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## MEMORANDUM

**TO:** Selectboard & Town Administrator  
**FROM:** Alex Weinhausen, Director of Planning & Zoning  
**DATE:** December 11, 2013  
**RE:** Hinesburg Center Phase One Issues

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What follows is a copy of the Front Porch Forum message I posted on 12/10/13, followed by some additional details on the ongoing issues with the Hinesburg Center Phase One development. Hopefully this will help you understand what has happened in advance of your discussion at the 12/16/13 Selectboard meeting. I will be at that meeting to answer questions.

### **Front Porch Forum Message**

The Hinesburg Center Phase One construction controversy has generated a Burlington Free Press article (12/3/13) and several recent FPF posts. Here are some of the facts to help shed light on what transpired and what is happening now. The landowner and developer is Hinesburg Center LLC. First approved in 2010 (with revisions since), the Hinesburg Center Phase One project currently includes Kinney Drugs, The Bristol Bakery, 15 apartments (in five buildings), and first floor commercial space with a tenant pending. Responsibility for what has been built rests squarely with this developer. The Town of Hinesburg does not have building inspectors or engineers on staff. Our Zoning Administrator (ZA, Peter Erb) does review building permit applications and does site inspections after construction, but we also rely on submissions and certifications from licensed engineers, architects, surveyors, and other professionals to be accurate. Please note that the Burlington Free Press article was wrong about the Town hiring Ruggiano Engineering to do inspections. Ruggiano Engineering works for the developer. In this case, the developer created two separate problems: 1) construction discrepancies from the approved plan; 2) violations of the Zoning Regulations and DRB approvals.

Discrepancies - Differences between what was built and what was approved came to light with the most recent construction of four buildings along Farmall Drive. Starting in September of this year and proceeding through the fall, our ZA advised the developer that there appeared to be multiple discrepancies. The ZA reminded the developer that pursuant to DRB approvals, a letter from a licensed engineer stating that the project was built per the plans must be submitted before the buildings could be occupied. The Development Review Board (DRB) became involved, and required the developer to provide a comprehensive list of discrepancies – large and small. The list includes several discrepancies. Although the issue of the building spacing was highlighted in the newspaper article, another important discrepancy is the reduction in the size of the pocket park behind the buildings – a key element of the original plan. Some of these discrepancies appear to be inadvertent and due to poor attention to detail, while others were conscious choices by the developer to deviate from the approved plans. The DRB reviewed the developer's request for after-the-fact revisions on 11/5 and 11/19. After deliberation, they concluded more information was needed, so this hearing will be reopened on 12/17 to allow for more testimony (from all parties) and discussion. It's difficult. The overall vision for the project is intact; however, several important details are not. Everyone is frustrated by the situation, and DRB members

have stated in open session that there must be both remedies and consequences. The developer stated that the intent of the changes was to improve the project, but he acknowledges that both he and his team made real mistakes. I have been discussing possible remedies with the developer, and I'm hopeful that the discussion at the 12/17 DRB meeting will help move the matter to a conclusion.

Violations – Beyond the discrepancies, the developer also moved people into several of the apartment units without the necessary certificates of occupancy (CO) from the ZA. This was a clear violation of both the Zoning Regulations and the DRB approvals for the project. The developer knew that COs were needed, and chose to occupy some of the units anyway. Our ZA issued several notices of violation, and through the Town Attorney, the Selectboard is pursuing these in Superior Court to impose substantial fines.

The Town is taking these issues very seriously. Beyond the court action, the Selectboard will discuss this issue at its 12/16 meeting. There are more details than I can convey in a FPF message, so feel free to attend or watch the 12/16 Selectboard meeting, or simply contact me directly if you would like more information. It is important to note that this situation is not the norm for development in Hinesburg. All development projects see minor revisions from planning to construction. For most projects, the development team works collaboratively with our ZA (and other Town staff) to identify issues and find resolution, often administratively, sometimes via further DRB review. Rarely has the Town had to go to court to ensure compliance with our Zoning Regulations or impose fines. Given the facts of this case, I'm quite confident that a higher level of scrutiny will be applied future projects proposed by this developer – both during the development review process and during the construction phase. We sometimes utilize independent professionals to review plans (at the applicant's expense), and we will likely need to do this more often. We sometimes also use independent professionals to inspect projects during construction (again, at the developer's expense), and we will certainly need to do this more regularly.

### **Additional Details**

1. Discrepancies – built versus approved. Here are some of the more significant ones:
  - a. The three center buildings were moved north (away from Farmall Drive).
  - b. Pocket park behind the buildings is significantly smaller (narrower than what was approved) because of the building location change mentioned above. Because of the high density development, this feature was deemed a critical component of the original plan.
  - c. Instead of three connecting walkways from Farmall Drive to the center buildings, seven were constructed – i.e., an increase in impervious surface and concrete along this streetscape.
  - d. The buildings on the corners (Bristol Bakery and new building on opposite corner) were both built farther into the interior of the site, and do not meet the approved, interior property line setbacks. Interestingly, the previous engineer on the project submitted a letter after the construction of the Bristol Bakery certifying that it was built per the plans. We now know this certification was erroneous.
  - e. The spacing between the three center buildings is 5' instead of approximately 9' as shown in the streetscape plans presented during the review. The approved site plan does show the buildings with the smaller spacing – see below for why there is a discrepancy between the two plans.
2. Building spacing changes without approval. The Applicant claims the DRB approved a site plan showing the reduced spacing. The DRB disagrees, citing a streetscape plan showing the original spacing. Why the dispute? During one of the reviews (5/15/2012 DRB decision), the Applicant submitted site plans showing the larger spacing. The DRB specifically asked for a Farmall Drive streetscape perspective as part of this review. This streetscape plan was created by the

Applicant's architect, and was based on the site plan engineering that existed at that time – i.e., with the larger building separation. At the end of this review, an issue came up with setbacks for the corner lot (Farmall Drive & Kaileys Way). To deal with that issue, the Applicant's engineer created a revised site plan. Unbeknownst to staff or the DRB, this revised site plan also reduced the separation between the center buildings in conflict with the streetscape plan/perspective. Neither the developer nor the engineer noted the change in the building spacing, and the DRB decision makes no mention of this change. This inconsistency between the architect's streetscape plan and the engineer's site plan was repeated when the Applicant submitted this same streetscape plan as part of the later site plan approval for the three center buildings (8/21/2012 DRB decision). In fact, this later decision actually relied on the erroneous streetscape plan when it stated in Conclusion #2 (underline added):

*The proposal involves three multi-family dwellings on the same lot. Multiple uses/structures on a single lot are allowed in the village growth area pursuant to section 2.5.5 (Zoning) with site plan approval, "...provided the provided the applicant demonstrates there is sufficient space according to good planning standards." The Applicant has established that there is sufficient space, and furthermore, it is noted that the proposal is consistent with the earlier approval for the overall project. A neighbor did express concern about the massing of the proposed buildings; however, the streetscape plan presented by the Applicant demonstrates that the proposal will create a well balanced streetscape. The building massing hasn't changed from what was envisioned in the original review/approval, and although it represents a high density build out, this is consistent with the regulations and the vision outlined in the Town Plan.*

3. Development Oversight. As noted above, the DRB and the Planning & Zoning Department typically rely on certifications from professional project engineers, architects, and surveyors to ensure projects are built per the approved plans. When there are discrepancies, they are typically small and can be resolved without major issues. In this case, our compliance system both failed and succeeded. It failed when the Bristol Bakery was issued a certificate of occupancy based on an erroneous certification from the previous project engineer. It succeeded when the new project engineer could not provide such a certification for the four new buildings. Our ZA is not a building inspector nor an engineer nor a surveyor. Our ZA cannot be expected to ensure a complicated project is in compliance with every facet of the approved plans. That is why we ask for certifications from the licensed professionals working on the project. In this case, our ZA did in fact call several problems to the developer's attention during the construction phase. Once the issue was raised, our ZA spent many hours trying to understand and illuminate the many discrepancies to the developer and the developer's engineer. This was a lot of tax-payer funded work hours trying to untangle what was wrong and why. In the future, it would be much fairer and more efficient to require this developer to pay for an independent engineer to do periodic inspections before, during, and after construction.
4. Fill Stockpile for Phase Two. Beyond the issues mentioned above, the developer has been stockpiling fill next to Kaileys Way in anticipation of the Hinesburg Center Phase Two project that the DRB just began reviewing this fall. Originally, the developer indicated that this was simply spoils from the construction of Phase One; however, later the developer made it clear that fill was also being brought in from off-site. Phase Two (and the proposed fill associated with it) has not been approved by the DRB or Act 250 – not even the conceptual sketch plan. The ZA is reviewing the regulations to determine if a permit is needed.
5. Violations. The Selectboard is well aware of the developer's existing violations and pending court action to impose substantial fines for renting/occupying buildings prior to getting a CO.