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March 10, 2016

Mr. Warren Palmer d/b/a
P & M Investment Corporation
116 Skunk Hollow Road
Jericho, VT 05465

Re: **Simple Parcel Subdivision**
116 Skunk Hollow Rd, Essex, VT
(formerly known as 122 Skunk Hollow Road, Essex)
APPROVAL #PC:2016-5

Dear Mr. Palmer:

The Town of Essex Community Development Department received your application on February 8, 2016, for a Simple-Parcel Subdivision of an existing 308.5 acre parcel into a 49.2 acre parcel and a 259.3 acre parcel. The property is located in the Industrial (I1) zone and Conservation (C1) zone. The 49.2 acre parcel (Lot 1) will contain a new single-family home and be situated entirely in the C1 zone, and be known as 116 Skunk Hollow Road. The 259.3 acre parcel is not being proposed for development at this time. The new lot (Lot 2) will be known as ___ Skunk Hollow Road.

Pursuant to Article II, Section 2.5 of the *Town of Essex Official Subdivision Regulations*, staff determined that the application was complete and deemed a minor application. Staff prepared a draft decision for review and approval by the Planning Commission under its consent agenda on March 10, 2016, subject to the following findings of fact and conditions:

Pursuant to state statute, a “Notice of Hearing” was provided to the applicant for posting on the site. The abutting property owners, applicant and landowner were mailed a copy of this draft approval prior to the hearing.

PROPOSAL:

The applicant is proposing to subdivide a 308.5 acre parcel into two lots. Lot 1 is proposed as a 49.2 acre lot and Lot 2 is proposed as a 259.3 acre lot. No development is proposed on Lot 2.

44 **BACKGROUND:**

45
46 The application was originally submitted on January 10, 2016. Due to incomplete
47 information, the application was returned to the engineer and resubmitted to the Town on
48 February 8th and placed on the March 10th meeting date.

49
50 Until recently, the landowners formerly resided at 122 Skunk Hollow Road in Jericho,
51 which abuts the Essex lands. The applicant owns 60 feet of frontage on the Jericho side
52 which provides access to the 308.50 acre parcel located in Essex. Zoning permit #2015-
53 74 and permit #2015-124 were issued in 2015 to accommodate a garage and single-
54 family 4-bedroom house. These permits were issued prior to the submittal of a
55 subdivision application.

56
57 The 122 Jericho Road parcel shares the existing access to the Essex parcel which is
58 owned by the applicant. An easement and shared driveway maintenance agreement are in
59 place with the new owners of 122 Jericho Road. The Town of Jericho allows 3 lots to
60 utilize a driveway.

61
62 **FINDINGS OF FACT**

- 63
64 1. Pursuant to Article II, Section 2.5(A)(2), a proposed simple parceling must satisfy
65 the following:

- 66
67 (a) The applicant must demonstrate that there is adequate area for
68 primary and replacement septic areas on both lots, or that both lots
69 are served by the municipal sewer system or other approved off-site
70 system.

71 *The applicant has received approval for a State Water & Wastewater*
72 *Permit for Lot 1. A portion of Lot 2 is located in the town's sewer*
73 *core. The applicant's engineer said, "Based on our soil testing and a*
74 *review of the soil mapping for the remainder of the property (the*
75 *SCS Soil Map shows approximately 60 acres of Adams-Windsor*
76 *sands and 25 acres of Duane & Deerfield soils), we are confident*
77 *that suitable soils for septic can be found on the 259.3 acre parcel."*

- 78 (b) Both lots created must meet all applicable minimum requirements of
79 the Town Zoning Regulations.

80 *This is a pre-existing, non-conforming lot due to the lack of*
81 *frontage. See Finding 5 for further details.*

- 82 (c) If the parcel to be divided contains any feature identified on the
83 Significant Features Reference Map, Staff shall review and accept
84 plans to mitigate the impact of the proposed parceling on said
85 features (e.g. conservation easements, specified building envelopes,
86 preservation of an open field, etc.). Staff may consult with the
87 Conservation Committee regarding such a proposed parceling.

The parcel is shown as contiguous habitat on the Significant features Reference Map. A building envelope, continued forest management and no clear-cutting should be required.

- (d) If the parcel to be divided contains any non-motorized, multi-use trails/paths identified in the Town Plan, applicant shall provide easement(s) at least fifteen (15) feet in width.

There are no trails/paths identified on the Town Plan maps.

2. With the proposed conditions, the applicant has demonstrated compliance with the simple parceling review standards contained in Article II, Section 2.5. of the *Town of Essex Official Subdivision Regulations*.

3. Pursuant to Article II, Section 5.1 (D)(1)(c) of the *Town of Essex Official Subdivision Regulations*, the Planning Commission may act on proposed decisions for Simple Parceling, Boundary Adjustment, Minor Subdivision Amendments and other procedural matters, as a consent agenda item.

4. The applicant submitted the following plans:

- Plat Plan entitled, "Simple Parceling Of The P & M Investment Corporation Property Essex & Jericho Vermont" dated October 16, 2015, as drawn by G.E. Bedard, Inc., Hinesburg, VT;
- Sheet 1: P&M Investment Co. Skunk Hollow Road Jericho and Essex, VT Orthophoto Plan", dated 6/28/2015;
- Sheet 2: P&M Investment Co. Skunk Hollow Road Jericho and Essex, VT 20 Scale Plan", dated 6/28/2015; and
- Sheet 3: P&M Investment Co. Skunk Hollow Road Jericho and Essex, VT Septic Details", dated 6/28/2015.

Sheets 1, 2 & 3, as drawn by O'Leary-Burke Civil Associates, PLC.

The Plat should be corrected to show a building envelope on Lot 1 to protect the significant feature requirement. The building envelope should include the setback requirements, the house, detached garage, septic system and any additional area to accommodate a shed or other accessory uses on the lot. The plat should note that the remaining lands on Lot 1 contain significant features and that 'no-clearing' is allowed outside the building envelope, except for the continued forest management the landowner has implemented over the years, without approval from the Planning Commission.

Lot 2 should contain a note stating that until Planning Commission approval is obtained for the development of Lot 2, the ROW into Lot 2 should not be constructed.

132 The existing note on the plat plan "Waiver of development rights without further
133 Planning Commission approval" is ambiguous and should be changed to read, *No*
134 *additional development of Lot 1 or development on Lot 2 shall occur without*
135 *approval from the Town of Essex Planning Commission. The applicant shall*
136 *obtain approval from the Town of Jericho should the Jericho access be utilized*
137 *for additional development."*
138

- 139 5. The proposed lots do not meet the 200' frontage requirements of the Zoning
140 Regulations relating to the C1 & I1 Zoning Districts.
141

142 However, Section 3.8 of the Zoning Regulations reads,
143

144 *Nonconformities: Any lot, building, structure, or land or use thereof that*
145 *is legally in existence as of the effective date of these Regulations, which is*
146 *made nonconforming by reason of the adoption of these Regulations or*
147 *subsequent amendments, or as issued a permit or approval in error, may*
148 *be continued indefinitely, subject to the provisions of this section.*

149 *(A) Nonconforming Lots. In accordance with the Act [symbol 4412(2).],*
150 *any lot of record that is in individual, separate and nonaffiliated*
151 *ownership from surrounding properties, and is legally in existence as of*
152 *the effective date of these Regulations or subsequent amendments, but **not***
153 ***currently in conformance with these regulations, may be developed for***
154 ***the purposes allowed in the district in which it is located, in accordance***
155 *with the following: (emphasis added)*

156 *(1) ...*

157 *(2) Access and Frontage. Access to, and the **development** of,*
158 *nonconforming lots that do not meet access or district frontage*
159 *requirements may be allowed, subject to review by the Planning*
160 *Commission, under applicable provisions of Section 3.1.*
161

162 Article VI of the Subdivision Regulations defines '**Development**' as follows:

163 ***The division of a parcel into two (2) or more parcels, the construction,***
164 ***reconstruction, conversion, structural alteration, relocation, or***
165 ***enlargement of any building or other structure, or of any mining,***
166 ***excavation or landfill, and any change in the use of any building or other***
167 ***structure, or land, or extension of use of land. (emphasis added)***
168

169 Section 3.1 of the Zoning Regulations state:
170

171 *3.1 Access and Frontage Requirements: ...*

172 *(D) Nonconforming Lots. The Planning Commission may grant access to*
173 *pre-existing nonconforming lots recorded in the Town Land Records*
174 *which do not meet applicable access or frontage requirements, including*
175 *landlocked parcels (i.e., without any frontage on a public road or public*
176 *waters), or a pre-existing parcel that has less than the required frontage*

177 *or is currently served by a right-of-way less than twenty-five feet (25') in*
178 *width in accordance with the following:*

179
180 *(1) If subdivision or site plan approval is required, the approval of an*
181 *access under this section shall be coincidental to subdivision or site plan*
182 *review and approval, and the subdivision or site plan application shall*
183 *note that approval is also required for use of an easement or right-of-way*
184 *for access. Application requirements shall be the same as for subdivision*
185 *or site plan review, plus documentation of the date of creation of any*
186 *existing easements or right-of-way of less than twenty-five feet (25') in*
187 *width.*

188
189 The proposed 49.2 acre building lot has a deeded 60' wide access from
190 Skunk Hollow Road in Jericho. The applicant owns this 60' wide strip of
191 land. The 60' wide ROW is planned to continue across the 49.2 acre lot to
192 provide access to the remaining 259.3 acre parcel. The 60' ROW satisfies
193 the requirement of Section 3.1.

194
195 6. Prior to the submittal of this subdivision application, a zoning permit for a single-
196 family house and garage was issued on the C1 portion of the lot. State
197 Wastewater System and Potable Water Supply Permit #WW-4-4480 was issued
198 on July 23, 2015. The house, well and septic system will be located entirely on
199 Lot 1 in the C1 zone.

200
201 7. The existing 308.5 acre parcel is located in both the Conservation (C1) zone and
202 the Industrial (I1) zone. The creation of Lot 1 keeps the 49.2 acre lot entirely
203 within the C1 zone. The minimum lot area is 10-acres for the C1 zone. Lot 2
204 (259.3 acres) will continue to have both I1 and C1 zones. The minimum lot area
205 requirement for the I1 zone is 40,000 s.f., served by off-site water and sewer and
206 100,000 s.f. for on-site water and sewer. However, the industrial lands located on
207 Lot 2 are situated in the Town's sewer core. Any future industrial development of
208 Lot 2 should be required to hook onto town sewer.

209
210 8. The entire 308.5 parcel is shown as contiguous habitat on the Significant Features
211 Reference Map. The applicant should consult with the State Conservation Dept.
212 prior to development.

213
214 9. Section 2.2 of the Zoning Regulations reads,

215
216 *When a zoning district boundary established by these regulations divides a*
217 *lot, the dimensional requirements for the more restrictive zone may be*
218 *applied to the lot. Criteria such as site conditions, location of sewage*
219 *disposal and water systems, and house siting may be factored into the*
220 *decision by the Planning Commission.*

221

222 The applicant will be required to seek approval from the Planning Commission in
223 order to make a determination as to which zoning district should be applied to Lot
224 2 prior to the submittal of a development application. Prior to any further site
225 plan development of either Lots 1 or 2 be proposed in the future, and the Jericho
226 access is a part of the application, the applicant will need to first obtain approval
227 from the Town of Jericho prior to proceeding with approvals from the Town of
228 Essex.

229
230 10. Lot 2 will be subject to an access easement and maintenance agreement from Lot
231 1. These legal documents are required to be reviewed by the Town Attorney.

232
233 11. In an email dated 2/29/16, the Fire Chief stated:
234 *My only comment will be that this driveway into the property should meet or*
235 *exceed any requirements / recommendations of the Town of Jericho or the*
236 *Underhill Jericho Fire Department.*

237
238 12. In an email dated 1/13/16, Public Works stated:
239 *Public Works takes no exception to the simple parcel subdivision for the*
240 *property referenced above. All access to the parcel is from the Town of*
241 *Jericho. Water and sewer service will be onsite and will be reviewed by the*
242 *State of Vermont. No further comment.*

243
244 13. The Police Chief and Recreation Director have no issues with the proposal.

245 14. In an email dated 3/1/16, from Michelle Patrick, Jericho Zoning Administrator,
246 said:
247 *Jericho Regulations state a private driveway should provide access for no*
248 *more than three lots. However, if the remaining land for the simple parcel is*
249 *to be developed in the future, the Town of Jericho does not want access*
250 *provided from skunk hollow. At the very least a large development proposal*
251 *would warrant a traffic study.*

252
253 **CONDITIONS:**

- 254
255 1. The plat shall be revised to add the following changes:
- 256 • The title block shall show the address as 116 Skunk Hollow Road, Essex,
257 VT (formerly known as 122 Skunk Hollow Road, Jericho, VT);
 - 258 • Lot 2 is shown on the plat as “Zone O-1”, this should read “C1 Zone”;
 - 259 • A building envelope shall be added on Lot 1; to show the required
260 setbacks and shall include the house, detached garage, septic system and
261 additional area to accommodate a shed or other accessory uses;
 - 262 • The existing note on the plat, "Waiver of development rights without
263 further Planning Commission approval" shall be changed to read, " *No*
264 *further development of Lots 1 & 2 shall occur without approval from the*
265 *Town of Essex Planning Commission. The applicant shall obtain*

- 266 *approval from the Town of Jericho should the Jericho access be utilized*
267 *for additional development. ”*
- 268 • A note shall be included on the plat stating that Lots 1 & 2 contains
269 significant features and no clear cutting outside the building envelope on
270 Lot 1, or anywhere on Lot 2 shall occur without Planning Commission
271 approval. Continued forest management practices shall continue to occur
272 on Lots 1 & 2.
 - 273 • A note shall be included on the plat stating, "Until Planning Commission
274 approval is obtained for the development of Lot 2, the ROW into Lot 2
275 should not be constructed."
- 276
- 277 2. Pursuant to Section 4.11 of the Subdivision Regulations all lot markers, consisting of
278 metal pipes or rebar with a minimum outside diameter of three-fourths inch and at
279 least three feet (9.1 dm) long, shall be set at all un-monumented corners and a
280 minimum of four subdivision's perimeter points.
 - 281
 - 282 3. The house, garage and any other accessory structures shall be built within the building
283 envelope on Lot 1.
 - 284
 - 285 4. No clear cutting shall occur outside the building envelope on Lot 1 and no clear
286 cutting shall occur on Lot 2 without approval from the Planning Commission.
 - 287
 - 288 5. Continued forest management on Lots 1 & 2 shall continue until such time as a new
289 development application is submitted for review and approval by the Planning
290 Commission.
 - 291
 - 292 7. Any future industrial development application regarding Lot 2 shall be required to be
293 served by town sewer.
 - 294
 - 295 8. Pursuant to Section 2.11 of the Town Subdivision Regulations, all deeds and a shared
296 driveway maintenance agreement shall be prepared by the applicant's attorney and
297 reviewed and approved by the Town Attorney prior to recording in the Land Records.
298 The applicant shall be responsible for the Town's legal fee.
 - 299
 - 300 7. A mylar shall be recorded in the Land Records no more than 180-days from the date
301 of this written approval, otherwise the subdivision is void.
 - 302
 - 303 8. A DXF file shall be submitted to the E911 coordinator.
 - 304
 - 305 9. Any further subdivision of a lot created by the approved Simple Parceling within a
306 period of ten years of the date of filing the parceling drawing shall require subdivision
307 approval in accordance with the Subdivision Regulations.
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10. By acceptance of the conditions of this approval without appeal, the applicant confirms and agrees for themselves and all assigns and successors in interest that the conditions of this approval shall run with the land and the land uses herein permitted, and will be binding upon and enforceable against the applicants and all assigns and successors in interest.

It is the conclusion of the Essex Planning Commission that the project described in the application referred to above, if completed and maintained in conformance with the foregoing findings of fact and conditions, will not cause a detriment to the health, safety and welfare of the inhabitants of the Town of Essex and will conform with the *Town of Essex Official Subdivision Regulations* adopted pursuant to 24 V.S.A Chapter 117.

This decision may be appealed to the Vermont Environmental Court pursuant to Section 7.4 of the *Town of Essex Official Zoning Regulations* and 24 V.S.A. § 4471. Any appeal must be filed by certified mail to the Environmental Court and by mailing a copy to the Essex Town Clerk within 30 days of the date of this approval

TOWN OF ESSEX PLANNING COMMISSION

Dustin R. Bruso, Chair

David P. Raphael, Vice-Chair

Johnathan Schumacher, Clerk

Tom Furland

Joshua Knox

Ned Daly

Dijana Kulasic

cc: Paul O'Leary, P.E.