

November 17, 2021

PLANNING BOARD
27 School Street
HILLSBOROUGH, NH
November 17, 2021

DATE APPROVED: 12/01/21

TIME: 7:00 p.m. – 9:40 p.m.

MEMBERS: Gary Sparks- Chairman, Susanne White-Vice Chair, Adam Charrette, Ed Sauer, Melinda Gehris, Nancy Egner

EX-OFFICIO: James Bailey III

PLANNING DIRECTOR: Robyn Payson

ALTERNATES: Bob Hansen

Excused: Ed Sauer, Bob Hansen

Public: Leigh Bosse, Frank Parisi-Vertex LLC, John Segedy, Brett and Tammy Davison, Samantha Livingston, Tom Carr-Meridian Land Services, Fred and Cheryl Sprague, Peter Mellen, Zach & Tia Whitney, Jesse Moreno, Richard Head-Conservation Commission, Riche Colcombe, Mark & Audrey Lawson, Bruce Egner.

Chairman Gary Sparks called the meeting to order at 7:00 PM.

Minutes 11/03/21

Melinda Gehris made a motion to approve the minutes. Nancy Egner seconded the motion. The motion carried with Adam Charrette abstaining. The minutes were approved.

Scope of Construction Oversight

136 Henniker Street (Map 12 Lot 75)

VIOTECH LLC

Peter Mellen-Donald Mellen Surveyor, LLC

The Planning Board was given a letter prepared by Gale Associates for a pre-construction meeting and construction oversight. The Planning Board needed to decide if they were going to sign off and require VIOTECH LLC to pay the fees.

Peter Mellen submitted a letter to Chairman Gary Sparks addressing the issue and stating the fee was unexpected and unreasonable.

Jim Bailey said he agreed that the amount was exorbitant, and the fees will be discussed at the meeting of Dec 1st. The Town has to protect itself without burdening the applicant. He felt the cost was way too expensive and he would not want to put that cost on an applicant.

Adam Charrette said that it was redundant to require the engineer to hold their hands through this process and then to ask for this oversight. He said the surety should cover any mistakes.

Melinda Gehris said she thinks the board should abide by the Notice of Decision of October 6 and on October 20.

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Robyn said that she didn't believe the Notice of Decision specified Gale Associates as the engineer so the Board could make another choice.

Susanne White said the common concern was drainage and if the Building Inspector is comfortable inspecting for drainage compliance, she thought the Building Inspector could do it.

Robyn said she would have to speak to him about that.

Susanne White said she thought there was a need to have someone to review it.

Melinda Gehris said they were very clear when the Board made the original decision, and the Board wanted an independent third party to look at drainage a year from now. She said she felt the Board needs to abide by what they decided. She thought if the building inspector could do the pre-construction meeting that's exactly what we said was going to happen and an independent third party can look at the drainage a year after construction. She said she is confident if that building inspector finds something wrong Livingston's is going to hear about it and the Board is going to hear about it.

Nancy Egner said she agrees and that the Board needs to abide what they decided already, and she thinks some accommodations can and should be made.

Gary called for a motion.

Jim Bailey made a motion that the Board does not sign off on the "Site Development Construction Observation Service" proposal submitted by Gale Associates. Adam Charrette seconded the motion. The motion carried with Gary Sparks Abstaining.

Applications

Subdivision -Public Hearing

216 Bible Hill Rd (Map 11I Lot 50)

Brett M. Davison

Tom Carr of Meridian Land Services Representing the Applicant

Nancy Egner recused herself from this application

Gary Sparks said the Planning Board has received new information within the last couple of days. He didn't feel he has had enough time to review the new material. He asked the Board they should continue this matter to the first meeting in December to allow the Planning Board to review the new material.

Susanne White said she would like to hear what Tom Carr has to say about the subdivision and have the changes explained.

Jim said he agreed with Gary and Susy. He said he would like to hear from Tom about the changes.

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Tom Carr said he appreciated the opportunity to go over the plans. He said making plan revisions and getting them to the Town in a two-week period is a challenge.

Mr. Carr said they made quite a few changes based on the site walk and the Conservation Commission letter.

He said they met with the Ernie Butler the Road Agent and Building Inspector Mike Borden about the drainage on Moore Road and ultimately came to a solution that was satisfactory.

Mr. Carr reviewed the driveway drainage plans. He said he had made a “yankee handshake agreement” with the Road Agent about the substantial pile of boulders on one of the lots and some scouring. He said that Earnie Butler that he will take some of the boulders and fill the scour marks.

Mr. Carr walked the Planning Board through the changes to the driveway design and the stormwater management plan.

Melinda Gehris said that last time you were here you told us very specifically that the buyers of these lots can do whatever they want. She asked if he is showing something that is his concept or a requirement for the buyers of the lots.

Tom said this will be a requirement of the buyers. The driveway entrances will be part of the plan set that will be on record with the town. He said he hopes the Board agrees with him on the stormwater management and erosion control plans. When people come to Mike Borden with their septic plan, this is what they are going to see.

Mr. Carr presented an example from Deering that shows aa storm water erosion control plan.

Mr. Carr said the Conservation Commission wanted to put some restrictions on areas of the lots. He said he did not know how he could do that because we don’t know what they are going to build.

If the storm water and erosion control plans are put in as a condition on these lots then the Building Inspector has the authority because it is on the approved plans to manage this in construction. If the site doesn’t look right he has the authority to tell whoever is building to stop what they are doing and that he could issue a cease and desist.

He said it is a great way to control properties in sensitive areas.

Going back to the subdivision; we have the email conversation about the Alteration of Terrain (see attached).

Mr. Carr said one of the comments that the Conservation Commission had was no movement of soil or sediment across lot lines. That is one of the criteria that would exempt this from the Alteration of Terrain. That means you can’t have earth moving across lot lines at any time with a bulldozer. That does not say you can’t put 10 yards in a dump truck and move it down the road

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to the next lot. Materials can and should be shared across lots if it is necessary.

Mr. Carr went back to the first page because note 13 had that messed up the note regarding AOT. So they have eliminated the part after the RSA 43E Shoreland Protection Act. He read the new note #13 which will go to the Building Inspector.

Mr. Carr went on to discuss Lot 6. He said the lot meets all of the regulations of the Town. He said it is a reasonable buildable lot under the regulations. He said when you have the stormwater management and erosion control plan in place there is a whole other level of protection. That being said they are not going to get rid of Lot 6.

The Conservation Commission also recommended that the upland area of Lot 5 is steep, and wetlands are impacted, they wanted to see it as a non-building zone. Mr. Carr said they have no problem with that. The non-building zone crosses over to Lot 6.

Melinda Gehris said she understood from the site walk where the non-building zone is likely to be on Lot 5. She said she didn't understand what the non-buildable areas would be.

Mr. Carr pointed to the location on the plan.

Mr. Carr said they are comfortable with the changes that they have made.

Gary Sparks called on Road Agent Ernie Butler and asked him if he was in agreement about the improvements to the plan. He said he was.

Gary Sparks called on Richard Head of the Conservation Commission.

Richard said he appreciated the effort put into the revisions. The storm water management plan and the restrictions on the development of the upland area are much appreciated.

With regard to Map 50 Lot 6, this is the lot that has been identified with the greatest concern. He said if the Board is interested, he would be happy to have another site walk there and describe on the property what their level of concern is. From the site walk; it has wetlands on either side, it has a lot of boulders throughout the middle of it.

While it doesn't hit the level of steepness that it becomes un-buildable there are slopes that are of concern and we are talking about a pathway through this stream that goes down the side of the lot that if there is going to be an impact it's going to be transported off site.

He said the Conservation Commission thinks over all this particular lot raises the highest level of concern and risks to impacts to wetlands and Beard Brook for the reasons we have described.

The Conservation Commission would ask that that particular lot not be a buildable lot. Whether it gets absorbed into the other lots or not is up to the Planning Board and the developer. He would be happy to do a site walk and discuss those matters specifically if the Board is interested.

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With regard to the storm water and erosion control plan, he said he was not an engineer and did not know if that language was sufficient to give the building inspector enough authority in the context of a septic plan. He said he understands it has to be somewhat flexible depending on the plan. He asked that the Building Inspector look at it and see if he thinks it gives him sufficient authority because what we really have is a subdivision plan that is going to be developed in a way that we don't know how that is going to be. And if he doesn't have flexibility and also authority, we are not going to see an effective erosion control plan.

He wanted to make sure that what we are talking about is impervious surfaces, the roofs the driveways so it is not just the septic, it is going to be a plan to control the water as its coming off those roofs and the driveways and it is being managed in a way that it does not cause impacts to the wetlands.

He said he would just ask that specific conditions have a very high level of detailed review by the Building Inspector so that he's comfortable that he is going to have the level of control needed so when the plan is developed it does control the sheet flow, it does control the impervious surfaces and he feels he has the authority to say "no we need to have some additional control system."

Regarding the movement of soil, we are obviously not talking about putting something in a dump truck, driving it off the property and bringing it on to another property. What we are talking about is the movement of soil uncontrolled on a property that is allowed to move on to another property.

With regard to the Conservation Commission's condition that there be no impacts to wetlands, the response was that there are no proposed impacts to wetlands. He gets that this is a subdivision plan, it's a bunch of lines on a piece of paper. What The Commission is asking for is the purchasers of these properties to be given very clear notice that they are not going to be allowed to impact the wetlands.

In regard to Map 50 lot 6, Tom mentioned that it is compliant. He said he is not disagreeing with that. In their first letter The Commission made note of a Supreme Court case that basic compliance is not all that you look at. You don't just say that he has checked the box on lot size steepness or whatever. You have to look at the context of the regulations. The regulations as they noted in their first letter talk about preservation of the environment, surface water, wetlands and to ensure all of those things are able to be met. What you are talking about here are very close to minimum lot sizes. What you are talking about here is not a gently sloping piece of property you are talking about fairly steep slopes. You are talking about properties that have wetlands on either side. You are talking about a high level of risk. So he is suggesting that you do not have to look at it and say they've met the bare minimum standard. He said he thinks you can ask for a little bit more.

With regard to the fertilizer, we generally agree that fertilizers present a significant risk he asked that be brought up with the Building Inspector to see if he is aware of any way of describing that in a way that does control the use of fertilizer in a way that he would be comfortable in terms of enforcement. He said he was not sure if there is language or not but it is a known risk to surface

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waters and wetlands especially where you have a mechanism for transport which is a stream that goes in to Beard Brook. He thinks especially with these lots there is a high level of risk. Gary thanked Mr. Head for his input.

Tom Carr said he understands the Commission's concerns which is why he brought up the stormwater and erosion control plan. He said he thinks they are taking the extra steps to protect those resources. We are trying to make sure that the Building Inspector is comfortable with this. He said he spoke to Mike Borden on site about this and I asked him to speak with Robyn so he hasn't had time so it is certainly appropriate that we table this or two more weeks.

Melinda Gehris said she would like to hear from Mike Borden or have him write something to the Board so they know his responses to these questions.

Robyn said she would talk to Mike and get that.

Susanne White made a motion to continue the public hearing to December 1st. Jim Bailey seconded the motion. The motion carried unanimously.

Nancy Egner re-joined the Board

Site Plan Review Accept Application No Public Comment

Dascomb Road (Map 11P Lot 191)

Vertex Towers/Dascomb Associates

Robyn said the application was complete and ready to be accepted.

Melinda Gehris made a motion to accept the application. Nancy Egner seconded the motion. The motion carried unanimously. The application was accepted.

Francis Parisi is representing the applicant. He brought with him Jesse Marino-Civil Engineer. Mr. Parisi explained he is asking for a Conditional Use Permit and Site Plan approval from the Planning Board for a telecommunications facility. It is located on a ten-acre parcel on Dascomb Road. The landowner will be purchasing two additional lots. One that will provide access over Melody Lane and another parcel west of lot 191 to increase the size of the lot for required setbacks for telecommunication towers.

They were in front of the ZBA a week ago for a variance for a commercial use with less than 200 feet of frontage. That variance was granted. They will be requesting waivers from some of the provisions of the Telecommunications ordinance.

They have constructed a tower in Antrim and have just received approval in Henniker.

Mr. Parisi shared photographs from the visibility test (balloon test).

Mr. Parisi gave his presentation (attached).

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Gary Sparks asked if the Board wanted to take a Site Walk.

Melinda asked if the Conservation Commission had seen the Plans. Robyn said she would send them out tomorrow. She thought the Site Walk should include the Conservation Commission.

Following discussion, the Site Walk was scheduled for December 5th at 9:00 am. Board members will meet on Myrtle Street.

Robyn said she needed the Board to vote for peer review on the cell tower.

Jim Bailey made a motion to accept the proposal from IDK Communications for peer review.

Susanne White seconded the motion. The motion carried unanimously.

Susanne White made a motion to continue the application to December 15th. Nancy Egner seconded the motion. The motion carried unanimously.

Melinda asked if there was anything in the Rules of Procedure about timing on receiving plans and meeting materials prior to the meeting.

Robyn checked and found that the ZBA requires receipt at least 7 days before a meeting but the Planning Board does not. It was suggested the Planning Board amend the Rules of Procedure to include something about the timing of submissions.

NON-PUBLIC SESSIONS

1. Non-Public Session pursuant to RSA 91-A:3, II(c)-Reputation

Nancy Egner made a motion to enter into Non-public session pursuant to RSA 91-A:3, II(c)-Reputation. Jim Bailey seconded the motion.

Roll Call Vote: Jim Bailey-Y, Nancy Egner-Y, Gary Sparks-Y, Adam Charrette-Y, Melinda Gehris-Y, Susanne White-Y. The Planning Board entered Non-public Session at 9:05 pm.

Planning Board returned from Non-public Session 9:15.

Susanne White made a motion to seal the minutes of the Non-public Session. Nancy Egner seconded the motion. Roll Call Vote: Jim Bailey-Y, Nancy Egner-Y, Gary Sparks-Y, Adam Charrette-Y, Melinda Gehris-Y, Susanne White-Y. **Non-Public Session pursuant to RSA 91-A:3, II(c)-Reputation**

Susanne White made a motion to enter into Non-public session pursuant to RSA 91-A:3, II(c)-Reputation. Jim Bailey seconded the motion.

Roll Call Vote: Jim Bailey-Y, Nancy Egner-Y, Gary Sparks-Y, Adam Charrette-Y, Melinda Gehris-Y, Susanne White-Y.

The Planning Board entered Non-public Session at 9:20pm

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Susanne White made a motion to leave Non-public Session. Melinda Gehris seconded the motion.

Roll Call Vote: Gary Sparks-Y, Susanne White-Y, Adam Charrette-Y, Nancy Egner-Y, Jim Bailey-Y, Melinda Gehris-Y.

The Planning Board returned from Non-public Session at 9:35 pm.

Susanne White made a motion to seal the minutes of the Non-public Session. Nancy Egner seconded the motion.

Roll Call Vote: Gary Sparks-Y, Susanne White-Y, Adam Charrette-Y, Nancy Egner-Y, Jim Bailey-Y, Melinda Gehris-Y.

There being no other business, Susanne White made a motion to adjourn.

Meeting Adjourned 9:40pm

Respectfully Submitted,

Robyn L. Payson, Planning Director

November 17, 2021



**Hillsborough Conservation
Commission**
P.O. Box 7
Hillsborough, New
Hampshire
03244-0007

October 12, 2021

Gary Sparks, Chairman
Hillsborough Planning
Board Town of
Hillsborough, NH 27
School Street
P.O. Box 7
Hillsborough, NH
03244
(via email only to Robyn Payson)

Re: Brett Davidson Subdivision
Application Map 11I, Lot 50

Dear Chairman Sparks:

I am writing on behalf of the Hillsborough Conservation Commission to provide our comments to the subdivision plan submitted by Brett Davidson. As is described in more detail below, the Conservation Commission recommends the project be denied as submitted. This letter is being submitted at this time in light of the October 13, 2021 deadline we were given for comments. If the Applicant submits a revised proposal, the Conservation Commission would like the opportunity to review any such modification and submit any further recommendations based on the updated plans.

The proposed subdivision raises significant concerns regarding (1) the potential for pollution of Beard Brook from stormwater runoff associated with the development within the proposed subdivision and (2) the loss of wetland functions and values due to direct and indirect impacts. The loss of wetland functions and values would further exacerbate the potential for impacts to Beard Brook associated with stormwater runoff.

I Town Subdivision Regulations

A Purpose

This application is governed by Chapter 201 of the Town Code. These regulations have the stated purpose “of protecting the health, safety and general welfare and to provide for the

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harmonious development of the Town of Hillsborough and its environs.” §201-1. The regulations also state that “[t]he purpose of these regulations is *to foster the development of an economically and environmentally sound and stable community* and to safeguard and protect the people of the Town of Hillsborough, the taxpayers, and the public from the consequences of improper subdivision, planless growth and haphazard development by:... (b) Protecting abutting and neighborhood land uses, interests, values and concerns through harmonious development of

the Town *and its environs*; ...*(d) Promoting and protecting the amenities of the Town through provisions for parks, playgrounds and other recreation areas and the preservation of the environment, natural beauty, trees, wetlands, lakes, ponds, bogs, streams and rivers, wildlife habitat and other natural and historic resources, values and features.*” §201-1, emphasis added.

Because the pending application is limited to a subdivision plan without any plan of development, the Conservation Commission assumes each lot will be sold to individual landowners, who will themselves be responsible for obtaining all permits and approvals for development on a lot-by-lot basis. It is, therefore, imperative that the Planning Board review this application with those future landowners in mind, and what limitations those new landowners may face as they attempt to develop their individual lots. Each lot is affected by some combination of legal restrictions and features which the Board should consider when considering the subdivision application. Those legal restrictions and features include the Shoreland Protection Act; the Wetlands Act; Alteration of Terrain regulations; flood zone limitations; and the slope of each lot. It is unusual to see such an array of environmental issues in a single application. This diversity of issues should give the Board pause. As such, the Conservation Commission recommends the Board obtain the services of experts who can help the Board understand the potential impacts development of each of these lots would cause, and work with the landowner to implement a less impacting subdivision design.

B Site Plan Violates Definition of Buildable Area

Section 201-2 defines “Buildable Area” as follows:

BUILDABLE AREA -- A contiguous area within a lot exclusive of road rights-of way and other easements, surface waters, wetlands, areas of steep slope exceeding 25%, and areas within a federally designated one-hundred-year floodplain. The buildable area is the portion of a lot upon which any building may be placed, in conformance with the Hillsborough Zoning Ordinance

Proposed lots 50-3, 50-5, 50-6, 50-7, and perhaps 50-2 have space designated on the plan as buildable but are not contiguous, being separated by wetlands which are not considered buildable. As such, the subdivision plan as currently proposed does not comply with the Town’s subdivision rules.

I Site Conditions

The Site has four dominant features that could impact environmental and ecological conditions on the site: (1) wetlands; (2) shoreland protection zones; (3) slope; and (4) lot size. Each is discussed in more detail.

Each of these factors presents a compounding risk to the ecology and environment of the site and presents a risk of negative impacts to Beard Brook, a culturally and environmentally significant resource. The proposed lots along Beard Road are all, in part, within the Beard Brook Protected Shoreland. There is a complex network of wetlands on all eight of the proposed lots. Impacts to these wetlands will reduce the ability of the land to absorb rainwater and filter pollutants and reduce their ecological value. The lots also are located on the side of a steep slope. While the Town regulations exclude from the definition of Buildable Area land on slopes exceeding 25%

(§201-2), slopes that approach 25%, when disturbed, present an increasing risk of erosion and contamination of surface waters and wetlands. Finally, the small lot sizes increases the density of development on those steep slopes, further increasing the risk to Beard Brook and the wetlands throughout the lots.

A Wetlands

All eight of the proposed lots have significant wetland coverage. Wetlands are essential components of a healthy ecosystem and provide improve the quality of life for residents. As described by the New Hampshire Department of Environmental Services (“NHDES”):¹

In addition to their economic value, New Hampshire’s wetland resources are of great importance for flood control, water quality, water storage and recharge for both groundwater and surface waters. These functions are more valuable with the expected increase in frequency and severity of storm events associated with climate change. Wetlands also support the food chain, providing food and habitat for a variety of aquatic and upland plants and wildlife....

It is found to be for the public good and welfare of the State of New Hampshire to protect and preserve both tidal and fresh waters and its wetlands (including lakes, ponds, rivers, streams, marshes, forested wetlands and peatlands) from unregulated despoliation because of the important functions and values that these aquatic resources provide, such as:

- Absorbing flood waters.
- Treating stormwater.
- Recharging groundwater supplies.
- Providing habitat for fish and wildlife.
- Providing economic and recreational value.

Each of the lots, as proposed, have wetlands that could be directly and/or indirectly impacted by future lot development. Although the applicant has not presented a development plan, the subdivision is being proposed for residential development. Thus, features that will eventually dominate these lots include driveways, houses and lawns. Those features will either directly impact wetland functions and values by virtue of construction that directly impacts wetlands, or indirectly through the flow of sediment and, after development, the flow of fertilizers and chemicals into the wetlands and, ultimately, impacting Beard Brook.

Because this application is a subdivision only, with no construction proposed at this phase, there will be no NHDES Wetlands Bureau review of this application. Thus, it is imperative that the Planning Board consider potential impacts to wetlands in its evaluation of the plan and, if approved, place conditions on any future development of these lots to protect wetland functions and values. The Applicant has not made any effort to show that the lot locations and sizes have

¹ See <https://www.des.nh.gov/water/wetlands#:~:text=In%20addition%20to%20their%20economic%20value%2C%20New%20Hampshire%E2%80%99s,severity%20of%20storm%20events%20associated%20with%20climate%20change.>

been designed in such a way as to minimize impacts to wetlands when they are ultimately developed for housing.

NHDES has published guidance on Wetlands Best Management Techniques for Avoidance and Minimization (“Wetlands BMP”).² The first step to avoidance and minimization comes with the design and layout of the subdivision. Chapter 3 of the Wetlands BMP discusses the subdivision stage of wetlands protection. A copy of Chapter 3 is attached to this letter. The guidance states, in part, that NHDES recommends that the following items are considered when determining how to best avoid and minimize wetlands impacts through alternative designs.

- Configure the lots to completely avoid wetland encroachment.
- Reduce the number of lots to avoid wetland disturbance.
- Provide adequate yard space for future homeowners to add a deck, shed or pool to their property without impacts to adjacent wetlands.

The Conservation Commission recommends that the applicant provide alternative subdivision layouts that are designed to minimize impacts to wetlands. Should the Board ultimately approve the application, however, the Conservation Commission recommends explicit conditions be placed on the approval in order to give notice to all future purchasers of the lots of the conditions that the Board would like to see on lot development. The Conservation Commission’s recommended conditions are described at the end of this letter.

B Shoreland Protection

As is shown in the Applicant’s site plan, proposed Lots 4 through 9 all have a portion located within the 250’ shoreland buffer and proposed Lots 4 through 8 each have a portion located within the 150’ shoreland buffer.

RSA 483-B:8, V(b) describes the 150’ shoreland buffer as the “Woodland Buffer.” Within the Woodland Buffer, the statute provides as follows:

The woodland buffer shall be those protected shorelands within 150 feet of the reference line. The purpose of the woodland buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland. ...

(2)(A) On a given lot, at least 25 percent of the woodland buffer area located between 50 feet and 150 feet from the reference line shall be maintained as natural woodland. The vegetation, exclusive of lawn, within the natural woodland shall be maintained in an unaltered state or improved with additional vegetation.... The percentage of the woodland buffer area maintained as natural woodland on nonconforming lots shall not be decreased. In addition, the commissioner of the department of natural and cultural resources may order vegetation on lands or properties owned by, leased to, or otherwise under the control of the department of natural and cultural resources within the protected shoreland to be cut when overgrowth of vegetation impairs law enforcement activities

² Available at <http://neiwppc.org/wp-content/uploads/2019/03/Wetlands-BMP-Manual-2019.pdf>.

and endangers public safety. If such cutting will exceed that which is allowed under this subparagraph, the commissioner of the department of natural and cultural resources shall provide written notification to the department of environmental services identifying the areas to be cut and an explanation of the need for the cutting at least 2 weeks prior to the undertaking.

NHDES requires that “no person shall commence construction, excavation, or filling activities within the protected shoreland without obtaining a permit from [NHDES] to ensure compliance with RSA 483-B” unless subject to the exceptions under the Act. A permit by notification can be filed if the project meets the requirements of RSA 483-B:5-b.

While it is likely that construction within the Protected Shoreland will be limited to driveway construction, the impervious surfaces associated with those driveways will likely trigger a shoreland permit requirement.

Should the Board decide to grant the application, the Conservation Commission recommends that the plan include a notation that the lots within the Protected Shoreland may require a Shoreland Protection Act permit from NHDES. This is to ensure that future purchasers are fully appraised of what may be required as they perform their due diligence before making a lot purchase.

C Slope

The site plan submitted with the subdivision application depicts those slopes that exceed 25% with shadings. The Town’s subdivision regulations excluded from the definition of Buildable Area those slopes that exceed 25%. §201-2. That does not mean, however, that the Board should ignore the slopes that are 25% or less. While the Conservation Commission does not have the internal expertise to provide the Planning Board with advice as to the risks presented by the soil type and slope of the proposed lots, the Conservation Commission recommends that the Planning Board consult with an engineer to get a better understanding of the risks presented by the development of these eight lots.

D Lot Size

The proposed lots comply with the minimum lots sizes within the Residential Zone. That, however, is not the end of the analysis by the Board. The New Hampshire Supreme Court has rejected the argument that a planning board has no power to disapprove a subdivision plan when lot sizes in the plan conform to zoning requirements. *See Patenaude v. Town of Meredith*, 118 N.H. 616, 621 (1978) (“In the present case the board properly looked beyond the issue of zoning compliance and considered both the community’s future need of open recreational space and the current and future fitness of the land for building purposes.”).

The small lot sizes with steep slopes simply compounds the risks to wetlands and water quality in Beard Brook. Small lot sizes results in higher density development. The small lot sizes simply compounds the risks created by the steep slopes to the extensive wetland network and Beard Brook.

In addition, the 75’ water well protective radius of four of the lots would cross property lines and wetland boundaries. Attached is a copy of NHDES’s 2021 Fact Sheet *Site Selection for Private Drinking Water Wells* which includes a water well setback chart, reproduced below:

RESIDENTIAL DRINKING WATER WELL LOCATION SETBACKS		Notes:
Entity	Setback (ft.)	
Effluent Disposal Area (leach field/bed)	75 ¹	¹ NHDES site visit and approval required for wells within 25 feet of an effluent disposal area.
Septic Tank	75 ²	
Property Boundary	75	² Setback can be 50 feet if SDR 26 pipe is used and the tank is plastic or coated with a sealant to prevent infiltration and exfiltration.
Livestock Pen	75 (100 for dug wells)	
Automobile Salvage Yard	75	³ The burial of on-site tree stumps is not considered solid waste if greater than 75 feet from a well. As such, wells must be 75 feet from stump burial sites.
Underground Storage Tanks (containing gas or diesel fuel)	250	
Storage of Regulated Substance (except gas or diesel fuel)	75	⁴ A well that is constructed within 50 feet from a state highway right-of-way or in a location that does not allow or provide for adequate surface drainage is not eligible for DOTs well replacement program.
Solid Waste Disposal Site	75	
Bulk Storage of Material (ex. fertilizer, manure, salt)	75	⁵ Under certain conditions the distance to septic system components to water supply lines may less than 50 feet. Contact NHDES for site-specific information.
Stump Dump	75 ³	
State Highway Right-of-Way	50 ⁴	⁶ 50-foot setback required from all surface waters including inundated wetlands, bogs, and swamps.
Sewer Component	50 ⁵	
Surface Water / Swamp	50 ⁶	⁷ Setback reduction requirements must be followed if a road surface is within 75 feet of the well.
Public Road Surface	75 ⁷	
Other Sources of Contamination	75	

It is well within the Board’s authority to evaluate whether these lots, as proposed, are fit for development. The Conservation Commission does not believe that the applicant has taken steps to minimize potential impacts or maximize the fitness of the subdivision for development within the Town.

Alteration of Terrain

Another consideration for the Board is whether the development of the proposed lots would trigger review by NHDES under its Alteration of Terrain (“AOT”) program. NHDES Rule Env-Wq 1502.58 defines “*significantly alter the characteristics of the terrain*” to mean “an area that, over a 10 year period, cumulatively exceeds ... 50,000 square feet of contiguous area if any portion of the disturbance is within the protected shoreland as defined in RSA 483-B.” Since, at a minimum, driveways will be developed within the Protected Shoreland, the 50,000 square foot rule could come into play as these lots are developed. Further inquiry should be made with NHDES regarding the effect the AOT regulations may have on future lot owners as they undertake development of the lots. If the AOT program is triggered, the cumulative cost of development to future owners would be significant.

Conditions

Should the Planning Board approve the application, the Conservation Commission recommends that the Board explicitly state the conditions any future lot development would be subject to.

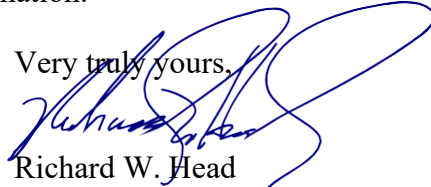
These conditions are designed to foster the development of an economically and environmental sound and stable community, and to promote the preservation of the environment. The conditions should provide future lot owners with a roadmap of what is and is not allowed on these properties. The conditions recommended by the Conservation Commission include:

- No impacts to wetlands.
- Preservation of existing features. Suitable steps shall be taken to preserve and protect features, such as trees, scenic points, stone walls, rock outcroppings, water bodies, and historic landmarks. §201-3(C).
- No lawn fertilizer use on the lots.
- No more than X% of each lot can be cleared (percentage to be developed on each lot in consultation with an engineer to maximize protection to wetlands and surface waters and to minimize sediment flow).
- Utilization of appropriate sediment barriers to prevent sediment flow into wetlands during construction and to prevent sediment flow off each lot during development.

In light of the relatively limited period of time the Conservation Commission has had to review the proposed subdivision design, the Conservation Commission reserves the right to submit further comments as the project is reviewed by the Planning Board.

Thank you for your attention to this matter. Please do not hesitate to contact me should you have any questions or require any further information.

Very truly yours,



Richard W. Head
Chair, Hillsborough
Conservation Commission

Attachments: Chs. 1-3, Wetlands BMP

NHDES's 2021 Fact Sheet *Site Selection for Private Drinking Water Wells*

Central New Hampshire Regional Planning Commission
28 Commercial Street Concord, NH 03301
Telephone: (603) 226-6020 Fax: (603) 226-6023 www.cnhrpc.org

October 25, 2021

Ms. Robyn Payson, Planning Director Town of Hillsborough
P.O. Box 7, 27 School Street Hillsborough, New Hampshire 03244

Subject: Gateway Zoning District Planning Process Dear Rob yn:

To follow up our previous discussions related to implementation of the 2018 Master Plan, the following is a proposal for CNHRPC staff assistance related to the potential establishment of a Gateway Mixed-Use District along NH Route 9. As you know, the Master Plan's Implementation Chapter included the consideration of a Gateway Mixed-Use District as a High Priority with a timeframe of 2-5 years from the Master Plan's 2018 adoption. Specifically, the Implementation Chapter includes the following description:

Establish a Gateway Mixed-Use District, spanning from the Historic District west to the wetland and stream opposite of Marina Road, to emphasize high-quality, attractive, and relatively dense development determined by the ability to extend municipal water and sewer service to this area.

We have learned from past experience that the consideration of new zoning districts such as a Gateway Zone require a great deal of public outreach and ample time for the Planning Board to consider and discuss potential uses, boundaries and other issues. To do so, we would recommend a project start in April 2022 in preparation for Town Meeting 2023.

The overall budget for the project is \$7,500. We propose to utilize a \$2,500 match to lower the Town's overall cost of the project to \$5,000. CNHRPC staff would be responsible for developing draft and final ordinance language, preparing all mapping, and supporting the public process.

I would be happy to meet with the Planning Board to discuss the project further. Please call me with any questions.

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Michael Tardiff Executive Director