

**TOWN OF HINESBURG
DEVELOPMENT REVIEW BOARD
FINDINGS OF FACT, CONCLUSIONS & ORDER**

**Hinesburg Center Investments, LLC
Conditional Use Approval for Development in a Special Flood Hazard Area, Fluvial Erosion
Hazard Area and a Stream Setback Area
Parcel Number 08-01-06.320**

Based on the above-mentioned public hearing and the documents contained in the “document” file for this proposal, the DRB enters the following Findings of Fact, Conclusions and Order.

FINDINGS OF FACT

1. Hinesburg Center Investments, LLC, hereafter referred to as the Applicant, is requesting Development Review Board (DRB) conditional use approval for development in flood hazard and stream setback areas as part of a final plat application for a subdivision called Hinesburg Center 2 (HC2) that would include 22 new lots and 73 new residential units and 16,800sf of non-residential space. This proposed subdivision on a 46.2-acre property, of which 9.7-acres is located in the Village Zoning District (VG) directly to the west of Kailey’s Way and north of the Creekside development. The remaining 36.5-acres is in the Agricultural Zoning District (AG).
2. The development includes infrastructure that crosses Patrick Brook (connector road and a separate pedestrian bridge), and is within the special flood hazard area (SFHA), the fluvial erosion hazard zone (FEH), and stream setback area. The development also includes roads, residences, and stormwater infrastructure in the SFHA. The proposed connector road and pedestrian bridge are planned future public infrastructure shown on the Hinesburg Official Map. The connector road, which would be a north/south through road and pedestrian path, is labeled on the Official Map as future community facility #14 & #15. The pedestrian bridge near VT Route 116 is shown on the Official Map as a future sidewalk.
3. This application was heard with in-person meetings with remote access via Zoom on October 4, 2022, November 1, 2022, November 15, 2022, December 6, 2022, December 20, 2022, January 3, 2023 and January 17, 2023. No testimony was taken at the December 6, 2022 meeting due to a lack of a quorum. Except for the December 6, 2022 meeting, Brett Grabowski (Applicant), Roger Dickinson (Engineer) and Mike Buscher (Landscape Architect) attended all the meetings. The Applicant’s design team also included at the October 4th meeting, Matt Murawski (Rivers Engineer).
4. This application is concurrently being reviewed with the final plat subdivision application and two conditional use & site plan reviews for multifamily dwellings. This decision is dependent on the final plat approval, where a full history of the project can be found. This conditional use application incorporates review of impacts to the SFHA, FEH, and stream setback area because these are similar areas for the same development.
5. There are two Village stream setbacks with proposed development. One is Patrick Brook that has a 100-foot setback from the top of bank. Proposed in the Patrick Brook setback area would be a vehicular & pedestrian bridge/culvert crossing by the future Patrick Road, a pedestrian bridge near VT Route 116, and some unimproved trails. The other is for the

- LaPlatte River, which has a 130-foot setback from the top of bank. Proposed in the LaPlatte River setback are some unimproved trails.
6. Section 2.5.1 of the Hinesburg Zoning Regulations (HZR) prohibits structures or parking areas from being placed in stream setback areas. Section 2.5.2(5f) of the HZR allows the DRB to approve encroachment onto stream buffer areas for roadways and improved paths to cross a stream buffer to gain access to land on the opposite side of the buffer. Section 2.5.2(5c) of the HZR allows the DRB to approve unimproved paths for public recreation located at least ten feet from the top of bank. This development would be required to meet the conditional use standards of Section 4.2.2 of the HZR. The other areas in the stream buffer are required to be left in a vegetated, undisturbed state with allowances for the establishment of native vegetation and trees.
 7. The proposed plans show the transition between the Patrick Brook river corridor and the proposed developed portion of the subdivision would have a slope that will be protected with erosion matting.
 8. Development in Flood Hazard Areas requires review per Section 6.5 of the HZR. Section 6.5.1 of the HZR requires the Applicant to demonstrate for Conditional Use approval that there will be no undue adverse impact on upstream and downstream properties, stream geomorphic equilibrium and water quality.
 9. Development of a bridge/culvert for a new road through a fluvial erosion hazard area and the floodway is allowed as a conditional use per Sections 6.7.2(8) & 6.8.2(5) of the HZR. The associated fill is allowed with conditional use approval per Section 6.7.2(10c) & 6.8.2(7c) of the HZR. Similarly, in the SHFA outside of the floodway area, such development is allowed with conditional use approval per Sections 6.9.2(9) & 6.9.2(11) of the HZR. The Town has deemed the Patrick Brook crossing as necessary, as evidenced by the Town's Official Map, and the purpose statements for the Village and Village Northwest zoning districts in Section 3.5 & 3.6. Required design standards for development in the SHFA and FEH zone are provided in Section 6.12 of the HZR.
 10. The Applicant's 'Overall Site Plan' civil sheet #1 shows the floodplain boundaries of FEMA, the Town's GIS and from the Milone & MacBroom. The Milone & MacBroom study varies from the others, given that the Milone & MacBroom study utilized actual site-specific topographic information, their base flood elevation is more relevant to the actual topography and project plans. The Milone & MacBroom study and flood hazard area delineation was the basis of a September 7, 2010 conditional use approval for development in the flood hazard area for the Hinesburg Center 1 project, which adjacent to the proposed HC2 project.
 11. On August 24, 2022, notice of this hearing was provided to Kyle Medash (Floodplain Manager), Western Floodplain Manager with the VT DEC Rivers Program. Section 6.13.2(1) of the HZR, which reflects State statute 24V.S.A-§4424, requires that a minimum of 30-day notice be provided to the State National Flood Insurance Program (NFIP) Coordinator. Kyle Medash is the NFIP Coordinator for Chittenden County. He provided several email responses and testimony at hearings.
 12. The Applicant's Rivers Engineer provided modeling and plans utilizing a HEC-RAS program, and existing and proposed elevations that were shown on the plans. This

- modeling showed the pre-development and post-development base flood elevations (BFE). The Applicants modeling was not disputed during the hearings.
13. The Applicant and the Floodplain Manager agreed that the smallest measurable change in elevation was 0.10-feet. The post-development BFE was only measurably greater than the pre-development BFE for a span of approximately 300 feet between the proposed culvert and the existing water & sewer lines that cross underneath Patrick Brook. The existing water & sewer lines are coincident with the north/south portion of Road 'B' on the plans.
 14. The Floodplain Manager agreed with the Applicant that the increase in BFE west of the water & sewer line crossing and south of the Patrick Brook river corridor would be less than 0.10-feet and would have no adverse impact. This would include portions of the proposed Road 'B' and Road 'D', a small part of the proposed Road 'C'/Patrick Road, a part of the proposed six-plex on lot #70, and some of the proposed single-family residences. The BFE in the areas of HC2 that are considered in the floodplain range between 326 and 330 feet. All of the proposed structures and most of the proposed roadways will be built above elevation 334. Portions of Road 'B' and Road 'D' will be as low as 332.60-feet in elevation.
 15. The Floodplain Manager raised concerns regarding the proposed 0.10-foot to 0.22-foot increase in the BFE in the 300-foot-long section of Patrick Brook between the proposed Patrick Brook road crossing of Patrick Road and water & sewer line crossings to the west. The Applicant stated that per Section 6.12.1(5) of the HZR, there is no impact upstream or downstream of the project, and the only areas impacted would be the HC2 property that the Applicant controls and has raised to an elevation well above the BFE.
 16. The Applicant obtained a State stream alteration permit as required in Sections 6.12.1(14) and 6.12.3(6) of the HZR.
 17. Development on proposed lot #55, except for a trail, is not part of this application. Should this lot be developed in the future, additional review for development in a floodplain may be required.
 18. The application was received and was deemed complete on August 22, 2022. The submitted plans are part of the official record and are contained in the document file 08-01-06.320 in the Hinesburg Planning & Zoning office. The plans and documents provided are for all of the Applicant's submitted applications. Relative to this application are the following:
 - A plan titled "Overall Site Plan", by Lamoureaux & Dickinson Consulting Engineers, Inc., with project number 19054, and with sheet number 1, dated 5/11/22 and with a revision date of 08/08/22.
 - A plan titled "Proposed Site Plan East", by Lamoureaux & Dickinson Consulting Engineers, Inc., with project number 19054, and with sheet number 2, dated 5/11/22 and with a revision date of 8/19/22.
 - A plan titled "Proposed Site Plan West", by Lamoureaux & Dickinson Consulting Engineers, Inc., with project number 19054, and with sheet number 3, dated 5/11/22 and with a revision date of 12/20/22.
 - A plan titled "Patrick Brook Sidewalk Crossing", by Lamoureaux & Dickinson Consulting Engineers, Inc., with project number 19054, and with sheet number 13 and dated 5/11/22 and with a revision date of 11/05/21.

- A plan titled “Road ‘C’ Patrick Brook Crossing”, by Lamoureaux & Dickinson Consulting Engineers, Inc., with project number 19054, and with sheet number 14 and dated 12/20/20.
 - Hydraulic Evaluation Summary, Proposed Patrick Brook Crossing by Matt Murawski, P.E. of Ripple Natural Resources LLC, dated July 20, 2022.
 - Response to Ripple report of July 20, 2022 from Kyle Medash VT DEC Rivers Program dated 9/22/2022.
 - Hinesburg Center II – Additional Hydraulic Information by Matt Murawski, P.E. of Ripple Natural Resources LLC, dated October 4, 2022.
 - Response to Ripple report of October 4, 2022 from Kyle Medash VT DEC Rivers Program dated 11/15/2022.
 - Memorandum by Roy Schiff, Milone & MacBroom, Inc, dated June 2, 2012 discussing the sizing of culverts along VT Route 116 for discharge and aquatic organism passage.
 - VT ANR DEC Individual Wetlands Permit 2021-237.01 dated November 8, 2022.
 - VT ANR DEC Watershed Management Division, Authorization to Conduct Instream Work, Permit #SA-3086.
19. The following members of the DRB were present for final plat hearings, constituting a quorum, as follows. See the official meeting minutes for a list of others present at these meetings.
- On October 4, 2022: Dick Jordan, Ted Bloomhardt, Branden Martin and Michael Webb.
 - On November 1, 2022: Dennis Place, Dick Jordan, Ted Bloomhardt, Branden Martin and Michael Webb.
 - On November 15, 2022: Dennis Place, Dick Jordan, Ted Bloomhardt, Branden Martin and Michael Webb.
 - On December 20, 2022: Dennis Place, Dick Jordan, Ted Bloomhardt, Branden Martin, Michael Webb and Jeff Daugherty.
 - On January 3, 2023: Dennis Place, Dick Jordan, Ted Bloomhardt, Branden Martin Michael Webb and Jeff Daugherty.
 - On January 17, 2023: Dennis Place, Dick Jordan, Ted Bloomhardt, Branden Martin and Michael Webb.
20. The October 4, 2022 public hearing was warned in *The Citizen* on September 15, 2022.

CONCLUSIONS

1. The Applicant has submitted all information required by the HZR for the aforementioned applications.
2. This proposed Patrick Brook crossings would provide a public benefit that cannot be placed in a better location and where no better alternatives exist, which helps justify the proposed encroachments.
3. The proposed development would enhance the capacity of planned community facilities by improving vehicular, pedestrian, and bicycle connectivity. The Patrick Brook crossings would allow for safe and convenient access between neighborhoods in the Village zoning district and community facilities (Bissonette Recreation Area) and proposed neighborhoods (Haystack Crossing development project). These crossings are consistent

- with the Town Plan vision, would lessen the use of non-renewable energy resources, and would enhance the public welfare. All of this in conformance to the Conditional Use standards found in Section 4.2.2 of the HZR.
4. The proposed development of the Patrick Road Patrick Brook crossing, the pedestrian Patrick Brook crossing near VT Route 116, and the proposed trails along Patrick Brook and the LaPlatte is approvable in the stream setback area as described in Findings of Fact #6 per Sections 2.5.2(5c) & 2.5.2(5f) of the HZR and in conformance to Section 4.2.2 of the HZR as described in Conclusion #3.
 5. The erosion control matting shown on the plans and described in Findings of Fact #7 is essential for conformance to Section 2.5.2(5) of the HZR.
 6. The proposed development of the Patrick Road Patrick Brook crossing, the pedestrian Patrick Brook crossing near VT Route 116, the proposed trails along Patrick Brook and the LaPlatte, and the filling of the floodplain to create building lots is approvable in the floodplain and fluvial erosion hazard areas as described in Findings of Fact #9 per Sections 2.5.2(5c) & 2.5.2(5f) of the HZR and in conformance to Section 4.2.2 of the HZR as described in Conclusion #3 and with no adverse impact as described in Findings of Fact #7.
 7. Timely notice, as described in Findings of Fact #11, was provided to the State Floodplain Manager in conformance with Section 6.13.2(1) of the HZR.
 8. The methodology utilized by the Applicant's Rivers Engineer described in Findings of Fact #12 is reasonable and appropriate for a review per Section 6.12 of the HZR.
 9. Deeming a less than 0.10-foot increase in the BFE as unmeasurable by the Applicant and Floodplain Manager as described in Findings of Fact #13 seems reasonable.
 10. The DRB agrees with the Floodplain Manager and the Applicant, as described in Findings of Fact #14, that the increase in BFE west of the water & sewer line crossing and south of the Patrick Brook river corridor would be less than 0.10-feet and would have no adverse impact.
 11. The proposed structures and infrastructure located west of the water & sewer line crossing and south of the Patrick Brook river corridor, as described in Findings of Fact #14, would be placed at least one-foot above the BFE as required in the special flood hazard area in conformance to Section 6.12.1 of the HZR.
 12. The overall proposed development especially in the 300-foot-long section of Patrick Brook between the proposed Patrick Brook road crossing of Patrick Road and water & sewer line crossings, as described in Findings of Fact #16, meets the requirements of Section 6.12.1(5) of the HZR. There will be no adverse impact on water quality or upstream and downstream properties and infrastructure. Additionally, there will be no adverse impact within the proposed development.
 13. The proposed development will not increase the risk to surrounding properties, facilities or structures from erosion or flooding in conformance to Section 6.12.2 of the HZR.
 14. The proposed development will not increase the susceptibility for fluvial erosion damage, should not create material that can be swept onto other lands causing damage, and will not

be an undue burden on public services and facilities in conformance to Sections 6.12.6(3,4&5) of the HZR.

15. As described in Findings of Fact #16, the Applicant obtaining from the Vermont Agency of Natural Resources the required stream alteration permit has shown conformance to Sections 6.12.1(14) and 6.12.3(6) of the HZR.
16. Placing the pedestrian bridge over Patrick Brook near VT Route 116 should have no adverse impact.

ORDER

Based on the Findings of Fact and Conclusions set forth above, the Hinesburg DRB grants conditional use approvals for development in a special flood hazard area, fluvial erosion hazard area and a stream setback area subject to the conditions listed below.

1. The project shall be built as shown on the plans and as described in the Findings of Fact.
2. This approval is tied to the Findings of Fact, Conclusions, and Orders of the Hinesburg Center 2 final plat subdivision approval. All applicable requirements of the subdivision approval shall be followed. This conditional use approval shall not contradict any of the requirements of the Hinesburg Center 2 final plat subdivision approval.
3. This project shall be completed, operated, and maintained as set forth in the plans and exhibits as approved by the DRB and on file in the Town Office, and in accordance with the conditions of this approval. Deviations may be made from these plans if they are:
 - a. Approved by the designer, or equivalent, and
 - b. In conformance with the intent of this decision, and
 - c. Determined by the Zoning Administrator that they are not significant enough to require a formal revision to the DRB decision.



Development Review Board

February 21, 2023

Date

Board Members participating in this decision; Dennis Place, Dick Jordan, Branden Martin, Michael Webb and Jeff Daugherty.

Vote to approve: 5-0

30-day Appeal Period: - An "interested person", who has participated in this proceeding, may appeal this decision to the Vermont Superior Court, Environmental Division within 30 days of the date this decision was signed. Participation shall consist of offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding. See V.S.A. Title 24, Chapter 117, Section 4465b for clarification on who qualifies as an "interested person".

Notice of the appeal, along with applicable fees, should be sent by certified mail to the Vermont Superior Court - Environmental Division. A copy of the notice of appeal should also be mailed to the Hinesburg Planning & Zoning Department at 10632 VT Route 116, Hinesburg, VT 05461. Please contact the Court for more information on filing requirements, fees, and current mailing address.

State Permits: - It is the obligation of the Applicants or permittee to identify, apply for, and obtain required state permits for this project prior to any construction. The VT Agency of Natural Resources provides assistance. Please contact the regional Permit Specialist at 879-5676 (111 West St, Essex Jct., VT 05452) for more information.

All new residential and/or commercial construction including additions, alterations, renovations, and repairs are subject to either the Vermont Residential Building Energy Standard (RBES) - 21 V.S.A. § 266, or the Vermont Commercial Building Energy Standard (CBES) - 30 V.S.A. § 53. A certificate of occupancy cannot be issued until the required RBES or CBES certification has been filed in the town records.