ESSEX PLANNING COMMISSION
July 28, 2016

STAFF REPORT

Prepared by Greg Duggan
Town Planner

Final Subdivision

I. Applicant

K & S Properties
Ken & Scott Pidgeon
98 Engineers Drive
Williston, VT 05495

II. Proposal

The applicant has applied for Final Subdivision Approval for a simple parcel subdivision of a 75.8-acre parcel at 289 River Road, Tax Map 4, Tax Parcel 3, Tax Lot 5. The lot is in an Agricultural Residential (AR) zoning district and an Industrial (I1) zoning district.

Because the property underwent a simple parceling less than 10 years ago, the current proposal must go through minor subdivision review.

The proposed simple parceling would create a 12.3-acre lot (Parcel A) and a 63.5-acre lot (Parcel B). Parcel A would be entirely within the AR district. The majority of Parcel B would be in an I1 district, with some land remaining in the AR district.

The applicant described the simple parceling in a narrative dated June 3, 2016:

> *The proposed subdivision will create two parcels, one of which is to be sold to K&S Properties for future industrial development and the other to remain as lands of Linwood Bushey. 'New Parcel B' is adjacent to a ±25.0-acre parcel owned by the State of Vermont subdivided by Bushey in 2007 ….*
>
> *The 'New Parcel B' will be ±63.5-acres with the majority of the lot within Industrial Zone 1. A 200-foot wide strip to the southwest in the Agricultural/Residential Zone is included in order to meet frontage requirements on River Road. A large portion of the newly created lot had previously been used as a functioning sand pit. Future development of the proposed lot may include industrial buildings, construction yards and a photovoltaic power generation facility. These plans are in the stages of development and will be submitted to the Town of Essex at a future date. …*

The 'Retained Parcel A' will be ±12.3-acres entirely within the Agricultural/Residential Zone and contains Bushey's Homestead.

Abutting properties to the north, east, and west are in AR and I1 districts. Parcels south of River Road/VT Route 117 are in a floodplain (C2). Abutting properties include undeveloped lots and residential parcels in the AR and I1 districts, and agricultural land in the C2 district.

III. Background

The property had been used as a farm, and portions of the property were used as a gravel/sand pit beginning in the 1950s.

In November 1978 the Planning Commission approved a five-lot subdivision on the property. The subdivision created new lots between the remaining lands and the Town of Jericho border.

The Zoning Board of Adjustment approved a sand extraction permit for the site in November 1979.

In March 1990 the applicant used a simple parcel subdivision to create a 5.34-acre lot.

In May 1990 the Planning Commission approved a four-lot subdivision.

In September 1992 the Planning Commission approved a three-lot subdivision of a portion of the property south of River Road.

In May 1993 the Planning Commission approved a reclamation plan for the sand pit on the property.

In July 2007, the Planning Commission approved a Simple Parcel subdivision of the property at 289 River Road. The simple parcel created a 25-acre lot and a 75.6-acre lot. The large lot is currently proposed for another simple parceling.

In January 2016 the Planning Commission approved the Sketch Plan for a two-lot, minor subdivision at 289 River Road.

IV. Article II, Section 2.9 of the *Subdivision Regulations*: Final Subdivision Approval

The applicant has applied for Final Subdivision approval pursuant to the *Town of Essex Outside the Village of Essex Junction Official Subdivision Regulations* (Articles II, III, IV). Section 2.9 of the *Town of Essex Outside the Village of Essex Junction Official Subdivision Regulations*

requires final subdivision approval for all major and minor subdivisions. Because the property was simple parceled within the previous 10 years and the current proposal would create a third lot, the proposed subdivision is a minor subdivision. Per Section 2.9(A),

> *The purpose of Final Subdivision Review shall be to compare the plat for consistency with the approved Preliminary Plan or approved Sketch Plan, to ensure that all engineering, survey and other data are complete, and to ensure that the proposed subdivision is in compliance with all appropriate regulations and standards. Review by the Planning Commission shall include a public hearing in accordance with the provisions of Article V of these Regulations.*

(A) Plans

The applicant has submitted the following plan:

- Sheet 1, "Final Plat, Proposed Subdivision, Bushey Property, 289 River Road, Essex, Vermont," prepared by KREBS & LANSING Consulting Engineers, Inc. dated 5/31/16.

(B) Article IV: Subdivision Standards of the *Subdivision Regulations*

The Planning Commission must evaluate any proposed subdivision based on standards laid out in Article IV of the *Subdivision Regulations*. Standards include conformance to the *Town Plan* and *Town of Essex Outside the Village of Essex Junction Official Zoning Regulations*. Other applicable standards relate to public safety, natural features, streets, sidewalks, open space, availability of water and sewer, and stormwater management.

1. Section 4.1, Standards Applicable to All Subdivisions

a) Conformance with the *Town Plan.* Section 4.1(P) of the *Subdivision Regulations* requires all subdivisions to conform to the *Town Plan*. The project complies with the following goals and objectives of the 2016 *Town Plan*:

> ***Goal 2a:*** *The Essex tax base is increased and diversified by an economic development climate that is friendly to a large variety of businesses, including start-ups.*

b) Conformance to the *Zoning Regulations*, Table 2.3, Agricultural Residential District (AR), and 2.10, Industrial District (I1). Per Section 4.1(G) of the *Subdivision Regulations*, "All lots created by any proposed subdivision shall conform to the Town's Zoning Regulations." The property is located in an AR district and an I1 district. Table 2.3 of the *Zoning Regulations* describes the purpose of AR districts:

> *The purpose of this district is to protect lands with an economic capability for agriculture and which are now essentially undeveloped except for uses associated with agriculture or forestry. In this district, planned residential developments which do not remove the potential of the land for agricultural production such as open space, conservation and certain forms of outdoor recreation, are encouraged. Further road development and the extension of public water supply and sewage disposal systems are not planned for this district. Therefore only low density residential and recreation development which uses existing facilities, which can adequately dispose of its sewage, and is compatible with the district's purpose and guidelines should be allowed.*

Table 2.10 of the *Zoning Regulations* describes I1 districts:

> *This area provides for employment opportunities in manufacturing, warehousing, research and development and commercial uses which specifically serve the industries or their employees in areas serviced by good transportation facilities and public utilities. Other uses incompatible with industrial uses, such as residential uses, shall not be permitted for the health, safety and welfare of the community.*

Parcel A would be entirely within the AR district. The bulk of Parcel B would be in the I1 district, with smaller sections in the AR district. Section 2.2(E) of the *Zoning Regulations* speaks to lots that fall in more than one zoning district:

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

Staff recommends that Parcel B be subject the dimensional requirements of the I1 district.

i. Permitted Uses. Parcel A, in the AR district, would retain an existing single-family dwelling, which is a permitted use.

Parcel B would remain undeveloped, although the application indicated future plans could include industrial buildings, construction yards, and a solar energy facility. Specific proposals would need to go before the Planning Commission for Site Plan Review, with the exception of electric generating facilities, which are permitted through the state.

ii. District Dimensional Requirements. The lots created by the simple parceling would conform to Table 2.3(D) and Table 2.10(D), District Dimensional

Requirements, as noted below:

Dimensional Requirements - AR	Required	Proposed Parcel A
Minimum Lot Area	3 acres	12.3 acres
Minimum Lot Area per Dwelling Unit	3 acres	12.3 acres
Minimum Lot Frontage	200 ft.	Approx. 450 ft.
Minimum Front Setback (from ROW)	50 ft.	Approx. 45 ft.
Minimum Side Setback	20 ft.	Approx. 80 ft.
Minimum Rear Setback	25 ft.	Approx. 850 ft.
Minimum Buffer/Surface Waters	50 ft.	

The existing residence on Parcel A is within the front setback, but the applicant has not indicated any plans to increase the degree of nonconformity.

Dimensional Requirements – I1	Required	Proposed Parcel B
Minimum Lot Area – Nonresidential	60,000 sf	2,713,788 sf
Minimum Lot Frontage	200 ft.	261 ft.
Minimum Front Setback (from ROW)	50 ft.	
Minimum Side Setback	25 ft.	
Minimum Rear Setback	25 ft.	
Minimum Buffer/Residential Districts	50 ft.	
Minimum Buffer/Surface Waters	50 ft.	

The applicant did not provide a building envelope for either lot. Future development would need to adhere to setback and buffer requirements.

3. Section 4.3, Preservation of Natural Features

a) Natural Features. The *Subdivision Regulations* specify, "Outstanding natural features of the site, including groves of trees, watercourses and falls, historic sites, exceptional views, and similar irreplaceable assets, shall be preserved." The Planning Commission can require building envelopes that protect the above-mentioned assets, or assets identified in the *Town Plan*'s Significant Features map.

The land slopes upward and away from River Road, leveling off near the back half of the property.

Town Plan Map 19, the Significant Features map, shows Contiguous Habitat near the property. The scale of the map, however, makes the exact location of the habitat difficult to determine. The Significant Features map also indicates that River Road has Crossing Value.

The site has been cleared at the lower portion, near River Road, and the upper

portion. Wooded areas exist along the northern and eastern property boundaries. The middle of the lot contains a large section of woods that the Final Plat identifies as a deer wintering area, a designation confirmed by the Vermont Agency of Natural Resources' Natural Resource Atlas.

The property also contains three streams: one stream begins in the northwest corner of the site; another begins in the deer wintering area and runs south toward a neighboring property; and the third stream begins near the northeastern property boundary before flowing onto an abutting property and briefly crossing back onto proposed Parcel B.

The Planning Commission, at Sketch Plan Review, decided that resource protection would be considered with any future development during site plan review.

i. **Erosion and Stormwater Control.** Section 4.3(A)(2) of the *Subdivision Regulations* requires erosion and stormwater control plans when subdivision improvements on slopes or areas with fragile soil conditions. Section IV(B)9 of this Staff Report covers stormwater management and erosion control in more depth.

ii. **Wetlands.** Proposed Parcel B contains a Class II wetland on the northern portion of the property. The Final Plat shows a 50-foot buffer around the wetland.

b) **Floodplain.** Land identified as areas of special flood hazard is included in the Town's Floodplain Overlay (C2) District. Although the property does not lie within a C2 district, the Final Plan shows Special Flood Hazard Areas on Parcel A, along River Road. The existing home and outbuilding lie in a 500-year floodplain.

c) **Water Bodies and Adjacent Buffer Areas**. The *Subdivision Regulations* prohibit the piping, damming, or alteration of natural watercourses without Town and State approval. Any alterations to the streams on the property would require the applicant to obtain Town and State approval before making the changes.

4. Section 4.4, Blocks and Lots – Planning and Design Standards

The applicant has not proposed the creation of any blocks.

Both lots would conform to the minimum lot and yard requirements of the *Zoning Regulations*.

Both lots would have satisfactory access to a public street. Parcel A has an existing driveway. Parcel B has access and utility rights over the abutting parcel to the west, which is owned by the State of Vermont. In a project narrative dated June 3, 2016, the applicant's engineer wrote:

> *The existing 12-foot wide gravel drive will be used to access the New Parcel B and is considered adequate for use by construction vehicles. Calculated minimum site distance for the 45mph zone is 500-feet which is met on both the northwest and southeast directions from the existing access point off River Road.*

The Fire Chief, in an email dated June 8, 2016, wrote,

> *My only suggestion would be to clearly label any address down at the … (River Rd) entrance for purposes of emergency vehicles being able to locate this property quickly.*

The Final Plat contains a note that the easternmost portion of Parcel B, a narrow strip with 60 feet of frontage along River Road/VT Route 117, could serve as a possible second entrance and exit. A driveway or road on the eastern portion of Parcel B would cut through the deer wintering area. If the applicant or a future landowner ever proposes a curb cut on that portion of the road, staff recommends that applicant be required to submit comments and recommendations from a state wildlife biologist about the impact on the deer wintering area.

Lots need to be laid out to provide positive drainage away from all buildings, with individual lot drainage coordinated with a stormwater management plan for the subdivision. Parcel A sits downhill of Parcel B. Any development that occurs on Parcel B is likely to require a stormwater management system that treats water onsite.

5. Section 4.5, Streets

The proposed subdivision does not include any new streets, nor does it require changes to existing streets.

The Police Chief did not have any concerns about the project.

Public Works did not have any comments about access, roads, or traffic.

6. Section 4.6, Sidewalks – Planning and Construction Standards

The proposed subdivision does not include new sidewalks.

7. Section 4.7, Land for Public Open Space and Recreational Use

Town Plan Map 8, Proposed Bicycle Network, shows a second priority bike path along River Road. As required by Sketch Plan approval and requested by the Parks and Recreation Director, the Final Plat shows a 15-foot-wide, non-motorized, multi-use easement along River Road.

The Parks and Recreation Director noted in a June 30, 2016 email that any future residential development would be subject to recreation impact fees.

8. Section 4.8, Utility and Access Easements and Improvements

a) Easements for Utilities, Drainage and Access. Section 4.8(A)(3) of the *Subdivision Regulations* allows the Planning Commission to "require perpetual, unobstructed easements to facilitate non-motorized, multi-use facility user access to schools, public open space, streets or adjacent properties as part of a proposed contiguous access plan."

The property currently has a 60-foot-wide access and utility rights over State of Vermont Land just west of proposed Parcel B. The applicant has also proposed a 60-foot-wide access and utility easement that would cross Parcel B and allow Parcel A to use the access on State of Vermont property.

Vermont Electric Power Company, or VELCO, has a 100-foot-wide right of way through the property.

b) Utility improvements. Per Section 4.8(B) of the *Subdivision Regulations,* utilities must be installed underground unless "the Planning Commission, upon recommendation of the Town Engineer, determines that ledge, underground water or other conditions make underground installation economically infeasible."

In the project narrative dated June 3, 2016, the applicant's engineer wrote,

> *There are no new utilities proposed as part of this project. …*
>
> *If the future industrial use requires providing power to the site, we would propose an interconnection to the existing power lines, running along the southern boundary of the New Lot B.*

9. Section 4.9, Water Supply and Waste Water Systems

The I1 portion of the property lies within the Town's Sewer Core Area. Parcel A, which is in the AR district, would be outside the Sewer Core Area and unable to connect to municipal sewer.

In the project narrative, the applicant's engineer wrote,

> *Water and sewer services have not been designed. However, if needed, septic needs could be served by a connection to the existing municipal sewer. Please*

> *note the proposed lot is within the sewer core. Water would be provided through the use of a new drilled private well.*

Public Works, in a memorandum dated June 23, 2016, wrote,

> *As noted in the applicant's narrative, the existing 75.6-acre parcel is located in both Industrial 1 and Agricultural / Residential zoning districts. The boundary line between the two is the existing limit of the Town Sewer Core. The portion of the lot outside the Industrial 1 district is outside of the sewer core. The 17 E.U.'s assigned to the current parcel will remain with proposed Parcel B. Being Parcel A is outside the sewer core, no assigned sewer allocation will be assigned.*

10. Section 4.10, Stormwater Management and Erosion Control

The *Subdivision Regulations* require proposed subdivisions to "include a stormwater management and erosion control plan in accordance with the Town's Stormwater Management Ordinance."

The applicant did not submit a stormwater management or erosion control plan. In a project narrative dated June 3, 2016, the applicant's engineer wrote,

> *Because the New Parcel B is a large former sand pit, any stormwater runoff generated from project improvements would be easily infiltrated, outside of that generated from the existing access road connecting to River Road.*

A stormwater management and erosion control plan will be required for any site plan review.

11. Section 4.11, Monuments and Lot Markers

The *Subdivision Regulations* require concrete monuments, which must conform to the Town's Public Works Specifications, to be set at all points of curvature and tangency. Lot markers must also be set at all unmonumented corners and at least four perimeter points.

V. Planning Commission Comments

While reviewing the project on January 14, 2016, the Planning Commission discussed that this application is really a simple parceling and many of the issues raised in the Staff Report would be addressed with any further development of Parcel A or B. The Planning Commission agreed it would require a master plan, which would take into account items such as the deer wintering yard, traffic, and building envelopes, with any further development of either parcel.

The Planning Commission took testimony from an abutting neighbor expressing concern over the accuracy of the identified stream on the site plan. It was noted that the stream appears to be on the state owned property, which would come under review with any development of that parcel.

While reviewing the project on July 28, 2016, the Planning Commission determined …

VI. Proposed Conditions

1. All construction shall be in conformance with the plans listed in Section IV(A) of this Staff Report and as may be amended subject to other conditions and approvals.

2. All conditions from previous approvals shall remain in effect except as modified herein.

3. Prior to the issuance of a zoning permit, the applicant shall submit any and all deeds and legal documents resulting from this approval for review by the Town Attorney. The applicant shall pay any legal fees associated with the review.

4. Prior to the issuance of a zoning permit, the applicant shall clearly label any address in reflective numbering at the River Road/VT Route 117 entrance.

5. Prior to the issuance of a zoning permit, the applicant shall install monuments and lot markers to the specifications in Section 4.11 of the *Subdivision Regulations*.

6. If the applicant ever submits a curb cut application for the easternmost portion of Parcel B, the application shall include written comments and recommendations from a state wildlife biologist.

7. Any development resulting from this simple parcel minor subdivision shall require a Master Plan on Parcel A or B.

8. Prior to the issuance of a zoning permit, the applicant shall obtain all applicable state approvals and permits.

9. A mylar shall be recorded in the Land Records no more than 180 days from the date of the written approval, otherwise the subdivision is void. The mylar and three paper copies shall be submitted to the Community Development Department at least one week prior to the 180-day expiration.

10. By accepting the conditions of this approval without appeal, the applicant confirms and agrees for himself 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 applicant and all assigns and successors in interest.

VI. Attachments

- Letter, "Subdivision Final Plat Application, Proposed Subdivision of Bushey Property Located at 289 River Road in Essex," from Jesse Carswell, Krebs & Lansing Consulting Engineers, Inc., dated 6/3/16.
- Email, "Re: River Road 289," Charlie Cole, Essex Fire Chief, dated 6/8/16.
- Email, "11 Foster Rd and 289 River Road," Chief Bradley J. LaRose, Essex Police Department, dated 6/15/16.
- Memorandum, "289 River Road – Final Subdivision," from Dennis Lutz, P.E., Public Works Director, and; Aaron Martin, P.E., Utilities Director/Town Engineer, dated 6/23/16.
- Memorandum, "Bushey Property – 289 River Road," from Ally Vile, Parks and Recreation Director, dated 6/30/16.

cc: Ian A. Jewkes, Krebs & Lansing Consulting Engineers, Inc.
Jesse Carswell, Krebs & Lansing Consulting Engineers, Inc.
Linwood Bushey

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