own them there could be possible future development. Tim Reynolds noted that the DRB can only consider the proposal before them tonight. Mr. Yates asked about ACT250 and if the deferred lots are a way to skirt around ACT250. Mr. Gervais stated that ACT250 is nine lots/nine units and he is proposing three. Mr. Yates final comment was regarding the current cul-de-sac with five homes. If, for some reason, this is approved and Meadow Lane continues straight with this proposal, the five homes in the current loop should, for 911 purposes, have a different road name. If the cul-de-sac (loop) name changed that would change everyone's addresses. Michael Gervais agreed with Mr. Yates on this with regard to 911. Dale Godfrey is a property owner on Meadow Lane. He asked Mr. Gervais if he owned any road frontage on Meadow Lane – yes, he owns 50 feet through the town's right of way. Mr. Gervais referred back to the map and pointed out the right of way. This is not

a deeded right of way, it is town owned. Mr. Godfrey asked how Mr. Gervais accesses his property now. He usually accesses through Norm Laroche's property either off Lamkin Street or Route 78. Mr. Godfrey asked why he does not use that right of way. Mr. Gervais noted he would have to build 2,000' of road to go that route. Mr. Godfrey asked about traffic studies and if they have been done. Mr. Gervais noted this is not a requirement and adding three houses to a town road is not a lot. There was discussion on hammerheads vs. cul-de-sacs. The town does not approve hammerheads. The road will be 24' with 2' shoulders. Mr. Gervais would like stick-built homes on the lots, but has not ruled out other housing options. Jessica Stevens, resident of Meadow Lane, spoke and had several questions, comments and concerns. She questioned the town right of way and Mr. Gervais' 50' right of way. Does the town have to give him the right to use it? Ms. Stevens stated he has no right to use the common land within the Meadow Lane development and read aloud from documents she had with her dated 12/03/2004. Mr. Gervais is not saying the residents don't have the right to use it, he is saying that it was conveyed to the town and is a public right of way. If Mr. Gervais can't explain it she would like the town to explain it to her. In our regulations it says that the right of ways are designed to extend to future subdivisions. She feels technically he has no right to it. What if Meadow Lane residents want to take back their road? They can't, it is an "irrevocable offer of dedication". Ms. Stevens asked about utilities and if they will go through the right of way - yes. But they will be the utilities (VT Gas / Swanton Village) easements, not his. If one or the other was not allowed, Mr. Gervais would bring the utilities in a different way. Ms. Stevens asked for a copy of the irrevocable offer of dedication, which is a recorded document in the town land records. Samantha Derosia, Zoning Administrator, made copies for those in attendance. Ms. Stevens questioned how Mr. Gervais could use a town road for his right of way and also how it can be used for utility easements. Mr. Gervais clarified that he will be upgrading the existing town right of way to meet the town road acceptance standards. Ms. Stevens feels he is doing the bare minimum and wants to make money. She further stated that the road is already deteriorating and now they want to add more houses. She is very concerned about the increase in traffic. Steve Scott, Meadow Lane resident, was also present. Years ago, they had an association and the agreement was that when the last house was built the road would be brought up to A76 standards and taken over by the town. They fought for years to get that done. Mr. Scott said there are potholes on the road and lots of young children in the development. Mr. Gervais can't speak to the condition of the road, as it is owned by the town. Mr. Scott has concerns about damage to the existing road. Mr. Gervais stated that he can offer to place a bond on his portion of the road to cover costs associated with bringing the new portion of the road up to A76 standards. This would hold him accountable. He doesn't plan to bring logs up Meadow Lane, but technically he could right now. Ms. Stevens read from the zoning bylaws with regard to the surrounding area being affected. She feels it will affect safety of their children and the character of their neighborhood, as per section 3.5. Ms. Stevens lives on a corner lot and does not want to see an increase in traffic constantly going by her home. Ms. Stevens also feels speed is an issue in their neighborhood, adding that there is no speed limit sign. Rick asked about the common land. Mr. Yates responded that the common land is everything outside of 10' from their houses. For example, if Mr. & Mrs. Degree wanted to go have a bonfire in the back yard of Mr. & Mrs. Severy, there is nothing they could do about it because it is all common land. This is because the development was done as a PUD, not as a subdivision, as noted earlier in the hearing. Ms. Stevens further pointed out the areas where the children play and all the common land that the Meadow Lane residents utilize. Tiffani Degree and her husband, Shawn, were present and are also Meadow Lane residents. Mrs. Degree spoke and reiterated what Mr. Yates said about when the town took over the road and the houses not being re-deeded. She feels strongly that this needs to be looked at. Also, Mr. Gervais has other means to access his property, which should also be looked at. It may be the easiest way and most cost effective, but he has other options. Mr. Gervais stated if he comes through the other way, he would be coming across Norm Laroche's back lawn, essentially doing the same thing to him. The right of way through Mr. Laroche's land was with a previous owner, Mr. Gervais was not involved in that agreement. The regulations clearly state that the right of ways are intended to extend into future subdivisions. Tiffani answered that just because he has the

right doesn't mean it is right. Mr. Gervais further stated that he is not proposing multi-unit housing, a PUD or businesses back there. He is trying to do nice lots at 1+ acres and doesn't want to hurt the neighborhood. He is keeping with the same character. He understands that the land has been used by residents of Meadow Lane, but it is a town road. Mrs. Degree asked about the proposed right of way to the new lots that appears to go through an existing shed. If this is approved, does that need to be moved? Mr. Gervais said that the shed is technically in the road right of way. Mr. Gervais is not asking anyone to move anything. Mrs. Degree continued that in 2010 when the last house was built (their home) there was no agreement or documentation from the residents of the five houses on the Meadow Lane loop to agree to anything. Mr. Yates added that Mrs. Degree was hitting the nail right on the head and that all five houses should have signed off on a deed to deed over the right of way. Mr. Yates is asking that the town not take a bad thing that was done and make it worse. He would like to see the screw ups with this development end today. Mrs. Degree added that she has talked to the majority of Meadow Lane residents and they would be happy to take the road back at this point. Woody Rouse stated that Sandy Acres and Meadow Lane were supposed to connect in the beginning, and it never happened. Mr. Laroche would not sell property, so they went with the PUD. Mr. Yates noted that some of the DRB members have been on this board a long time and may remember or have been part of that process. It was noted that the Planning Commission used to approve these projects, which switched over to the Development Review Board (previously known as the Zoning Board of Adjustment). Mrs. Degree's point is that she doesn't believe the right of way is legally owned by the town. There was brief discussion about Thak Blvd. just down Lamkin Street a short distance and how the town has not taken over that road yet over concerns with the cul-de-sac. Mr. Yates stated that Sandy Acres should have been brought up to A76 standards and blacktopped at the same time Meadow Lane was. Again, he asked that the town not take a bad situation and make it worse. Mr. Gervais reiterated he is not proposing a PUD. Mr. Yates stated that this is nothing against Mr. Gervais. This is an internal town issue that he is now involved in. Tim Reynolds asked for confirmation – the main issue here tonight is that Mr. Gervais is proposing to come off from Meadow Lane? Yes, those present agreed, that is the issue. The Meadow Lane residents feel this is a legal issue. Mr. Yates believes this will end up in court. Mr. Yates was a Selectboard member at the time the town took over the road and he recused himself from the situation at the time. He feels the residents had blinders on at the time they asked the town to take over their road and he feels for them in their situation now. Mr. Gervais was not part of all that, and the Selectboard approved taking over the road, and that is what he has to go on. Mr. Yates said it's up to the residents to question the legality of the town taking over the road, it is not his fight to fight. There is an exhibit deed attached to the irrevocable offer of dedication and that deed was not signed. Only the irrevocable offer was signed. Mr. Gervais doesn't believe the exhibit needed to be signed, but he will let their attorneys make that determination. Ms. Stevens will be speaking to her attorney about all of this. Mr. Yates wanted to make sure it was noted for the record that one of the DRB members is an employee of Mr. Gervais. The four DRB members participating in this hearing are aware of this, and Courtney Veeder (DRB member and employee of Barnard & Gervais) has recused himself from this hearing and all are aware of the rules. Mrs. Degree asked about the utilities and the boxes on Meadow Lane with regard to electricity. Mr. Gervais replied that he does not have plans from Swanton Village yet but believes they will come in along the edge of Meadow Lane to his property. The location of the two boxes were pointed out on the map. Mr. Gervais explained how public utilities have the ability to extend along public right of ways with blanket easements. Michael Kravetz asked about public utilities tunneling underground without digging up people's yards. There is technology that allows this to happen. VT Gas will bore it and a week later you won't even know what happened. There were comments about VT Gas damaging sewer lines in the past. Phil and Sara Menard, also residents of Meadow Lane, were present and are the ones that will be impacted the most. The Menard's driveway is currently in the town right of way, which was pointed out on the map as well. There was nothing further from those present in the audience. From what Mr. Gervais can tell, the concern is whether or not he has the legal right to do this. He believes he does, but if they want to prove he does not that is their right. Rick Trombley said the town will be getting advice

from the town's attorney. Ms. Stevens said they will be doing the same. Wendi let everyone know that they will be noticed every time before another hearing will take place. Rick read through the criteria with regard to a sketch plan review from the development regulations. Motion by Tim Reynolds to move this to preliminary review. The motion was seconded by Woody Rouse – **APPROVED**. Mr. Gervais feels he will be ready for next months hearing. The deadline is March 23rd for the April 9th meeting. Ms. Stevens had questions about the appeal process and how that works. After the final hearing a decision letter will be issued by the town within 45 days.

Cadieux, David & Sally
2-Lot Subdivision – Sketch Plan Review
11 McKinnel Road
Medium Density Residential District

It was noted for the record that Courtney Veeder recused himself and remained in the audience for this hearing. Rick noted there was still a quorum of the board present to continue with this hearing. Michael Gervais and Lucas Cadieux were present, and both were sworn in by Rick Trombley. This proposal is to subdivide the existing 10.2 acre parcel, making a 2 acre parcel and a 8.2 acre parcel. The existing right of way will be used and shared. Luc plans to build on lot #3. Nothing will be done with the remaining lands at this time. A septic design was done years ago and will remain in place on the remaining land. Mr. Gervais noted the road is darn good and has a very good base at A76 standards but is not paved. Ultimately there will be just two homes coming off the shared right of way with a driveway agreement. If anything would go on the remaining lands it would have to be paved. Test pits are complete, and a new septic will be done for the new lot which is noted on the plans. Tim Reynolds asked about power lines and locations, which Luc pointed out on the plans. Mr. Gervais pointed out the permitted septic area and proposed septic area on the plans. The shared drive will need to be named with two homes coming off it. There were no further questions from the board. Rick read through the criteria for a sketch plan review from the development regulations. Motion by Woody Rouse to move this to final review. The motion was seconded by Tim Reynolds – **APPROVED**. They plan to submit in time for the April agenda.

It was noted for the record that Courtney Veeder rejoined the DRB.

IV. APPROVAL OF MINUTES

Motion by Woody Rouse to approve the minutes from the joint DRB / PC meeting on *February 13, 2020*, as presented. The motion was seconded by Michael Kravetz – **APPROVED**.

V. OTHER BUSINESS

Michael Gervais asked the DRB about performance bonds with regard to paving Maizefield Drive. He has an estimate from Hungerford for \$35,000.00 +/- and it was a condition of the permit that the road be paved. Regency Housing is waiting on another building permit and driveway permit that can't be issued until this is figured out. There is \$10,000.00 in escrow already. He will get us the Hungerford estimate to pave the road – everything else is already at A76 standards. Wendi asked Mr. Gervais to get us something to be recorded in the land records and put in the project file. The board would like to have the paving done this summer, and Mr. Gervais agrees.

VI. DELIBERATIVE SESSION

Motion by Rick Trombley to enter into deliberative session @ 8:05pm. The motion was seconded by Tim Reynolds – **APPROVED**. Courtney Veeder exited executive session @ 8:25pm. Motion by Rick Trombley to exit deliberative session @ 8:52pm. The motion was seconded by Woody Rouse – **APPROVED**.

VII. ADJOURNMENT

Motion by Tim Reynolds to adjourn the meeting @ 8:52pm. The motion was seconded by Woody Rouse – **APPROVED**.

Minutes respectfully submitted by:

Wendy Dusablon Town Clerk &
Wendi Dusablon Public Meetings Clerk

6/11/20
Date

Minutes approved by:

Richard Trombley DRB, Chair
Richard Trombley

6-11-20
Date