



Fairhaven Planning & Economic Development

40 Center Street, Town Hall, Fairhaven, Massachusetts 02719

Definitive Subdivision: Hiller & Timothy St. Subdivision Remand Review of DS19-01 Staff Report: 2022-11-18

1. DESCRIPTION

- 1.1 Applicant:** Robert Roderiques **Engineer:** Dave Davignon of Schneider, Davignon & Leone, Inc; **Attorney:** John Mathieu; **Property Owner(s):** Jimmy A. Papas and Nickolas L. Papas
- 1.2 Project Location:** Map 28C, Lots 71 and 71A. The proposal is to create frontage for the lots by creating new roads off of Hiller Avenue and Timothy Street (15.08 acres total according to Tax Map. DS Submittal listed as 10 acres).
- 1.3 Proposal:** The current revised proposal is to create fifteen (15) buildable lots with two drainage parcels on Map 28C, Lots 71 and 71A. A proposal to create 16 lots was denied unanimously on January 14, 2020. (Based on Plans received December 6, 2019 and the third Peer Review received December 30, 2019)
- 1.4 Zoning:** RA – Single Residence District. The District requires a minimum of 15,000 sf and 13,500 sf upland. The applicant has not requested any waivers from the Subdivision Regulations though the last Peer Review (12/30/19) suggested they needed at least two.
- 1.5 Local Permits:** Definitive Subdivision from Planning Board; 2019 Subdivision was also denied by the Conservation Commission under the local Bylaw (Mass DEP issued a superseding Order of Conditions re: State Wetlands Regulations but denial under local bylaw still in front of courts); Board of Health; Connection to the Wastewater Treatment Facility from the DPW;
- 1.6 Surrounding Land Uses:** Fairhaven Sewage Treatment Plant, residential neighborhood, Bureau of Public Works yard and offices; wind turbines.
- 1.7 Project History:**
- The Preliminary Plan was denied in December 2018 and was virtually the same proposal as the Definitive Plan that was denied in January 2020. Three Peer Reviews of the storm water report and revisions were received dated July 12, 2019; October 4, 2019 and December 30, 2019.
- 1.8 Project Summary:**
- The Revised conceptual proposal is the same plan as the plan unanimously denied in January 2020 with the following exceptions:
 - One lot (Lot 11) is still shown as a house but is colored green with a note saying “Proposed Lot 11 = Green Space”.
 - A proposed 25 foot wide “Tree Preservation Zone” is shown along the west side of proposed lots 1,2,3,4, 13, 14, 15 and 16 and the east side of Lots 5, 6 and 7.
 - Locations for placards indicating “Tree Preservation Zone” are shown in four locations.
 - Within the “Tree Preservation Zone” the approximate location of 9 mature trees to be saved are shown.
 - “Tree Preservation Zone” is not defined. Several leaching fields extend into the zone.
 - The proposed Hiller Street extension has been changed but concept plan is not clear.
 - A few lot lines have shifted to remove the reserve strip at the entrance from Timothy Strip. Revised lot sizes are not shown on the plan or confirmed to be conforming.

- The 2018-2020 proposed 16-Lot Subdivision was unanimously denied primarily under Section 322-15.C due to the proximity to the sewage treatment plant, wind turbines and wetlands and the amount of fill that would impede stormwater runoff from its natural flow through the site.
- **Section 322-15.C states:** “The subdivision shall be so designed as to protect the safety, convenience and welfare of the occupants of the subdivision and the Town of Fairhaven, through reasonable precautions against possible natural disasters, provisions for traffic safety and convenience, assurance of adequate sanitary conditions and consideration of amenities. Proposed subdivision shall conform to overall development plans and policies, which may be adopted by the Planning Board, and shall adhere to the principles of sound planning and good engineering. It shall be the responsibility of the Design Engineer for the adequacy and safety of the design”.
- Revised conceptual proposal is to create a fifteen (15) lot subdivision. A detailed narrative describing the changes as not been submitted.
- The proposal would create frontage for the 15 buildable lots by constructing three new dead-end roadways off Hiller Avenue and Timothy Street.
 - An approximately 330’ long road with a hammerhead perpendicular to Timothy Street.
 - An approximately 550’ long road with a cul-de-sac perpendicular to Hiller Avenue.
 - An unknown length roadway extending Hiller Avenue. The road previously had a hammerhead at Lot 11 but now length and type are uncertain in concept plan.
- There would be two drainage parcels.
 - Drainage Parcel A, off of Hiller Ave Extension, is a constructed drainage pond of 23,478 sf
 - Drainage Parcel B, is mostly wetlands with a constructed drainage pond.
- Much of the buildable lots and drainage Parcel A would be cleared of trees and filled up to 7’.

2. ADMINISTRATIVE SUMMARY

2.1 Conceptual Plan Filed: September 27, 2022

2.2 Advertisement: Fairhaven Neighborhood News November 3 and 10, 2022

2.3 Site visits:

2.4 Public Hearing: November 22, 2022.

3. PLANNING CONCERNS

3.1 Key Planning Issues

- The slightly revised proposal does remove the proposed house lot closest to the sewage clarifying pits but 3 of the proposed houses are 100’ from the sewage treatment property boundary and 6 are within 200’ of the property which is scheduled to expand southerly.
- The proximity to the sewage treatment plant, wind turbines and wetlands and the amount of fill that would impede stormwater runoff from its natural flow through the site.
- The sewer treatment plant (which is scheduled to be expanded) regularly emits noxious fumes detectable in the existing neighborhood. These houses would be closer to the sewer plant and remove most of the existing vegetative buffer that has matured to screen the existing neighborhood.
- The site is wholly within the buffer of the two town wind turbines. If the homes already existed, the turbines would not be allowed to be constructed due to the required buffer.
- Subdivision of Land: Below are excerpts from Chapter 322 (Subdivision Rules & Regulations).
 - **Section 322-10 Requirements for more stringent standards.** The Planning Board may, in special and appropriate cases, require the developer to follow more stringent standards than

the ones mentioned in these rules and regulations. In doing so, the Planning Board shall notify the developer in writing of said standards and the reason they are required.

- **Section 322-15.C.** Noted above.
- **Section 322-15.D.** No land shall be divided for residential use if it is of such a character that it cannot be used for building purposes without danger to health.
- Section 322-16(A)(3), The Plan does not meet the requirements which state that “It is the Board’s policy not to approve streets that do not connect to existing neighborhoods or do not provide for connections in the future.”
- Section 322-16(B) footnote 6 states “No part of a hammerhead shall be used for a driveway to the lot(s) or for the parking of cars.”
- Section 322-24 (Natural Feature) states that “all natural features such as large trees...stonewalls...shall be preserved if in the opinion of the Planning Board they will add attractiveness and value to the subdivision”.
- **Wetlands:** Almost 30% of the proposed site is existing wetlands and another 30%-35% of the site is within the 100’ buffer of the wetlands.
 - At least 10 of the 15 proposed lots are in the jurisdiction of the Conservation Commission.
 - Several of the lots that are made up of predominantly wetland (e.g. Lots 8, 9, and 12). Many of these lots will need permits through the Conservation Commission for any proposed future work including construction, additions, decks, pools, or patios. There is likely to be encroachment into the wetland and a potential for violations in the future.
 - The majority of the buildable area on lots 8, 10, 12, 13 and 16, and all of lot 9, are within the 100ft jurisdictional buffer zone.
- **Potential Flooding:** The site is lower than the existing neighborhood to the west and receives a significant amount of storm water during rainstorms. The site slopes from east to west about 11’ (from elevation 45’ to 34’ on the east. The proposal is to capture the existing neighborhood storm water flow in catch basins and bypass the proposed neighborhood through a 370’ long drainage pipe then discharge the storm water at the edge of the site into a 110’ long trap rock swale between detention area A and the town sewer plant and then into the wetlands.
- **Social Justice:** If these houses already existed it is not inconceivable that the residents would protest the Town allowing habitation in an unsuitable location abutting the sewage treatment, wind turbines and so close to the wetlands.
- **Comments from other Town Departments:** Have not been solicited on the revised concept plan.

3.2 **Environment**

- **Vegetation:** The site is completely wooded at this time with a mix of mature deciduous and evergreen trees. There are some invasive species on the property. The significant grading required for roads, driveways, house sites and drainage will result in the removal of the vast majority of trees on the site. The trees have matured to a height at which they now largely block the view of the turbines from the houses on Teal Circle and Paul Street.
- **Wetlands:** The proposal was denied a Conservation Commission permit under the Notice of Intent to build the roads, stormwater management facilities, and utilities associated with the subdivision.
 - Proposal does not meet current Conservation Regulations adopted since original application.
- **Habitat:** The site is not in a Natural Heritage Endangered Species Program (NHESP) Priority Habitat.
- **Lighting:** A lighting plan was been submitted on December 6, 2019 for the previous proposal.
- **Landscaping:** No landscaping plan has been submitted yet.
- **Noise:** The site would be within the buffer zone of two 500’ tall industrial wind turbines.
- **Open Space:** There is no plan to provide any open space.

- **Bicycle/Pedestrian/Trails:** The site abuts the Fairhaven Bike Path.
- **Energy/Sustainability:** The plans do not include any special requirements for energy.
- **Water Source:** Town Water.
- **Watershed:** The site is in the Buzzards Bay watershed.
- **Nitrogen Loading:** The 15 houses would be connected to the Wastewater Treatment Facility.
- **Stormwater:** A storm water report was prepared by Keri Williams PE. Three Peer Reviews (PR) of the stormwater report and its revisions and revised plans have been prepared by GCG Associates. The last Peer Review continued to detail many concerns with the plan related to Subdivision Regulation Section 322 and Stormwater related sections of 192, 194 and 198. Below is a list of some of the issues outlined.
 - Section 322-14C(18) requires a plan of trees to be retained and those to be removed. Planning Board could require a tree survey to identify specimen trees to be protected.
 - Section 322-14C(19) – The 3rd PR notes “the applicant should identify the existing sewer pipe material and conditions in Hiller Avenue. This is a multimillion-dollar development connecting to an unknown pipe. They should investigate the conditions and capacity of the existing sewer main.
 - 322-14(D)(7) – Construction cost estimate is required.
 - MSH Vol. 2, Ch. 2 Pg. 91. –GCG recommends the applicant to request a waive for 322-Appendix A (C)(2)(g)(2)” noting, however, MassDEP could reject the design by Superseded Order of Conditions for their 15’ wide access path requirements.
 - “The three proposed 24” pipes from DMH-1 to DMH-2 to DMH-3 to outfall do not have the capacity to carry the 100-year storm flow”.
 - “The capacity of double catch basin #1 should be analyzed to assure no overspill over onto lot 79.
 - “The Town would be liable for approving a water main without knowing it can meet the water demand and fire flow requirements. GCG does not recommend approval without proving the proposed water main will meet all codes”.
 - “GCG recommends the new water main be looped from Paul Street to Timothy Street.
 - “The two drain lines crossing at the easterly Hiller Avenue Hammerhead collide at the crossing”.
 - Subdivision Regulations - Appendix A (C)(2)(K) –GCG does not recommend the solid concrete sump at the forebay bottom. Water would pond ... and create a mosquito breeding ground”.
 - “GCG believes that the proposed double catch basin #1 does not have the capacity to collect the excessive offsite stormwater runoff and runoff will spill over onto the abutting private property”.
 - “Proposed drainage swale along Map 28C Lot #77 should have a berm along the abutter’s property line to prevent spillover onto private property and the roadway surface runoff flows through the paved runoff chute to the level spreader does not meet the treatment requirement”
 - The Peer Review also questions the size and setbacks of the infiltration basins and storm water control infrastructure. Peer Review says storm water runoff is not adequately accounted for.

3.3 Transportation

- **Access:** Three new dead-end/cul de sac roads. One off of Timothy Street and two off of Hiller.
- **Trip Generation:** The proposal for 15 new homes can be expected to generate about 150 new daily trips based upon ITE standards through existing neighborhoods.
- **Nearby Intersections (LOS):** The nearby elementary school on Sconticut Neck Road has congestion issues in the morning and when school lets out. The impact from this subdivision would be minimal.

3.4 Economic Impact

- The impacts to municipal services such as schools, police and fire should be minimal.
- Adding a new neighborhood between the existing neighborhood and the sewage treatment plant and wind turbines would impact the existing neighborhood that has already sued the town due to the wind turbines. Future residents may make an Environmental Justice claim.

3.5 Scenic Values

- **Visibility:** The site is away from busy public roads. The large amount of clearing and significant fill will expose the existing neighborhood to the sewage treatment plant/turbines.
- **Building/Massing:** Housing plans or size limits have not been offered.
- **Architectural Detailing:** Housing plans, size limits or architectural details unavailable.

3.6 Local Impact/Abutters

- Approximately 25 abutters to the proposed subdivision showed up for all scheduled public hearings. Those that contacted the Planning Department have expressed concern with this development removing what buffer they have now between themselves and the sewage treatment plant and the wind turbines. They fear that cutting down the woods to accommodate this proposal will make their exposure to the sewage and the flicker from the wind turbines worse.

4. CORRESPONDENCE

4.1 Public: