

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

**Haystack Crossing LLC & Black Rock Construction  
Subdivision Sketch Plan Denial  
Tax Map 16-20-56.500**

This matter came before the Hinesburg Development Review Board (DRB) on the application of Black Rock Construction, hereafter referred to as the Applicant, for sketch plan approval for a subdivision and Planned Unit Development (PUD) on the west side of Route 116 and south side of Shelburne Falls Road. The DRB held meetings to review the sketch plan review on December 2, 2014, January 6, 2015, and February 17, 2015. Ben Avery, representing the Applicant, was present at all of the meetings.

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. The Applicant is requesting sketch plan approval of a subdivision in the Village Northwest and Agricultural Zoning Districts. The subject parcel is approximately 76.37 acres, and is located on the west side of Route 116, south of Shelburne Falls Road; parcel # 16-20-56.500. This property is owned by Haystack Crossing LLC (Bissonette family). The property constitutes lot #4 from the 2011 Bissonette 4-lot subdivision approved on April 5, 2011 (plat recorded on map slide 191A, 191B). Lot 1 of this previous subdivision is now owned by Fletcher Allen Health Care, and is the site of the new Hinesburg Family Health facility. Lot 3 of this previous subdivision is now owned by B. Cairns Property LLC, and is undeveloped. Lot 2 of the previous subdivision is owned by Haystack Crossing LLC. The subject property for the proposed subdivision (lot 4) has two access strips (for future road connections) connecting to Shelburne Falls Road, and a long frontage along the west side of Route 116. While this sketch plan application was being reviewed, another subdivision of the property was finalized; thereby reducing lot 4 from 84 acres to 76.37 acres. This two-lot subdivision (approved on December 2, 2014; recorded on slide 208C), created lot 5 (8.11 acres) which is in the process of being transferred to the Town for development as a recreation area. Lot 5 is entirely within the Agricultural Zoning District and has no bearing on the density calculations for the Black Rock Construction proposal.
2. This is Black Rock Construction’s second sketch plan application. Their first sketch plan application was denied by the DRB on August 27, 2014. Many elements of the original sketch plan have been revised, while other elements have remained the same (e.g., proposed solar array and other uses of the western woodland).
3. Natural features are well identified. The eastern agricultural fields consist of mapped agricultural soils interspersed with several small wetland areas. Much of the southern boundary is adjacent to Patrick Brook (including an associated fluvial erosion hazard area), and portions of the northern and northwestern boundaries are coincident with an unnamed tributary of Patrick Brook. This unnamed tributary runs south bisecting the parcel into easterly agricultural fields and westerly woodland. Extensive flood hazard areas associated with Patrick Brook and the LaPlatte River are present in the westerly woodland, and extend a short distance along the unnamed tributary. The westerly woodland is approximately 28 acres, and includes clay plain forest remnants and a small area of steep slopes in the northwestern corner. The VELCO electrical transmission line runs along the western side of the parcel, and the future VT Gas transmission pipeline is planned for this same general area. Overall, the property is exceedingly flat with the land rising in the northeast corner to a high point along the northeastern Route 116 frontage.

4. Development is proposed in the eastern agricultural fields, largely in the Village Northwest zoning district. Approximately 219 dwelling units are proposed – 66 detached single family dwellings, 28 units in multi-family town houses (3 and 4-plex buildings), 20 units in two 10-plex multi-family buildings, 12 units in one 12-plex, and 93 units in eight mixed use buildings (buildings A-G, J, which include non-residential uses). An additional 56 units of congregate senior housing is also proposed. Two fully non-residential building (Buildings I & K) are proposed. The eight mixed use buildings (Buildings A-G, J) are anticipated to have approximately 23,010 square feet of designated commercial space and 10,200 square feet of potential commercial space – e.g., office, retail, restaurant, etc. Buildings I & K are anticipated to have at total of approximately 17,756 square feet of commercial/light industrial space.
5. Development is also proposed for a portion of the westerly woodland in the Agricultural zoning district. A large-scale solar array (150-500kw) is proposed for the northern portion of this 28-acre woodland area. The actual size of the solar array is not determined, but could occupy between 0.5 acres (80'x275') and 1.7 acres (275'x275'). The Applicant indicated that this would be a net-metered system for the benefit of the proposed development, and that it would also require review by the Public Service Board.
6. The subdivision proposes approximately 80 lots +/- laid out along an interconnected grid of proposed roads. Two new roads running north/south and two new roads running east/west. Four principal access points to existing public roads are shown – two to Shelburne Falls Road, a portion of one is over the existing drive serving Hinesburg Family Health, the second is via a road providing right-in, right-out only access that is yet to be built on the east side of the Hinesburg Family Health property; the third to Route 116 opposite the existing Riggs Road intersection; the fourth extending south of the project to Kaileys Way and Farmall Drive across yet to be developed land (Lyman property). Pedestrian access is proposed via sidewalks along all of the new roads shown on the plan as well as along the property's Route 116 frontage. Trails are also proposed on the north and south boundaries of the development areas. The southerly trail shows a connection to Route 116 just north of Patrick Brook. Municipal water and sewer service are proposed, and existing, private water/wastewater lines bisect the property from north to south.
7. The Hinesburg Official Map shows that a variety of future public infrastructure is planned for the subject parcel given the important role it plays in the VG-NW district and the overall Village Growth Area. These elements include:
  - a. A through road south from Shelburne Falls Road to Farmall Drive (West Side Road), including a connection to Route 116 opposite Riggs Road.
  - b. Sidewalks along the aforementioned new roads as well as along the Route 116 frontage.
  - c. Two different connecting trails - one along a portion of the southern boundary line, and one following a stream from Route 116 to the western edge of the agricultural fields.
  - d. A community facilities area (approximately 2-3 acres) - possible uses mentioned on Official Map; Selectboard conversation during Official Map adoption centered on developed park/recreation facilities.
8. The sketch plan application was received and deemed complete on October 2, 2014, and included various plans, maps, and supporting narratives. The plans and narratives were modified and supplemented throughout the review process. The final sketch plan is depicted on sketch plan sheet L-100 dated 12/9/2014 and last revised 12/15/2014. All of these submissions are contained in the document file (16-20-56.500) in the Hinesburg Planning & Zoning office. This file also

- contains staff reports and other correspondence that were discussed during the review and are part of the record.
9. The following members of the DRB participated in the review, and were either present at the hearings, or if absent, reviewed the VT Community Access Media video recordings of the hearings: Zoe Wainer, Dennis Place, Sarah Murphy, Ted Bloomhardt, Greg Waples, Dick Jordan, Andrea Bayer. See the official meeting minutes for actual attendance at particular meetings, and a list of others present at the meetings.
  10. Although the overall size of the parcel has changed since the first review, the calculations of allowed and proposed development densities have not, since the area within the Village NW district (where all residential development is proposed) remains the same. The applicant's prior application provided the following calculations of development densities – allowed and proposed. Area within the Village NW district excluding stream buffer areas is 34.21 acres. Pursuant to section 2.4 (Zoning), this is the area upon which to calculate base and maximum residential density. The base density allowance for the Village NW district is 3 units/acre; therefore, the base density allowance for the property is 102.6 units. Pursuant to section 2.4, a density bonus of up to 120% is possible via provisions outlined in sections 2.9 and 5.21. The Applicant is proposing to satisfy some or all of the following bonus/incentive provisions for the full bonus, in order to achieve the proposed 219 dwelling units – just under the maximum possible number of 225 dwelling units.
    - a. 50-74% of units will meet the small dwelling unit size criterion.
    - b. 75% or more of the units will meet the Green Home Certification criterion.
    - c. 50-74% of the units will meet the Renewable Energy Technology criterion.
    - d. The Applicant requests one incentive point under the Important Public Spaces & Public Infrastructure criterion via various project components – e.g., town green, recreational paths, public parking and access to support the future Town recreation fields, and community gardens.
  11. Pursuant to section 3.6.3 (Zoning), density limits do not apply to the proposed 56 dwelling units of congregate, senior housing.
  12. Pursuant to section 3.6 (Zoning), all residential development in the Village NW district shall be reviewed as a Planned Unit Development (PUD), and must comply with the special standards contained both in section 3.6 and section 4.5 (PUD).
  13. All of the development in this project is proposed to be served by Town water and wastewater treatment as required in section 5.22.2 #1 (Zoning). The Applicant acknowledges that neither of these municipal systems currently have the capacity to serve a full build out of the project. The Applicant proposes to work collaboratively with the Town to find capacity solutions. The Applicant plans to submit a phasing plan as part of any preliminary plat application that addresses this issue in more detail.
  14. The November 2014 municipal bond vote on improvements to the Town water supply system clarified that the Town does not currently have the capacity to serve this project. The new wells scheduled to come online in the fall of 2015 will replace two problematic wells that serve current users. The new wells will not add substantial new capacity to the water system, so additional water system improvements (i.e., one or more wells) will be needed to serve this project. The Town is actively exploring sites for additional wells. No decisions have been made and timing

remains uncertain for this future water supply expansion. With that said, the evidence indicates that additional water capacity is possible and is actively being explored by the Town.

15. As of the most recent Uncommitted Reserve Capacity report (6/19/2014) for the municipal wastewater treatment facility, there is not enough capacity to serve the entire project. On the residential side alone, the project proposes 219 dwelling units, which at 210 gallons/day per unit would require approximately 45,990 gallons/day of capacity. The actual amount would be adjusted downward somewhat by smaller multi-family units, and upward by the 56 units of congregate senior housing as well as pipeline infiltration rates determined by the State. As of the 6/19/2014 report, there are only 40,908 gallons/day of uncommitted residential reserve capacity remaining.
16. The Applicant estimated that the project will create a total 96 students at full build out. The Applicant indicated the full build out would likely be 10+ years from now, but indicated that a more rapid 5-year build out starting in 2016 would result in approximately 18 students per year until full build out. In a February 5, 2015 letter and follow up February 9 email, Bob Mason from the Chittenden South Supervisory Union indicated that the proposed development will not exceed the school capacity at either the Hinesburg Community School or CVU High School for the next 5 years. However, he recommends that this sort of review be repeated every two years as growth unfolds in the town. He indicated the following student capacities and current enrollments: HCS – 670 capacity, 506 current enrollment; CVU – 1410 capacity, 1290 current enrollment.

### **CONCLUSIONS**

1. The proposed development density represents very nearly a maximum residential build out scenario. Maximum residential build out in the Village NW district is consistent with the density provisions in sections 2.4 and 2.9 (Zoning). The number of residential dwelling units proposed is in keeping with these density provisions. The number of dwelling units is also in keeping with the intent in the Village Growth Area (section 3.1), the purpose statement for which calls for development densities to be high relative to the rest of Hinesburg, to be maximized to better realize the Town's overall "smart growth" strategy, and to serve as an incentive to promote the creation of affordable and moderately priced housing.
2. It appears there is a reasonable chance that sufficient water may become available for the proposed project. Conformance with the water supply standard in section 5.1.8 (Subdivision) is not assured, but has clear and demonstrable possibilities.
3. The Board sees no major flaws in the sketch plan with respect to the following planning standards outlined in section 5.1 of the Subdivision Regulations: 5.1.1, 5.1.2, 5.1.4, 5.1.7, 5.1.10. As a conceptual-level plan and review, these planning standards require additional consideration at later steps in any subdivision review (e.g., preliminary and final plat review) as projects evolve and more detailed plans are created.
4. Unlike the water supply capacity issue, the wastewater treatment capacity issue is more problematic. The Town is not actively pursuing a wastewater treatment capacity increase. More importantly, the Town's ability to get a capacity increase permitted is extremely uncertain given ongoing negotiations between the State of Vermont and the US Environmental Protection Agency on a cleanup plan for Lake Champlain. It's entirely possible that additional municipal wastewater capacity will not be possible due to State and/or Federal regulations. As such, conformance with the wastewater treatment standard in section 5.1.9 is not assured, and it is unclear that there are

any possibilities on this front. Without this critical infrastructure, the conceptual plan for this project would likely have to be substantially redesigned. Per section 3.1 (Subdivision), the purpose of sketch plan review is to provide DRB feedback to conceptual plans before the subdivider invests substantial effort and resources to design the project (e.g., engineering, road design, building elevations, traffic studies, etc.). Per section 3.1.6 (Subdivision), the DRB must determine whether or not the sketch plan conforms to or would be in conflict with the bylaws. Given current municipal wastewater capacity, there is a clear and potentially unresolvable conflict with section 5.1.9. Phasing is not a solution to this issue because inadequate wastewater treatment capacity may preclude portions of the project, and make the overall sketch plan impossible to execute.

5. The project continues to be dominated by residential uses, with little space made available to light manufacturing and other non-residential uses that require space and separation from dwellings for loading areas, storage, mechanical equipment, trucks and related vehicles, etc. As noted in section 3.1, the mix of uses in this zoning district is “particularly important” for reasons beyond simply residential use. Employment, services, and events are all mentioned as desired elements. The bulk of the non-residential space shown on the plan is designed for low impact commercial uses (e.g., office space, retail, restaurant, service establishments) that can easily co-exist with residential uses in close proximity or in the same building. The Zoning requires a more vibrant mix of uses including areas for enterprise, employment, and light manufacturing. Buildings I & K are designated for these types of uses. However, the lot on which Building K is located is constrained by adjacent, dense residential use. More area for these types of space intensive commercial and light manufacturing uses is needed in the plan.
6. The following items are not grounds for this sketch plan denial, but represent issues that warrant further attention before compliance with planning standards and bylaws can be determined, should the Applicant choose to submit a new application:
  - a. The placement of more commercial uses on the interior north/south “Main Street” addresses one of the central problems with the sketch plan that was previously denied. The location and distribution of the non-residential uses has been improved. Some of the proposed versus designated/dedicated commercial spaces are still problematic with regard to conformance with the mixed use purpose statements in sections 3.1 and 3.6. In particular, Building E should have designated/dedicated non-residential space given its size and central position in the project.
  - b. The proposed access plan will only be sufficient if the eastern connection to Route 116 at the Riggs Road intersection, and the southern connection to Kaileys Way and Farmall Drive are assured as part of any phased build out. These need to be principal points of access to the development.
  - c. Subdivision planning standard 5.1.3 (cultural features protection). The western streetscape comprised of a relatively unbroken row of single family homes creates few opportunities for westerly views. Section 3.1 (Zoning) anticipates the loss or shifting of some scenic views as this area develops; however, it also anticipates that new view opportunities will be provided from the new public street network and other perspectives available to the public. This plan does a better job than the previous plan in addressing this from the Route 116 vantage point. The project’s east/west green space elements also help ameliorate this to some degree; however, lot arrangement and building envelope placement on the western edge of the project may require some adjustments.

- d. Subdivision planning standard 5.1.5 (compatibility with surroundings). Based on the configuration of lots, pattern of development, and site topography, the Board is concerned about the potential size, height, and massing of the two largest buildings (E & H). Both have the potential to dwarf the surrounding structures and streetscapes. Building E in particular, shows a side façade that is nearly as long as the proposed community park. These large buildings must be carefully sited and designed so as not to overwhelm the surrounding built environment. The compatibility of this project with its surroundings (section 5.1.5, Subdivision) depends on proper integration of these large buildings.
- e. Subdivision planning standard 5.1.6 (transportation). As discussed above, compliance with the transportation planning standard will depend on the project's ability to bring the northern, eastern, and southern access points to fruition – potentially in early phases of construction. Extension of roads to the east (Route 116) and to the south (Farmall Drive) is necessary to provide appropriate access and to ensure the project will not cause unreasonable highway congestion. Beyond access points, it should be noted that there is substantial existing traffic congestion along Route 116 during the morning and evening peak times. A comprehensive traffic study would be needed at a later step in any subdivision review (e.g., preliminary plat review) in order to fully judge compliance with this standard. Even without such a study, the Board concurs with the former Town Administrator's suggestion (February 3, 2014 letter) that construction of the project should be contingent on the State of Vermont completing planned improvements to the Route 116, Shelburne Falls Road intersection (currently scheduled for 2017 construction).
- f. Subdivision planning standard 5.1.11 (municipal services). The project will have substantial impacts on the Town's municipal services. Beyond water and wastewater capacity (discussed above), the project will likely require additional investments in highway equipment, sidewalk maintenance, and fire protection equipment. School capacity at the Hinesburg Community School and CVU High School was discussed at length, and CSSU feedback indicates likely capacity for the new student projections, with the caveat that this should be re-evaluated every two years.
- g. Subdivision planning standard 5.1.12 (energy conservation). The proposed lot layout does not provide maximum solar gain per this planning standard. Although this subdivision planning standard is advisory, section 3.6 of the Zoning Regulations clearly requires that projects in the Village NW district be "designed, sited, and constructed to take advantage of passive and/or active solar energy resources..." As such, the project will need to implement the proposed solar array or a suitable green home certification – preferably both.

### **ORDER**

Based on the Findings of Fact and Conclusions set forth above, the Hinesburg DRB denies the proposed subdivision sketch plan.

---

Development Review Board

March 31, 2015  
Date

**Hinesburg DRB - Notice of Decision**  
**Haystack Crossing LLC, Black Rock Construction Subdivision Sketch Plan Denial - 2015**

---

Board Members participating in this decision: Zoe Wainer, Dennis Place, Sarah Murphy, Ted Bloomhardt, Greg Waples, Dick Jordan, Andrea Bayer.

Vote on decision: 6-1; Dick Jordan voted no

Vote taken at a special deliberation on March 31, 2015; Andrea Bayer indicated her vote in advance of that deliberation after reviewing the draft decision language.

***30-day Appeal Period:***

An “interested person”, who has participated in this proceeding, may appeal this decision to the Vermont Environmental Court 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 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 Applicant 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 878-5676 (111 West St, Essex Jct., VT 05452) for more information.