

TOWN OF HIGHGATE

Development Review Board

June 11, 2020 @ 6pm

Approved Minutes

NOTE: All actions taken are unanimous unless otherwise stated.

Join Zoom Meeting

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I. CALL TO ORDER

The meeting was called to order by Chair, Richard Trombley @ 6:02pm, noting there was a quorum of the board participating. Due to the COVID-19 pandemic, changes to open meeting law allowed for this meeting to take place with no declared physical location. Everyone participated from their own location by video or phone. Richard Trombley, Tim Reynolds and Wendi Dusablon participated separately via Zoom from the town office.

Present at this meeting:

DRB members: Richard Trombley, Chair; Tim Reynolds, Vice-Chair; Woodbury Rouse, Jr; Michael Kravetz; Courtney Veeder (joined via Zoom @ 6:35pm)

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

Public / Other: David Cadieux; Michael Gervais; Jim Harrison; Peter Garceau; Brendan Deso ; Brad Ruderman ; Jessica Stevens ; Tiffani & Shawn Degree ; Phil & Sara Menard; Joe Severy; Kyle Wells – VTrans; Mark Fitzgerald – Vtrans; Deb Ferland

Rick asked everyone to identify themselves that was participating either by video or by phone. Rick explained that the applicants would be heard, followed by questions from the board and then questions from abutters and the public. (It is noted that all abutters were noticed on this meeting and mailed a copy of the plans for their respective hearing 15 days in advance of this meeting.)

II. PUBLIC HEARINGS

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

David Cadieux (applicant) participated in this meeting and he is working with Michael Gervais (Barnard & Gervais) who is also participating. He has submitted the road name request – Memory Lane – which will need to go before the Selectboard for approval. Rick had a question on the proposed well and if that was for future development. Michael Gervais responded that the well up in the back lot would be utilized if a future home were to be placed there. For his son's lot a new system and well have been permitted. The process to move a system is the same as to apply for a new one. Michael Kravetz asked about the existing power on the property and what the plan is for additional power. What is there was installed when David developed on lot #1 and secondary power will come off that, all below ground. There were no abutting property owners participating in this

hearing. Rick read through the criteria for final plan review from the development regulations. Mr. Cadieux verified there is no lighting on this proposed private road. This is currently the first driveway off McKinnel Road. It will be treated like a shared driveway and the future development is when everything comes into play with the road name, A76 standards and blacktop. Once three homes are being served off this drive, it will trigger 911 address changes for Memory Lane. There were no further questions from the board, zoning administrator or anyone else participating. Motion by Woody Rouse to close this hearing. The motion was seconded by Michael Kravetz – **APPROVED**. The board has 45 days to issue a written decision. Mr. Cadieux is familiar with the process.

- **Airport Sand & Fill, LLC**
8 Lot Subdivision – Sketch Plan Review
358 Airport Road
Industrial / Commercial District

Jim Harrison (applicant), Peter Garceau (Cross Consulting), Kyle Wells (VTrans) and Mark Fitzgerald (VTrans) all participated in this hearing and were all sworn in by Rick Trombley. Peter Garceau gave an overview of the proposal for this 8 lot subdivision. This is just to the east of the Franklin County Airport with the access road coming off Airport Road. The access road will be a loop all the way around the perimeter, which is intended for truck traffic to be able to go all the way around. The plan is to market these lots as an industrial park. Septic and water will be on site at this point, but if the sewer and water is extended down to the airport the plan would likely change. Tim asked if there is currently already an access road there. Yes, the access road for the sand pit will be utilized. Rick asked if the lots are being planned with the intentions of having employees. Yes, depending on what the development is will dictate the number of employees. Parking is not being considered at this time, this review is simply for the subdivision of the lots. They will go through this process of sketch, preliminary and final plan review for the subdivision and if any development is proposed for any of the lots they will come back to the town for a site plan review and approval. Michael Kravetz asked about the wetland area and if there will be potential problems for development. There is a Class II wetland area indicated on the plan. Mr. Garceau answered that the Class II wetland area has been delineated and approved for the sand pit extraction. The wetland is at the bottom of the ravine. There is a 50' buffer off of that, which is where the sand pit was approved. This subdivision proposal will not be encroaching into that wetland area any further. Michael also asked about the sand pit area itself and where it is located on this plan. Mr. Garceau answered that the sand pit is wrapping up and still functioning to some degree. The entire subdivision is being proposed over the actual site of the sand pit. Tim asked when they stripped for the sand pit what did they do with the topsoil? It is on site and stockpiled in an area of active operations. Most of the site has been reclaimed and will be certified by ACT250 as they go into each phase. Tim asked for clarification on how far they are through the sand pit. It was confirmed that they are all the way through. Michael asked why they are going on to another use of the area. The sand pit extraction was approved for a certain amount of cubic yards. This subdivision is a future plan now that the sand pit approval has been fulfilled. There were no further comments or questions from the board or from Mr. Harrison or Mr. Garceau. They plan to submit further documents to get on the soonest available agenda. Motion by Woody Rouse to move this hearing to preliminary plan review. The motion was seconded by Tim Reynolds – **APPROVED**. Kyle Wells from VTrans spoke up that he might have just missed his opportunity to comment. The board allowed him to continue with his comments. He is not part of the application, he is participating as a neighboring parcel (FC Airport). The applicants were still listening so Mr. Wells continued. Mr. Wells stated he just received notice about this hearing today and had not had an opportunity to see the plan and would like an opportunity to take a look at it. He is concerned about just how close they are coming to the airport. Mr. Wells also noted an agreement and a gravel driveway on Airport Sand and Fill's property that VTrans uses as a maintenance driveway. He wanted to confirm that was not going to be

compromised. Kyle also stated that in the future they will be approaching Mr. Harrison about navigation easements, as there will be concern with building heights associated with any development. This will need to be run by the FAA to make sure everything is good. Wendi stated that Mr. Wells had been noticed on this hearing both by email and by hard copy in the mail two weeks ago and that a copy of the sketch plan was included in what was mailed, as it was for everyone else as well. Wendi asked him to email her with his correct mailing address for future hearings. Mr. Garceau emailed Kyle a copy of the plans during this conversation as well so he could review it. Kyle wanted to make sure that the footprint and an easement agreement for lot 8 was agreed upon between Mr. Harrison and VTrans. Mr. Garceau confirmed that there could be future conversation between them before they submit for preliminary review. Kyle will email his concerns directly to Mr. Garceau at Cross Consulting. Mr. Garceau will confer with Mr. Harrison.

- **Deso, Brendan – applicant**
Nolan, Dennis / Kemp, Joyce / Timura, Jacqueline – owners
9 Lot Subdivision – Final Plan Review
Lamkin Street – south side of Lamkin St. after Quail Dr. on right traveling east
Medium Density Residential District

Brendan Deso (applicant) and Brad Ruderman (Brad Ruderman & Associates) participated in this hearing. There were no abutters or members of the public participating in this final plan review. Courtney Veeder, DRB member, joined the board hearing @ 6:35pm. Brendan complimented Rick for doing a great job chairing his first Zoom meeting and Brendan turned it over to his engineer, Mr. Ruderman. Since they were last here, nothing has changed with the lot layouts, with the water or wastewater systems or with the driveways. They have added trees and shrubs that were requested along the front lots and they specified on the plans they were to be built as slabs on grade, no foundations. The state wastewater permit has been obtained. The state stormwater construction permit was put on notice yesterday and there is a thirty-day comment period before it will be issued. Rick touched on a few points from the follow up letter sent to the applicant after the March hearing. Brendan said that his attorney, Tim Hawkins, drafted up proposed articles for the associations. They had not been submitted yet, so Brendan sent them over electronically during the meeting to Wendi and Samantha for the file. Michael Kravetz asked about the association. He noticed in the fine print that there will be two homeowner's associations with two owners each on each of the roads. Mr. Deso answered that each association will cover one driveway. The two users of each shared driveway will form each of the associations. If one person doesn't pay their fair share it doesn't impact all three of the other homes. There will be two separate road names and two separate associations. The body of the association will be the users of each respective road. Michael had more questions about plowing and road maintenance. The cost per person will be the same no matter how the associations are formed because they are separate driveways with two households per driveway. The front five lots will not be members of either association. There are no shared septic systems, but some do overlap property lines and there will need to be deeded easements. Draft deeds were previously submitted that included that language. This was a requirement to move from preliminary to final. Brendan offered to send them again if needed. Michael asked Samantha to forward the draft deeds and homeowner's association documents around to the board members. Michael would like to see these before the hearing is closed. Tim recalls seeing the road agreements previously. Brendan resubmitted the draft deeds again and association paperwork electronically to Wendi and Samantha during this meeting. His notes say that the deeds were previously submitted and Wendi confirmed that there were draft deeds in the file from the previous meeting in March. Michael would like time to see the wording. Tim does not have a problem with it if Rick doesn't have a problem. Courtney had questions about the survey map itself regarding shared access through lot 4 to lots 6 & 7 and clearly showing the angle involved for maintenance and plowing purposes. Brad said a full description can be added on the final mylar. A right of way easement table

would work perfectly and will clean up any possible liabilities. Courtney also added that an easement table would be helpful through lot 1 and lot 9 so they know where that ends for lot 8's access. The board will make these a condition of the final mylar. Rick said that the draft deed was presented at the March meeting and everyone should have already seen it. Michael does not recall ever seeing the draft deeds in March and requests that we keep the meeting open until the documents have been reviewed. Tim and Woody have already seen the documents and feel they have enough info to make a decision. There were no further questions from the board. Mr. Deso stated he is thankful that this meeting was organized via Zoom. He would appreciate it if the hearing could be closed. They are approaching some deadlines with the purchase and sale agreement with the Nolans and before they can order an appraisal to get their financing going they need to have a copy of the signed decision letter from the town showing any conditions. The septic permit was approved by the state back in April and they are not aware of any appeals made. The stormwater construction permit was noticed yesterday after being held on to for several months. The state did not realize they had it. They did not need to apply for a stormwater discharge permit. There is a very real chance if they receive final approval and a follow up letter in the next few weeks new homes could be on the site by this fall. They have a lot of interest in this project already. The board has 45 days to issue a written decision. Motion by Tim Reynolds to close the hearing. The motion was seconded by Woody Rouse – by voice vote 4 YES (Tim, Rick, Woody, Courtney) and / 1 NO (Michael) – **APPROVED**. Both Brendan and Brad are familiar with the process and Brendan would appreciate anything the board can do to get him a decision letter sooner than later. Brendan thanked everyone for participating virtually and thanked the Rick for running a good meeting.

(2 minute break)

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

Rick asked everyone participating to identify themselves: Michael Gervais (applicant); Joe Severy; Jessica Stevens; Tiffani & Shawn Degree; Sara & Phil Menard (all residents of Meadow Lane). He recapped how this would be handled. We will hear from the applicant first and then to the board for questions followed by the abutters. It is noted for the record that Courtney Veeder recused himself from the DRB. He is not currently working for Barnard & Gervais, but he does have knowledge of the project. Rick noted for the record that there was still a quorum of the board present for this preliminary plan review. Mr. Gervais stated there were no real changes from the sketch plan review a few months ago. There were no major changes that the board requested. This is still proposed as a five lot subdivision with three of the lots proposed to be developed, two left undeveloped and all on a shared drive coming off the end of Meadow Lane. He noted that the utilities will be underground. Rick asked about the deferred lots. 1A, 2A and 3A are proposed for development and the other two will remain vacant wood lots at this time. Michael's attorney had not yet sent us the road maintenance agreement, so he took a prior road maintenance agreement from another project and modified it for this project. This document was sent to Wendi and Samantha just prior to this meeting. Each of the lots has shared rights based on the number of houses that are there, split evenly financially, even if more homes are added. This is only to be split amongst the new homes in the proposed new section off Meadow Lane. There was lengthy discussion on the right of way that leads to Mr. Gervais' property. We have a written response from the town attorney that the town does indeed own the right of way. Tim asked about the permit for the shed on the Menard property and how far that shed is from the property line. A copy of the permit is in the board's packet for review. The shed is noted on the permit to be 51' from the property line. If the shed is in the town right of way, how will this be handled? Can it be moved or slid over? Mr. Menard stated that it is not a small shed. Mrs. Degree asked how he was issued a permit for the shed in the first place?

The property next door was not listed as common land on the permit. Woody feels that would have made a difference and he would not have been issued the shed permit back in 2009. Joe Severy noted that permit was issued before the town had deeded access to the right of way. Jessica Stevens stated this is a town mistake and the Menard's should not be punished for it. There was further discussion on the permit from 2009 and Woody stated nothing should be placed on common land. Mr. Gervais asked if this should be part of deliberative because it has no bearing on his project. This discussion is about a permit on a neighboring property that Mr. Gervais has no control over. Rick opened up the discussion to the abutters. Joe Severy had a couple points to make: 1) from what he was told, they are not paying taxes on 1.04 acres any more because now the town owns the road and his tax bill still states 1.04 acres, and 2) if they are not paying taxes on 1.04 acres they are an illegal PUD (planned unit development) for being under an acre. He enjoys having the town maintain and plow the road, but, speaking only for himself, he would rather pay taxes on 1.04 and take care of the road themselves rather than pay taxes on 1.04 and having the town take care of it. Mr. Severy pointed out that the 1.04 acres on his deed includes his home and the land it sits on as well as the common land. Mr. Severy estimates with the town taking over the road and right of way that each of the five homes is down to .75-.78 acres each per home. Each of the five homes pay taxes equally at 1.04 acres. If he or any of the five houses goes to sell, he anticipates issues when the title work is researched. Mr. Degree said this was brought up at the last meeting as well and it still needs to be answered. Mrs. Degree added that they were told yes the town does own the road (verified by the town's attorney), but there are still questions about them being under on acreage and totally messes up their PUD which requires at least one acre. And they all continue to pay taxes on 1.04 acres even since the town took over the road. There was discussion on who came to the town asking the town to take over the road. Joe stated it was Denis Bourbeau who brought the road up to standards and paved it after the fifth house was completed. Tim asked if any Meadow Lane residents had anything to do with the town taking over the road. Joe said no. He never went to a hearing and he doesn't think anyone did and they were not enlightened on the deed process when the road was signed over. He saw the copy of the deed and it was not signed by the town it was signed by Denis. Since then the five homes continue to pay taxes on 1.04 acres. If they own less acreage their taxes should not be what they are. Woody mentioned that this conversation might have to go before the Selectboard. The residents of Meadow Lane are currently dealing with the DRB and the question remains, what happens to their PUD if they have less acreage. If the residents want to take their road back, they need to go before the Selectboard. The discussion continued and the residents are happy with the town taking over the road and with Butch and his crew. But how does the town feel about having an illegal PUD? Mr. Degree stated this is the only development of its kind in Highgate, referring to the existing Meadow Lane. Joe is irritated by the way things were handled with the deed and the right of way and paying taxes on land he does not own and it was not caught. It is not personal with Mr. Gervais at all. Mr. Gervais understands that and appreciates Mr. Severy's comments. Mr. Degree wants to see some things clarified: 1) who owns the road 2) the right of way and what will happen with the Menard's shed and 3) the property lines don't match on Mr. Gervais' plans vs. what the town shows. Mr. Degree has no issues with Mr. Gervais developing back there but he does want things to be right. He is referring to the back property line of the common land that borders Mr. Gervais' land. Mr. Gervais replied that there are existing monuments back there and it is a straight line. He does not know how he could change that. Jessica Stevens pointed out that the residents are not saying he can't build. He has other access points he could use: 1) Maizefield Drive 2) Norm Laroche's property or 3) through Sandy Acres. She also feels badly for the Menards. That right of way goes right through their driveway. She referred to the Deso right of way conversation earlier and road maintenance agreements, etc. She fears that the Menards would literally get plowed in. Jessica also mentioned that she spoke to her attorney. Her attorney mentioned that the Meadow Lane residents never signed their rights away to the road and why did that not happen. Joe

asked when the next Selectboard meeting is and if they can get on the next agenda. The next meeting is June 18th and Wendi will check in with Heidi and have someone get back to Joe. Tim suggested both attorneys speak to each other. Ms. Stevens feels the residents of Sandy Acres would benefit from Mr. Gervais using their road for access because they currently have a hammerhead and that could make room for a cul-de-sac. Accessing from another point would not interrupt the Menards. Mr. Gervais does not have rights over Sandy Acres. Ms. Stevens feels they would grant it to him if he approached them. Tiffani Degree added that he could access the property from Gervais Lane / Maizefield Drive, which he owns, so he doesn't need permission from himself. Tim isn't speaking for the applicant, but said it's probably cheaper to go with his current proposal. It may be cheaper, but will screw up what's already established on Meadow Lane. Rick's concern is the PUD acreage. There was discussion on continuing this at preliminary review. Mr. Gervais did not understand that because any issues are not with his proposal, they are with the neighboring subdivision. The public right of way was created in 2015 and his subdivision won't change anything with their acreage. His subdivision proposal meets the regulations and he is not proposing a PUD. He does feel bad and he understands what the residents of Meadow Lane are saying, he sees it often in his business. He isn't trying to take things from anyone. It's public access and the most logical. It's paved close by, utilities are close by and he meets the regulations. Unless it comes to light that the town attorney was wrong, he doesn't see why his subdivision would be continued at preliminary and not moved on to final. Meadow Lane is an established right of way. Woody clarified that it was not Mr. Gervais that changed their acreage, it was the town when the town took over the road. He is not proposing anything on anyone else's property. The discussion went back to the shed (Menard) which is in the right of way. Mr. Gervais clarified that the shed was built in an existing right of way. Mr. Gervais is not trying to be difficult or rude but it has taken several months just to get to this second hearing, due to COVID-19 pandemic. Mr. Gervais asked the board to consider that he did not create the right of way and he did not create the issues next door. There will be at least one more hearing if he is moved to final. Tim asked the board if they agreed, if Mr. Gervais is moved to final and there are still unanswered questions it will be continued at final. This will give time for the attorneys to communicate with each other. That was agreeable to the DRB. Mrs. Degree asked if it turns out that the town does not own the right of way and the road becomes a private road again, would the residents of Meadow Lane own the road again? That is another question for their attorney. Mrs. Degree made reference to Ms. Stevens earlier comments about the residents of Meadow Lane (all 10 houses) not signing off. Their deeds were not redone after the town supposedly took the road over and to Joe's point, they are still paying taxes on 1.04 acres. Mrs. Degree feels it should not be moved to final because there are too many issues yet to address. If the town does not own the road that changes everything for Mr. Gervais and how he accesses his proposed subdivision. Rick noted that if this is moved to final it can always be continued at final. Rick has no problem with the proposed development but has concerns if we end up with a group of houses that have lost their rights. Rick asked for confirmation on the total number of houses on Meadow Lane – 10. Joe added that nobody was informed when Mr. Bourbeau signed the road over. Tim asked if Denis owned the road or if the residents owned the road. The Degree house was the last one built and the residents maintained the road until 2015 when Denis conveyed it over to the town. It was a private road until that point. There was further discussion on who had the right to sign the road over. Ms. Stevens stated that Mr. Bourbeau had no rights to sign over the road so it's not legitimate – it's all fake. From what Mr. Gervais has heard, the town attorney has verified that Meadow Lane is a public right of way. If anyone else has an opposing opinion from their own attorney there will be another hearing, as well as an appeal period, to bring that information forward. If it is not a public access and not acquired legally, he does not have access to it. But as it stands with all the information we have, he currently does. Jessica again pointed out that the Menards are the most affected and feels it was the town's mistake to issue that shed permit, as well as issues for them with their driveway. The residents will reach out to their attorney(s) and they will attend a

Selectboard meeting. Mr. Gervais offered to provide an easement around the shed, so it does meet the setback to his property line. He does not have the rights to do that for the town's right of way. If there is anything he can do to help them keep the shed there he will. Jessica would like him to use his own road to access his property. Rick read through the requirements for preliminary plan review from the development regulations. All the board members had a copy of the plan in front of them. Motion by Woody Rouse to move this to final review. The motion was seconded by Tim Reynolds – by voice vote 4 YES (Rick, Tim, Woody, Michael) / o NO / Courtney recused himself – **APPROVED**. It was noted that if there are still unanswered questions or other issues this could be continued at final review. Mr. Gervais will try to make the deadline for the next meeting but he can't be certain. We already have three hearings for July on the schedule, so first come first serve. If he misses the deadline it gives them that much more time to gather information and talk with their attorney(s).

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

III. **APPROVAL OF MINUTES**

Motion by Tim Reynolds to approve the minutes from March 12, 2020, as corrected. The motion was seconded by Michael Kravetz – **APPROVED**.

IV. **OTHER BUSINESS & UPDATES**

None

V. **DELIBERATIVE SESSION**

Motion by Rick Trombley to enter into deliberative session @ 7:55pm. The motion was seconded by Woody Rouse – **APPROVED**.

Courtney Veeder exited deliberative session @ 8:39pm.

Motion by Rick Trombley to exit deliberative session @ 8:54pm. The motion was seconded by Michael Kravetz – **APPROVED**.

VI. **ADJOURNMENT**

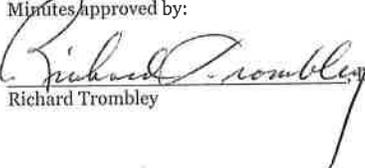
Motion by Woody Rouse to adjourn the meeting @ 8:54pm. The motion was seconded by Tim Reynolds – **APPROVED**.

Minutes respectfully submitted by:


Wendi Durablon, Town Clerk &
Public Meetings Clerk

7-9-2020
Date

Minutes approved by:


Richard Trombley, DRB, Chair

7-9-20
Date