



## Fairhaven Planning & Economic Development

40 Center Street, Town Hall, Fairhaven, Massachusetts 02719

### Definitive Subdivision: Hiller & Timothy St. Subdivision

DS 19-01 Staff Report: revised January 14, 2020

*Note: New Information is printed in Bold Type*

#### 1. DESCRIPTION

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- 1.1 Applicant:** Robert Roderiques; **Agent:** Schneider, Davignon, & Leone, Inc. (Engineers)
- 1.2 Owner(s):** Jimmy A. Papas and Nickolas L. Papas
- 1.3 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. (10.8 acres total).
- 1.4 Proposal:** The proposal is to create sixteen (16) buildable lots with two drainage parcels on a 10.8-acre parcel of land through the definitive subdivision process. **(Based on Plans received December 6, 2019 and the third Peer Review received January 30, 2019)**
- 1.5 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 Peer Review (12/30/19) suggests they need at least two.**
- 1.6 Local Permits:** Definitive Subdivision from Planning Board; NOI for roads and drainage from Conservation Commission; Board of Health; Connection to the Wastewater Treatment Facility from the DPW;
- 1.7 Surrounding Land Uses:** Fairhaven Sewage Treatment Plant, residential neighborhood, Bureau of Public Works yard and offices; wind turbines.
- 1.8 Project History:**
- The Preliminary Plan was virtually the same proposal and was denied in December 2018. The proposal has been continued several times without taking testimony. **Three Peer Reviews of the storm water report and revisions to it have been received dated July 12, 2019; October 4, 2019 and December 30, 2019.**
- 1.9 Project Summary:**
- To create a sixteen (16) lot subdivision on a 10.8-acre parcel of land **(Assessors records say 15-acres).**
  - The proposal would create frontage for the 16 buildable lots by constructing three new dead-end roadways off Hiller Avenue and Timothy Street.
    - An approximately 330' long roadway ending in a hammerhead perpendicular to Timothy Street.
    - An approximately 550' long roadway ending in a cul-de-sac perpendicular to Hiller Avenue.
    - An approximately 320' long roadway ending in a hammerhead extending Hiller Avenue.
  - 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, off of new roadway is mostly wetlands with constructed drainage pond.
  - At least 90% of the buildable lots and drainage Parcel A would be cleared of trees and filled up to 7' deep, in many cases up to the property line and the wetlands (as shown by the proposed fill lines on the plan).

#### 2. ADMINISTRATIVE SUMMARY

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- 2.1 Complete Filing Stamped Received:** May 28, 2019
- 2.2 Advertisement:** June 20 and June 27, 2019; July 25 and August 1; and August 22 and 29, 2019 in the Fairhaven Neighborhood News;
- 2.3 Site visits:** None yet
- 2.4 Public Hearing:** July 9, 2019; continued to August 13, 2019; August 13 public hearing was continued without taking any testimony to September 10, 2019; the September 10 public hearing **was continued to October 22, 2019; the October 22 scheduled hearing was continued without taking any testimony to December 10, 2019; there was some public hearing discussion on December 10, 2019 and the hearing was continued to January 14, 2020.**

### 3. PLANNING CONCERNS

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#### 3.1 Key Planning Issues

- Subdivision of Land: Below are excerpts from Section 322 (Subdivision Rules & Regulations) that may apply.
  - **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 -14.E The Board of Health should report on whether or not the land is suitable for human habitation. The project is on the BoH Agenda for the January 22, 2020 Meeting.**
  - **Section 322-15.C. 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.**
  - **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”. At least 90% of the lot outside of the wetlands would have to be cleared to do the new grading as shown on the plans and all stone walls except those on the property line or in the wetlands would be removed or buried to die to grading and construction plans.
- Suitability: The proposal is on wooded lowlands with a significant amount of wetlands abutting the sewage treatment plant and transfer/recycling center within the buffer of both wind turbines.
  - 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.
  - **The Third Peer Review notes (Number 38, page 11) that issues with the size and type of forebay could create a “mosquito breeding ground”.**
- Suitability: The proposal requires a very significant amount of fill throughout almost the entire site **outside of the wetlands** to create the roads, driveways and development areas to bring the site out of low-lying land near the water table.
  - How much fill is required?
  - Where will the fill come from?
- Intensity of Use: The proposal creates three new dead end roads off existing neighborhood streets. The clearing and grading would require many hundreds of truck trips that would cause significant disruption to the existing neighborhood.
- Stormwater: A storm water report was prepared by Keri Williams P.E. A Peer Review of the storm water report **has been** prepared by GCG Associates. **A summation of key stormwater concerns is described in storm water section and in the three Peer Reviews (July 12, 2019; October 4, 2019; December 30, 2019).**
- 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.

- 11 of the 16 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, 11, 12, 13 and 16, and all of lot 9, are within the 100ft jurisdictional buffer zone and will require permission from the Conservation Commission to initially build a house and later make improvements.
- There is a significant amount of work proposed in the buffer zone near the wetland line. Significantly reducing the amount of vegetation, especially mature trees, in the buffer zone can have negative impacts on the wetland such as increased temperatures and a reduction in the filtration of pollutants.
- There is grading for a hammerhead within 10 feet of a wetland and paving within 30 feet. Some driveways are located as close as 10 feet to a wetland with grading and tree removal even closer.
- **Flooding:** The site is lower than the existing neighborhood and receives a significant amount of storm water during rainstorms. The site slopes from east to west about 11' (from elevation 45' on the west to elevation 34' on the east. The proposal for the existing Hiller Avenue stormwater 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 directly into the wetlands. **The Peer Review notes that this flow does not appear to have been adequately addressed.**
- **Traffic:** 16 new homes can be expected to generate about 160 new daily trips through existing neighborhoods.
- **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 wetlands.
- **Comments from other Town Departments:**
  - **Fire Department (Chief Tim Francis):** Fire Department has approved the plan as proposed.
  - **Police Department (Chief Mike Myers):**
  - **Public Works Department (Vinnie Furtado):** Re-submitted concerns from December 2018 Preliminary review noting that the plant regularly emits noxious fumes detectable in the existing neighborhood. **The third Peer Review was forwarded to DPW on January 13, 2020.**
  - **Highway Department (John Charbonneau):**
  - **Finance/Treasurer/Collector, Wendy Graves:**
  - **Assessor (Def Garcia):**
  - **Conservation Agent (Whitney McClees):** Has submitted a memo with concerns (attached).
  - **Board of Health: Scheduled for the January 22, 2020 meeting.**

### 3.2 **Environment**

- **Vegetation:**
  - The site is completely wooded at this time with a mix of mature deciduous and evergreen trees.
  - 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.**
  - Increasing the number of homes in the area has the potential to increase the amount of fertilizers, herbicides, and pesticides that runoff into the wetland.
- **Wetlands:**
  - The property is sloped from west to east with an elevation change of approximately 11 feet, from the west side of the property to wetlands located on the east side.
  - The Conservation Commission issued a Determination of Applicability based on Preliminary Subdivision plans dated November 8, 2018 that Lots 1, 2, 3, 4 and 14 were not within their jurisdiction.
  - The Commission made no determination on the 11 other lots and other aspects of the proposed project.
  - Included in the Determination was a caveat that if any of the lot lines change, it renders the Determination void.

- The Applicant has filed a Notice of Intent with the Conservation Commission to receive a permit to build the roads, stormwater management facilities, and utilities associated with a 16-lot subdivision.
- Both proposed detention ponds are located directly next to the wetlands on the property and portions of all three proposed roadways fall within the 100-foot buffer zone to the wetland.
- 10 of the 16 proposed lots have wetland and/or are within the buffer zone on the lot.
- **Habitat:** The site is not in a Natural Heritage Endangered Species Program (NHESP) Priority Habitat.
- **Lighting: a lighting plan has been submitted (December 6, 2019).**
- **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/Wastewater/Stormwater:**
- **Water Source:** Town Water.
- **Watershed:** The site is in the Buzzards Bay watershed.
- **Nitrogen Loading:** The 16 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. There have been three Peer Reviews by the Towns engineering consultant (GCG) that have responded to the original Stormwater Report and subsequent responses by the Applicant in anticipation of Public Hearings that were scheduled. The Peer Review continues 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 in the PR.**
  - Section 322-14C(18) requires a plan of trees to be retained and those to be removed. **The Applicant has responded that the Town Planner has not identified which trees to save. However, the Applicant has not submitted a plan showing the proposed area to be cleared.** Judging by the proposed grading it appears that at least 90% of the existing vegetation not in the wetlands is to be removed.
  - Section 322-14D(1) **The Applicant submitted an Environmental Impact Analysis on September 10, 2019.**
  - Section 322-14D(8) **A street lighting plan was submitted on September 10, 2019**
  - Section 322-14C(19) – **The 3<sup>rd</sup> PR notes that “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. Applicant has offered that they will fulfill a covenant. PB decision required.**
  - **MSH Vol. 2, Ch. 2 Pg. 91. – “requires 15 feet wide access around the entire basin perimeter, (applies to Pond A & B). 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.**
  - **“Hiller Avenue 10” RCP for the 25-year and 100-year storm events were calculated as 14.11 cfs and 17.40 cfs, respectively. The proposed 15” replacement RCP has a full capacity of 6.79 cfs. Therefore, a large amount of runoff will be left behind and flow toward to the proposed double catch basin #1”.**
  - **“Some ponding is expected and allowed during the less frequent storm events per 322-26.F.(3)”.**
  - **“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 location and capacity of the double catch basin #1 should be analysed to assure no overspill over onto lot 79. The proposed wall and drain system require extensive manual maintenance and should be reviewed and approved by the Board of Public Works”.**
  - **“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 existing AC water mains are old but functional. GCG recommends the applicant to test and prove that the existing water main on Paul Street and Timothy Street have the capacity to support this project”.
- “The two drain lines crossing at the easterly Hiller Avenue Hammerhead collide at the crossing”.
- Subdivision Regulations - Appendix A (C)(2)(K) – “forebay minimum depth should be 4 feet and sized to accommodate 0.25 inches/impervious area. Access path should be provided per 322-26 (D). GCG does not recommend the solid concrete sump at the forebay bottom. Water would pond at bottom of the sump 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”.
- “GCG believes the 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 that the roadway surface runoff flows through the paved runoff chute to the level spreader does not meet the treatment requirements”
- Existing abutting Lots 78 and 79 appear to be surrounded by new fill up to 5" higher than the existing lots right up to their property line that would make it likely that storm water will come from the proposed subdivision property back onto Lots 78 and 79.
- The Peer Review also questions the size and setbacks of the infiltration basins and storm water control infrastructure. According to the original Peer Review the Infiltration Basins need to be set back at least 50 feet from the wetlands. Bigger setbacks will likely require altering the plan. **The applicant chose a different route to try to meet the standards.**
- The site slopes 11' from east to west and is lower than the surrounding existing neighborhood to the west. **The Peer Review indicates the 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 Street.
- **Trip Generation:** The proposal for 16 new homes can be expected to generate about 160 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.
- **Traffic Summary:** Adding three new dead-end/cul de sac roads onto existing neighborhood streets will add traffic to quiet neighborhood streets. Several curves do not appear to meet Fairhaven Code.

### 3.4 Economic Impact

- The impacts to municipal services such as schools, police and fire should be minimal.
- The impact of 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. This proposal would exacerbate their situation.

### 3.5 Scenic Values

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

### 3.6 Local Impact/Abutters

- Approximately 25 abutters to the proposed subdivision showed up for **all scheduled public hearings**. Those that have 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:** Wayne Gifford has written with concerns; Dianne Clark has written with concerns; Ken Resendes has written with concerns; Lina Silveira has written with concerns; Rachel Thomas has written with concerns; Chelses and Karen Isherwood have written with concerns; Ann and Bob Espindola have written with concerns; All correspondence has been loaded to the Planning Board website.