

**Town of Hinesburg**  
**Development Review Board Meeting Minutes**  
**October 6, 2020**

Approved December, 15, 2020

**Members Present:** Dennis Place, Dick Jordan, Sarah Murphy, John Lyman, Jonathan Slason, Bryan Currier (alternate), and Branden Martin (alternate).

**Members Absent:** Ted Bloomhardt and Greg Waples.

**DRB Staff:** Mitchel Cypes (Development Review Coordinator), Alex Weinhagen (Director of Planning & Zoning), Suzanne Mantegna (Zoning Administrator)

**Applicants:**

- Hayden, HLG Excavating Appeal – Bradley Hayden (landowner), Elizabeth Filosa (Attorney), Liam Murphy (attorney)
- Hinesburg Center 2 Project – Brett Grabowski (developer); Michael Buscher (landscape architect); Roger Dickinson (engineer); Nicholas Smith (engineer)

**Public Present:** Carl Bohlen, Kyle Bostwick, Andrea Morgantee, Roger Kohn, David Harcourt, Jennifer Chiodo, Vaneska Litz, Darren Johnson, Cyndi Labelle, Henry Bass  
*Since this was a remote meeting, it is possible there were others were in attendance, who did not speak nor make themselves known.*

Zoom participant counts (including one for VCAM): 20 at 7:35pm

Dennis P. called the meeting to order at approximately 7:30pm.

**Meeting Procedures:**

Mitch C. explained the meeting was being held remotely via Zoom due to the covid-19 state of emergency and the closure of the Town Office. He reviewed remote meeting protocols.

**Agenda Changes:** - None.

**September 15, 2020 Meeting Minutes** - Dennis P. **moved to accept the minutes as written.** John L. **seconded the motion.** The motion passed 7-0. Jon S. Abstain.

**Michelle Allen and Stephen & Elizabeth Carlson - Subdivision Revision to adjust a boundary line to effect a transfer of land to adjoiner. The two properties involved are a 0.28-acre property owned by Michelle Allen at 847 Pond Brook Road, and a 3.09-acre property owned by Stephen & Elizabeth Carlson at 85 Upper Access Road, both in the Rural Residential 1 Zoning District.**

Dennis P. **moved to continue the public hearing to November 3, 2020.** Dick J. **seconded the motion.** **The motion passed 7-0.**

**Bradley Hayden/HLG Excavating – Appeal of the Zoning Administrator’s Notice of Violation** – for the expansion of a home occupation (contractor’s yard) on a ±3.0-acre property located at 1290 North Road in the Rural Residential 2 Zoning District.

There was a discussion as to how to proceed. The Board agreed to have the Zoning Administrator speak first. Suzanne M. stated that we were contacted in March from a neighbor regarding noise & changes from the Hayden property on North Road. She spoke to Mr. Hayden and sent a pre-notice of violation in April. She stated that Bradley Haden, Darrell’s father passed away in December 2019, and that Darrell Hayden was not residing on the property. In addition, there was noise and screening issues. They cleared vegetation on the north side of the property to the property line. There was Town council that reviewed the notice of violation.

There was a discussion as to how to proceed. Whether Elizabeth Filosa, who was present to represent Darrell Hayden, or Roger Kohn, who is representing several neighbors, should present first. Liam Murphy, who was going to represent Darrell Hayden, was at a meeting in South Burlington. If Roger K. presented first, it would provide more time for Liam M. to attend.

Roger K. stated that he is representing Jennifer Chiodo, David Harcourt, Vaneska Litz, and Darren Johnson, who are close neighbors to the HLG property. Roger K. stated that he believes the Notice of Violation was correct, that the only question is how much is grandfathered, and that the neighbors have faced a terrible situation due to the changes to the property and an expansion to the contractor’s yard, which have been made within the last 15 years. He added that these changes have resulted in more noise, less screening and a change to the character of the neighborhood. He added that the production of gravel is new. Roger K. said that he stated in his letter why Liam Murphy’s argument that this is a pre-existing use that has not change, is not true because it was a home occupation.

David H. and Jennifer C. introduced themselves and stated that they have lived in the property next door to HLG. They support the notice of violation because the owner no longer lives there. They stated there understanding that the business is supposed to be for storage of equipment for offsite use. They are creating gravel and soil piles on site for sale. They noticed in March that a portion of the neighboring HLG property adjacent to their property was being clear-cut. They noticed big piles of sand and vibrations from heavy trucks, which now are idling with noise and fumes waiting to enter the property at 7:00AM. Without the trees they can see the oil barrels and concrete tubes, which they could not see before. They then showed the difference of property with aerial pictures from Google Earth and recently from a drone in a PowerPoint presentation. They also showed other pictures detailing their testimony and property encroachment. They stressed that they have worked from home in the past and that this is not because of being home more from COVID, and this is a very recent occurrence.

Vaneska L. and Darren J. introduced themselves and stated that their property is separated by a powerline. They echoed what David H. and Jennifer C. stated. They said they have lived on the property since 2009. They live and work in their home and said they have seen a large change in the activity on the property. They said that in the last six months they have seen the property transformed from a place where materials are stored to an industrial site. There are large vehicles dropping off and picking up soil. The noise has driven them to their basement so they could make their work calls and their kids could go to school on line. There are large vehicles coming and going picking up dirt and dropping off dirt. They raised the concern about safety of having 30-foot high soil piles. Other contractor yards in the area follow the rules. They described the photographs from their submittal, which were submitted.

Elizabeth F., representing the Appellant, responded that Bradley H. will describe the historic use of the property. She said that the character of the neighborhood includes the Hayden business. Mitchel C. clarified that this notice of violation did not mention the level of business, though this could be an issue, but was specific to screening, noise and lack of owner occupancy. Elizabeth F. decided to interview Bradley H. to respond to the comments provided, which Bradley H. stated the following:

- His family has owned property in the area since the 1800s, which included 100s of acres.
- Pieces of property have been sold over the years for development.
- His father started an excavating company in 1982 on this property.
- That property was given to his father by his father, who farmed the land and had a scrapyard.
- The scrapyard was moved and his father put a trailer on the property.
- The historic use of the property included an excavating business in 1982, which expanded over time.
- The large garage was the original residence. His father later built a larger residence in early 1990s.
- The types of equipment on the property at that time included two bulldozers, backhoes, two excavators and two tandem dump trucks.
- His father had two trucks like the amount he owns.
- The company would go on a job site, clear the trees, bring back to the property the topsoil, screen the topsoil on their property and then reuse the topsoil.
- The company evolved to provide leveling service for motorhomes. He said they had a motorhome demo. They built motorhomes on the property and processed top soil.
- They stored and maintained equipment on the property.
- The work they are doing today, they have been doing for a very long time.

The photos submitted were displayed. Bradley H. stated that these photos show soil near the concerned neighbors, topsoil screening equipment that was five times louder than what is used today, topsoil in the location where he screens today, screening equipment where it is located today, the area from years ago that the concerned residents said was recently cleared out, an eight wheel amphibious machine, a plow, tractors, a grader, a bucket loader, outdoor storage, large piles of top soil, and trailers on the property.

Elizabeth F. showed some historic aerial Google Earth photos. Bradley H. testified that the photos showed cleared areas behind the house and garage, vehicles in the yard, storage containers, soil piles, equipment storage, material storage, and the screening area. While and after showing the photos, Bradley H. Testified to the following:

- That his niece is living on the property on works for him.
- His father had a large plowing business, which included CVU and HCS, and had multiple trucks with plow equipment.
- That he has not expanded the use of the property and has less equipment than his father had.
- His father had graders and bull dozers, which he does not have. Also a plowing operation, which he does not have.
- He has not expanded the area that he has worked on.
- He did clear a few trees behind the garage, where he wanted to level the area, but he has not moved equipment to that area. The piles of wood that are there, he wants to get rid of.
- They are a year-round excavating company instead of a company that does other types of work in the winter.
- He believes he is using the property the same way it has been used in the past.
- He plans to occupy the property after doing major renovation to the house and after his kids finish school in four years.

Elizabeth F. stated that no evidence has been provided to show a discontinuance of the use.

There was a discussion as to how to continue due to the length of the meeting. It was decided to let Roger K. speak a rebuttal and to let other Public speak. Roger K. stated his opinion that the expansion and noise have not been address and that this use was clearly a home occupation, which without occupancy the use expires. Roger K. added that the pictures with all the family present shows how much a home occupation the use was, and how the owner interacted with the neighborhood.

Dennis P. opened the hearing for the Public. Henry B. spoke saying he was a longtime nearby resident and was concerned about a strange mailing. He stated his memory of the business on that property being much larger than it is today. He was concerned about how the Town relates to businesses. Cyndi L., who lives across the street, spoke positively about the business and its longevity. She spoke of how the trees needed to come out.

Dennis P. moved to continue the hearing to the October 20 meeting. Dick J. seconded the motion. The motion passed 6-0.

The Board discussed a site visit of the Hayden properties. It was discussed a group site visit or individual site visits. Jon S. suggested Board members do their own site visits, which was discussed. Dick J. suggested with some planning having the owner operate some equipment so they can hear the noise made on the property. Mitchel C. noting that the Board had a lot of information to digest, that if they want a site visit, the Board set it up at the next meeting.

**Hinesburg Center 2 (HC2) Subdivision, Preliminary Plat Review:** - for a major subdivision of a  $\pm 46.2$ -acre property located on the west side of Route 116, west of the Kinney Drug development, south of Patrick Brook, and north of the Creekside neighborhood in the Village and Agricultural Zoning Districts. In this phase of the development the applicant is proposing 22 residential units and 6,000sf of commercial/ office space. *Continued from September 15 meeting*

Jonathan S. and John Lyman recused themselves from this review. Alternates Bryan C. and Branden M. are participating in this review.

Mike B. said they will go through the Staff comments.

Comment #0 – Proposed Grades: - Nick S. explained the grades were needed to allow stormwater to discharge to Patrick Brook. He described how the soils and lack of depth to groundwater would not allow for infiltration, except for an area near Patrick Brook that they kept at a high elevation to allow some infiltration per the State rules and the Town's L.I.D. requirements. Nick S. using the plans showed where the outfall and proposed infiltration areas are proposed. He explained the grades were set to allow stormwater collected in drainage pipes to discharge to the outlets. He acknowledged the gravel wetland elevations were greater than they needed to be, but said the grades in the development should not change. He described how lengthening the gravel wetland lowered the elevations. Mitchel C. suggested using bigger pipes at lower slopes. Nick S. welcomed the idea, but said that they kept the minimum slopes at 0.005. Nick S. discussed the option of sending some of the stormwater to the Creekside system, but the work that the State would require to upgrade the existing pond, makes this not feasible. They also need to tie in the grades to the existing Hinesburg Center 1 (HC1) development.

Dick J. raised a concern about the proposed elevation contours at the 'Road A'/'Road B'/Farmall Drive intersection area. Nick S. said the contour lines are tying into an existing grade to Creekside or in the building lot adjacent to Creekside to have a stepping feature, which is why grades come into and end at the building envelope. Mitchel C. stated that the contours don't support this access, which Roger D. confirmed that will be adjusted. Brett G. stated that they are still updating the plans to the Staff comments and many of these small edits will be taken care of in the near future. Alex W. asked why HC2 needs to be at a significantly higher elevation than Creekside, which has a functioning stormwater system at a lower elevation. Nick S. responded saying that this is a flat site and the elevations are to meet the outfall. There is no way to have pipes under a road to drain to where they are going to outfall at a lower grade and be able to convey a 100-year storm. Mike B. added that the outfall for Creekside, which discharges to the LaPlatte instead of Patrick Brook, which is at a four-foot lower elevation. Brett G. added that the roads and stormwater system in Creekside were designed with very little pitch and tolerance. He said they will look at flattening this out a little bit and using lot #30 for some treatment. Nick S. added that the outfall for Creekside is in the stream/canal embankment, which the State rivers program is no longer allowing.

There was a discussion as to which comments to continue the review acknowledging that many of the subsequent comments were related to Comment 0.

Comment #2 - Elevations and streetscape renderings for road A (Sketch decision, Order 1i): - Mike B. believes that this comment could be addressed in site plan review instead of the subdivision review. Noting the need for a quick turnaround from Staff comments received the Friday before, they provided an elevation for review, which was displayed. Mike B. described the elevation asked the Board if this is what they are looking for. He explained that they will be updating this elevation based on the Staff comments to lower the road grades. He spoke of having the sidewalk have grades that would be no greater than ADA ramps. Alex W. said he believes the Board would like to review this further and that Staff would like to discuss the access to 'Building A' in more detail after the meeting and how it compares to the adjacent properties in both Creekside and HC1. Brett G. said they have some ideas how to discuss this.

Comment #6 - Patrick Brook road crossing structure size (Order 1G & Official Map requirement): - Nick S. said that they sized the culvert for the aquatic organism passage (AOP) per the Milone & MacBroom report. Mitchel C. confirmed that the AOP is what should be provided, however the actual size for the structure is not site specific. He continued, that much of the surrounding area would flood before an 8'x14' structure would be fully utilized. Mitchel C. explained how a hydraulic equivalent that was wider and lower would allow water to flow better through the channel, which would better fit the channel, and would not require them to fill in a portion of the channel as shown on the plans. Dennis P. asked if we should be concerned if the State changes the culvert upstream. Roger D. said "no". Mitchel C. explained that what is proposed here will accommodate what the State would do on VT Route 116. Nick S. & Roger D. agreed. Alex W. confirmed that the Milone & MacBroom did a detailed study, done in 2013, did note that the existing culvert under Route 116 is undersized and that this project should have a box culvert equivalent in size to their proposed an 8'x14' culvert under Route 116. Dick J. asked if the culvert would actually be a box, or if the bottom is open with the culvert recessed into the ground. Roger D. responded saying it is a box, but the bottom part would have gravel over it to mimic the conditions of the stream, and it is not into the ground very much. Branden M. questioned how much the culvert would be recessed into the ground and what the effective area of the culvert would be. Alex W. said the study will be placed in the dropbox and agreed with Roger that the intent would be for the

culvert to have gravel on its bottom. Alex W. stated, and Roger D. confirmed, that the amount of gravel at the bottom of the culvert would be inches instead of feet in size.

Comment #8 - Patrick Brook road crossing funding (Order 2f): - Brett G. said that he is having discussions with Ben Avery of Blackrock and they are in the process of drafting an agreement between the two of us.

Comment #9 - Required public open space improvements (Section 5.22.5 of the HZR): - Mike B. there are a few greenspace areas. He mentioned lot #30 as the larger space between the Creekside and HC2 developments, which will be managed by both groups. Inside the rest of HC2 are additional parklet areas. Lot #72, which is on the corner of 'Road A' and 'Road C', would have a parklet with benches, walkways and trees. On the north side of 'Building C' is a parklet with seating and permanently installed gas grills, which is similar to one that Brett built in Williston on the corner of Knight Lane and Day Lane. Mike B. said that they have installed fire pits in these areas in the past. There is another parklet on lot #50, which they have not proposed any improvements at this time, but will do so for site plan approval. Mike B. said that they plan to use some of the fill in HC2 to raise the elevation of lot #30 and that the residence of Creekside do not want a lot of amenities in lot #30. They would like to avoid filling the south side of the lot so as not to impair the trees located there. The trees on the north side of the lot would need to be replanted. Mike B. said they are planning to place a small shelter on the northwest corner of lot #30 to provide some structured recreation gathering space.

Dick J. wanted clarification that this area would drain into the Creekside stormwater system instead of the new stormwater system and asked if you are going to have the land grade more gradually, would there be a swale at the southern edge of lot #30? Mike B. said it would not be a swale, but more of sheet flow, which would also drain from east to west to a catch basin on the western side of the property. Mike B. said there may be a low non-defined swale at the southern part of the property. Dick J. added the concern that stormwater was not going into the Creekside properties to the south of lot #30. Nick S. said they are looking to use some of lot #30 for stormwater treatment so that the stormwater could be directed to the meadow space or to Creekside.

Alex W. described the requirement for the open space improvements as needing something that will draw people to them and be somewhat different from other similar surrounding areas. Alex W. said that generally what was discussed here for lot #30 and a little more in the community space to the north is what the Town is looking for. Dennis P. asked about ownership and maintenance of such spaces. Alex W. said the vision would be that these spaces would be in private ownership and function the way greenspaces in HC1 function. Dick J. said that when he hears Public space, he thinks of an area where people from the rural areas of Hinesburg would visit. Dick J. said that he doesn't see these spaces like that, but rather the local community would use, and not a destination place. Alex clarified saying that these areas should be accessible to the general Public, but agreed with Dick J's assessment of how these areas will work. Alex W. said the goal to have improvements to these places to draw whom ever will be able to utilize these green spaces. Dick J. said he was concerned about liability for the structures in these green spaces.

Mike B. asked which regulations is this project being reviewed. Alex W. stated the application was submitted in January, but was not complete until September, which we believe this should be reviewed per the current zoning, which occurred in February. Brett G. asked if the regulations per the sketch plan apply. Alex W. said that the Town learned from attorneys in the past that an application is not grandfather until it is complete, and a sketch plan application is considered too conceptual to be

considered a complete application, so an Applicant vests when they submit a complete preliminary plat application.

Dennis P. opened the hearing on what was discussed today to the Public. John L., as a member of the Public, wanted to clarify that the proposed parklets would have a gazebo instead of a swimming pool. Brett G. confirmed.

Andrea M. asked why the stormwater treatment is in the fluvial erosion hazard area and the distance of the setback for Patrick Brook. Andrea suggested that the Applicant can not get all that they are proposing in this area. Mitchel C. and Nick S. said the only structure going in the fluvial erosion hazard area is the box culvert and adjacent report. Alex W. suggested we look at the plans to see if the proposed stormwater system is in the fluvial erosion hazard area. A review occurred. Nick S. clarified the lines on the plans. Brett G. suggested that if the Town wants to limit development in the fluvial erosion hazard area then there should be no bridge because that will have more of an affect than the stormwater system and fill in the fluvial erosion area. Andrea M. agreed the road should not be placed there. Alex W. said that Staff will work with the Applicant's team to remove as much as possible the stormwater system and fill from the setback and fluvial erosion hazard areas. Nick S. agreed.

Mitchel C. told the Board that there is Public comments from Kyle Bostwick and Dan Jacobs of Creekside.

After some discussion about scheduling, Dennis P. **moved to continue the review to the October 20, 2020 meeting.** Dick J. **seconded the motion. The motion passed 5-0.**

Dennis P. adjourned the meeting at 10:13pm.