

1 **ESSEX PLANNING COMMISSION**
2 **April 28, 2016**

3
4 **STAFF REPORT**

5 Prepared by Greg Duggan, Town Planner
6

7 **FINAL PLAN**
8 **MASTER PLAN**
9

10
11 **I. Applicant**
12

13 Allen Brook Development, Inc.
14 c/o Al Senecal
15 31 Commerce Ave.
16 South Burlington, VT 05403
17
18

19 **II. Proposal**
20

21 Pursuant to a judgment order, the applicant is seeking Final Plan approval for a four-lot, minor
22 subdivision of 401.41 acres at 31 Allen Martin Drive, Tax Map 72, Tax Parcel 8. The property is
23 located in the Resource Preservation District – Industrial (RPD-I) zoning district.
24

25 In the project narrative dated February 25, 2016, the applicant’s attorney wrote,
26

27 *Pursuant to the February 5, 2016 Settlement Agreement and proposed Judgment Order*
28 *between Allen Brook Development Incorporated (“Allen Brook”) and the Town of Essex*
29 *(the “Town”) relating to Allen Brook’s approval to conduct sand extraction on 27.5*
30 *acres of its land in the Saxon Hill Industrial Park, Allen Brook is required to convey*
31 *approximately 245 acres of its land to the Town for recreation and conservation*
32 *purposes.*
33

34 *The Settlement Agreement, which was negotiated between Allen Brook and the Town over*
35 *the course of many months, resulted in the approval of the boundaries of the lands that*
36 *would be conveyed to the Town and the lands that would retained by Allen Brook. These*
37 *boundaries are shown on the enclosed plat entitled: “Subdivision Plat, Allen Brook*
38 *Development, 31 Allen Martin Drive, Essex, Vermont,” prepared by Trudell Consulting*
39 *Engineers dated February 3, 2016 (the “Subdivision Plat”).*
40

41 *Under the Settlement Agreement, Allen Brook will be conveying Parcel C (35.37 Acres)*
42 *and Parcel D (195.05 Acres) as shown on the Subdivision Plat to the Town, and Allen*
43 *Brook will be retaining Parcel A (8.23 Acres) and Parcel B (162.76 Acres) as shown on*
44 *the Subdivision Plat, for development purposes. In order to complete the agreed-upon*
45 *land transfer described in the Settlement Agreement, Allen Brook will need subdivision*
46 *approval for the four-lot subdivision depicted on the Subdivision Plat.*
47

48 Parcel B of the proposed subdivision includes 27.5 acres where sand extraction has been

49 approved by the judgment order; another 27.5-acre temporary no-build area that will be off limits
50 to development while sand extraction takes place. Once the sand extraction is complete and the
51 land reclaimed, Allen Brook Development would convey by warranty deed the reclaimed land to
52 the Town and be able to develop the temporary no-build area.

53
54 Abutting properties north of the proposed subdivision are in the RPD-I district and an Industrial
55 (II) zoning district, and include industrial uses and undeveloped land. Properties to the east are
56 in Agricultural-Residential (AR), Conservation (C1), and Open Space (O1) zoning districts, and
57 include residences, recreational trails, and undeveloped land; the 90 acres in the O1 district are
58 owned by the Essex Junction School District and are included in the 60 percent
59 conservation/recreation land ratio for the RPD-I. Properties south of the proposed subdivision are
60 in an II district and are currently undeveloped but are going through a subdivision process to
61 create industrial lots. Properties west of Allen Martin Drive are in the RPD-I district and include
62 industrial uses; properties west of Sand Hill Road are in a Medium Density Residential (R2)
63 district and contain residences.

64
65

66 **III. Background**

67
68 The RPD-I district was created in December 1977 and covers approximately 750 acres east and
69 west of Allen Martin Drive. Within the RPD-I district, 60 percent of land is designated for
70 Conservation/Recreation use and 40 percent for Industrial use.

71
72 In 2011 the Planning Commission denied an application for a sand extraction operation on 54
73 acres of the property. The decision was appealed to the Environmental Division of Vermont
74 Superior Court. In November 2014, Allen Brook Development purchased much of the
75 undeveloped RPD-I land, as well as the rights to the sand extraction appeal. Allen Brook
76 Development approached the Town with an offer to settle the appeal. In early 2016, the
77 Selectboard authorized the Town Manager to sign the settlement agreement that would allow
78 Allen Brook Development to extract up to 615,000 cubic yards of sand from 27.5 acres; in
79 return, Allen Brook will convey approximately 245 acres of conservation/recreation land to the
80 Town. In February, a judge issued a judgment order granting Allen Brook Development approval
81 to conduct sand extraction on 27.5 acres. The matter was then remanded to the Town to process
82 the application to subdivide Allen Brook's property into four lots, which will allow the Town to
83 take ownership of the approximately 245 acres for conservation and recreation.

84
85 In March 2016, the Planning Commission approved the Sketch Plan for the proposed four-lot
86 subdivision at 31 Allen Martin Drive.

87
88

89 **IV. Article II, Section 2.9 of the *Subdivision Regulations*: Final Subdivision** 90 **Approval**

91
92 The applicant has applied for Final Subdivision review pursuant to a judgment order. Section 2.9

93 of the *Town of Essex Outside the Village of Essex Junction Official Subdivision Regulations*
94 requires final subdivision approval for all major and minor subdivisions. With fewer than six lots
95 and no need for a new street or the extension of public water or sewer systems, the proposed
96 project is considered a minor subdivision. Minor subdivisions must receive Sketch and Final
97 approval. The purpose of final subdivision review

98
99 *shall be to compare the plat for consistency with the approved Preliminary Plan or*
100 *approved Sketch Plan, to ensure that all engineering, survey and other data are*
101 *complete, and to ensure that the proposed subdivision is in compliance with all*
102 *appropriate regulations and standards. Review by the Planning Commission shall*
103 *include a public hearing in accordance with the provisions of Article V of these*
104 *Regulations.*

105
106 **(A) Plans:**

107
108 The Applicant has submitted the following plans:

- 109
110 • Sheet C1-02, “Subdivision Plat, Allen Brook Development, 31 Allen Martin Drive,
111 Essex, Vermont,” prepared by Trudell Consulting Engineers, dated 2/3/16.

112
113 **(B) Article IV: Subdivision Standards of the *Subdivision Regulations***

114
115 The Planning Commission must evaluate any proposed subdivision based on the standards
116 of Article IV of the *Subdivision Regulations*. Standards include conformance to the *Town*
117 *Plan* and *Town of Essex Outside the Village of Essex Junction Official Zoning Regulations*.
118 Other applicable standards relate to public safety, natural features, streets, sidewalks, open
119 space, availability of water and sewer, and stormwater management.

120
121 **1. Section 4.1, Standards Applicable to All Subdivisions**

- 122
123 a) **Conformance with the *Town Plan*.** Section 4.1(P) of the *Subdivision Regulations*
124 requires all subdivisions to conform to the *Town Plan*. The project complies with
125 the following goal of the 2016 *Town Plan*:

126
127 *Goal 1e: The Town’s natural resources, water quality and scenic views are*
128 *protected.*

- 129
130 b) **Conformance to the *Zoning Regulations*. Table 2.14, Resource Preservation-**
131 **Industrial District (RPD-I).** Section 4.1(G) of the *Subdivision Regulations*
132 requires all subdivisions to conform to the *Zoning Regulations*. The property is
133 located in the RPD-I district. Table 2.14(A) of the *Zoning Regulations* describes the
134 purpose of the RPD-I:

135
136 *The RPD-I District is established for land that is comprised of forests, bodies*
137 *of water, high elevations, scenic overlooks, or similar natural settings. The*

138 *RPD-I District acreage in combination with the 90-acre parcel zoned O1*
 139 *(presently owned by the Essex Junction School District) totals 751.7 acres.*
 140 *The objective of the RPD-I and the related O1 District parcel is to protect*
 141 *such natural attributes for public enjoyment, and to carry out development*
 142 *activities in harmony with the natural surroundings. Of the 751.7 acres in this*
 143 *district, 60 percent has been formally designated for recreation/conservation*
 144 *use (including all of the related O1 District acreage) and the remaining 40*
 145 *percent for permitted uses as set forth in (B) below that satisfy all other*
 146 *district requirements. Residential uses are not allowed in this district.*
 147

148 **i) District Dimensional Requirements.**
 149

Dimensional Requirement	Required	Proposed
Minimum Lot Area	40,000 sf	358,499 sf
Minimum Lot Frontage	200 ft.	0 ft.
Minimum Buffer/Residential Districts	200 ft.	200 ft.

150
 151 The lot boundaries were delineated per the judgment order. Parcels A, B, and D
 152 have adequate frontage. Parcel C, which will consist of open space owned by
 153 the Town, will have approximately 2,380 feet of frontage once Thompson Drive
 154 is extended. Until then, per the judgment order, access to and through Parcel C
 155 would exist via easements over existing trails and dirt roads.
 156

157 When a subdivision has special circumstances, Section 2.1 of the *Subdivision*
 158 *Regulations* allows the Planning Commission to make the minimum
 159 modifications to the Regulations necessary to afford relief without nullifying or
 160 adversely affected the intent and purpose of the Town Plan or the Zoning
 161 Regulations. At Sketch Review, staff recommended that the Planning
 162 Commission waive the frontage requirements for Parcel C because of special
 163 circumstances: the subdivision is a result of a judgment order from the
 164 Environmental Division of Vermont Superior Court, a road will eventually be
 165 constructed to give frontage to Parcel C, and access to Parcel C currently exists.
 166 In granting Sketch Approval, the Planning Commission determined that the
 167 waiver was warranted due to special circumstances.
 168

169 **ii) District Development Standards.** Use allocations for the RPD-I district
 170 specify that at least 60 percent of the district shall be retained for
 171 recreation/conservation use. The remaining 40 percent of the land can be
 172 developed with the permitted uses listed in Table 2.14(B) of the *Zoning*
 173 *Regulations*. The O1 land owned by the Essex Junction School District counts
 174 toward the 60 percent recreation/conservation land.
 175

176 The proposed subdivision would maintain the 60/40 ratio throughout the entire
 177 RPD-I. Land outside the property at 31 Allen Martin Drive would retain
 178 existing boundaries delineated on the *Official Zoning Map for the Town of*

179 *Essex*. Within the property at 31 Allen Martin Drive, the subdivision would
180 establish the boundaries of conservation/recreation land and developable land.

181
182 Table 2.14(D)(7) of the *Zoning Regulations* lays out buffer requirements for the
183 RPD-I, including a 100-foot buffer along Allen Martin Drive and 200-foot
184 buffers along residential areas. Parcel A would contain a 100-foot no-build
185 conservation area along Allen Martin Drive. The plat also shows a 200-foot-
186 wide no-build conservation area on the northeastern portion of Parcel B, where
187 it abuts an AR district. Other setback, buffer, lot coverage, and height
188 requirements would be applied during site plan reviews.

189
190 **2. Section 4.3, Preservation of Natural Features**

191
192 **a) Natural Features.** The *Subdivision Regulations* specify,

193
194 *Outstanding natural features of the site, including groves of trees, watercourses*
195 *and falls, historic sites, exceptional views, and similar irreplaceable assets,*
196 *shall be preserved. The Planning Commission may require building envelopes*
197 *to be specified for some or all buildings where it is necessary to carefully define*
198 *building locations and heights in order to protect the natural features listed in*
199 *this section or identified on the Significant Features Reference Map.*

200
201 The Significant Features map, Map 19 in the 2016 *Town Plan*, shows Contiguous
202 Habitat and deer yards on portions of the property. Much of the resources are in the
203 lots that would be conveyed to the Town for conservation and recreation.

204
205 The Vermont Agency of Natural Resources' Natural Resource Atlas does not show
206 any deer wintering areas on the property, but does show a habitat block that extends
207 over the forested portions of the property. The habitat block is ranked 5 out of 10,
208 with 10 being the highest ecological priority.

209
210 The Habitat Map shows an archaeological area on Parcel D.

211
212 **i. Natural contours.** Section 4.3(A)(1) of the *Subdivision Regulations* specifies that
213 subdivisions shall retain the natural contours of land and conserve natural cover
214 and soil as much as possible.

215
216 Parcels A, B, and C consist of mostly level terrain. Parcel D contains some level
217 land as well as ravines with steeper slopes. Once conveyed to the Town, Parcels C
218 and D would be preserved as conservation and recreation land.

219
220 **ii. Erosion and Stormwater Control.** Section 4.3(A)(2) of the *Subdivision*
221 *Regulations* requires erosion and stormwater control plans when subdivision
222 improvements occur on slopes or areas with fragile soil conditions.

223

224 No subdivision improvements are being proposed with this application. Section
225 IV(B)9 of this Staff Report provides more details about stormwater management
226 and erosion control.

227
228 **iii. Wetlands.** The property contains ponds that are included in the Vermont State
229 Wetland Inventory. The ponds are located on Parcels C and D, which would
230 remain undeveloped as conservation and recreation land.

231
232 **iv. Lot sizes.** The *Subdivision Regulations* encourage the smallest possible lot sizes
233 that can site the primary use, accessory buildings, on-lot water, on-lot sewer and
234 access driveways. Small lot sizes are intended to maximize the amount of open
235 space.

236
237 The RPD-I district has a minimum lot size of 40,000 square feet, or 0.92 acres.
238 Lots C and D will protect 35.37 acres and 195.05 acres of open space,
239 respectively. As covered later in Section V of this staff report, the proposed
240 subdivision would serve as a master plan showing that future development and
241 subdivisions may occur on Parcels A and B.

242
243 **v. Forested areas.** When a subdivision is proposed in a forested area, the
244 *Subdivision Regulations* require the developer to submit recommendations from a
245 professional forester regarding the location of subdivision improvements and the
246 removal of trees.

247
248 A forest management plan for the RPD-I already exists.

249
250 **b) Water Bodies and Adjacent Buffer Areas.** The property contains streams and four
251 ponds. Portions of two of the ponds, as well as a stretch of one stream, are located on
252 adjacent properties that are not part of the subdivision application. Most of the
253 streams and ponds are located on the land that would be preserved in Parcels C and
254 D.

255
256 The plat does show a small length of stream that runs across a narrow portion of
257 Parcel B. If the stream is at any time piped, dammed or altered, the applicant will
258 need to obtain Town approval, and should be required to submit comments from the
259 State Department of Environmental Conservation about whether state approval is also
260 required.

261 262 **3. Section 4.4, Blocks and Lots – Planning and Design Standards**

263
264 The proposed subdivision does not contain any blocks.

265
266 Section IV(B)1(b)(i) of this staff report describes the lots in relation to the dimensional
267 requirements of the *Zoning Regulations*.

268

269 **4. Section 4.5, Streets**
270

271 The applicant is not proposing the construction of any new roads with the subdivision,
272 although the narrow portion of Parcel B will serve as the location of a future public road.

273
274 **a) Fire Department.** The Fire Chief did not have any concerns with the proposed
275 subdivision.

276
277 **b) Police Department.** The Police Chief said the police department did not have any
278 concerns with the proposed subdivision.

279
280 **c) Public Works.** In a memorandum dated April 4, 2016, Public Works wrote,

281
282 *The Public Works office has reviewed the submittal for the Final*
283 *Submission at 31 Allen Martin Drive and takes no exception to subdivision*
284 *of the lot. However, the current access to the existing parcel is off of the*
285 *end of Thompson Drive. The current level of traffic to and from the site*
286 *causes a substantial amount of sediment to be tracked on to the paved*
287 *surface of Thompson Drive. The Applicant must establish, and maintain a*
288 *Stabilized Construction Entrance, (tracking pad), at the entrance to the*
289 *site. A detail has been provided outlining the requirements. It is the opinion*
290 *of Public Works that this requirement be made a condition of approval.*
291

292 **5. Section 4.6, Sidewalks – Planning and Construction Standards**
293

294 The applicant does not plan to build any roads or sidewalks with the proposed
295 subdivision.

296
297 **6. Section 4.7, Land for Public Open Space and Recreational Use**
298

299 The *Subdivision Regulations* allow the Town to accept land reserved for public
300 recreation purposes in lieu of all or part of recreation impact fees. Trails and
301 conservation greenways identified in the Town Plan must be accommodated within open
302 space and recreation areas.

303
304 Parcels C and D would be conveyed to the Town as public open space for conservation
305 and recreation. *Town Plan* maps indicate that the parcels have “extensive trails,”
306 including proposed horseback trails, cross country ski trails, footpaths, and bike trails.
307 Parcel B would also contain trail easements provided to the Town.

308
309 **7. Section 4.8, Utility and Access Easements and Improvements**
310

311 **a) Easements for Utilities, Drainage and Access.** The Planning Commission can
312 require perpetual, unobstructed easements to facilitate non-motorized, multi-use
313 facility user access to public open space or adjacent properties as part of a proposed

314 contiguous access plan. Non-motorized, multi-use access easements must be at least
315 15 feet wide. The applicant plans to provide 20-foot-wide trail easements to the
316 Town over portions of Parcel B.

317
318 A temporary parking area and easement at the end of Thompson Drive would allow
319 access to the 200-foot conservation buffer area in the northeast portion of Parcel B.
320 Other easements would ensure access to the Town-owned Parcels C and D.

321
322 A temporary, 20-foot-wide easement over Parcel C would allow the applicant to
323 access the northern and southern portions of Parcel B until Thompson Drive is
324 completed.

325
326 **b) Utility Improvements.** Public utility improvements shall be installed in accordance
327 with Public Works Specifications, and shall be installed underground unless Public
328 Works determines that doing so is infeasible.

329
330 **8. Section 4.9, Water Supply and Waste Water Systems**

331
332 The applicant has not proposed the extension of water or wastewater lines.
333

334 **9. Section 4.10, Stormwater Management and Erosion Control**

335
336 The *Subdivision Regulations* require all proposed subdivisions to include a stormwater
337 management and erosion control plan that adheres to the Town's Stormwater
338 Management Ordinance. The plan must address stormwater management and erosion
339 control during and after construction.

340
341 No construction is proposed as part of this subdivision, although in a memorandum
342 dated March 10, 2016 and submitted for Sketch Review, Public Works wrote,

343
344 *The applicant will be required to obtain a state general permit for construction*
345 *before any sand extraction occurs on Parcel B. The permit must be reviewed by*
346 *Public Works before final approval.*

347
348 *The applicant is required to take preventative action to prevent the tracking of*
349 *sediment from the construction site onto any Town roads or surrounding streams.*
350 *Failure to comply will result in a violation of Section 10.20.067 of the Town's*
351 *Stormwater Ordinance.*

352
353 **10. Section 4.11, Monuments and Lot Markers**

354
355 If the project obtains Final Plan approval, the applicant shall install concrete monuments
356 and lot markers to the standards specified in Section 4.11 of the *Subdivision*
357 *Regulations.*

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V. Article II, Section 2.7 of the *Subdivision Regulations*: Master Plan

Subdivision Regulations require a Master Plan “for any project which is intended to be developed in phases and for which approval of only one phase is currently requested, or for any project where development of only part of the parcel is proposed and the remaining land exceeds in area three times the minimum lot size in the district in which the subdivision is located.”

Per Section 2.7(B) of the *Subdivision Regulations*, a Master Plan serves the following purpose:

The purpose of the preparation and review of a Master Plan by the Planning Commission is to acquaint the Commission with the entire tract of land without requiring the presentation of extensive surveying, engineering, or design data, to identify significant features warranting future protection, and to facilitate anticipated future development in an orderly manner. Applicants are encouraged to explore different schemes by presenting alternative plans that represent thoughtful site planning and are in conformance with the Town Plan and Bylaws.

The proposed subdivision will serve as a master plan for the 401 acres currently owned by Allen Brook Development. Parcels A and B will be available for development of uses as allowed in the Zoning Regulations for the RPD-I district, and Parcels C and D will be reserved as conservation and recreation land owned by the Town of Essex.

VI. Planning Commission comments

While reviewing the project on March 24, 2016, the Planning Commission determined that due to special circumstances a waiver of road frontage to Lot C is warranted.

While reviewing the project on April 28, 2016, the Planning Commission determined ...

VII. Proposed Conditions

1. All conditions from previous approvals shall remain in effect, except as modified herein.
2. If the stream that runs through Parcel B is at any time piped, dammed or altered, the applicant shall obtain Town approval, and shall submit comments from the State Department of Environmental Conservation about whether state approval is also required. If state approval is required, the applicant shall obtain any applicable state permits.
3. No clearing shall occur on individual lots prior to the issuance of a zoning permit for those lots, except for activities permitted in a forest management plan approved by the Planning Commission.

Final Plan Review
31 Allen Martin Drive, 4-lot subdivision
April 28, 2016

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4. The applicant shall establish and maintain a Stabilized Construction Entrance (tracking pad) at the Thompson Drive entrance to the site.
5. Prior to the issuance of a zoning permit, the applicant shall install concrete monuments and lot markers to the standards specified in Section 4.11 of the *Subdivision Regulations*.
6. By acceptance of 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 would be binding upon and enforceable against the applicant and all assigns and successors in interest.

VIII. Attachments

- Narrative, “Saxon Hill Industrial Park—Four Lot Subdivision,” from Robert H. Rushford, Gravel & Shea PC, dated 2/25/16.
- Memorandum, “Final Subdivision Plan, 31 Allen Martin Drive,” from Dennis Lutz, P.E., and Public Works Director; and Aaron Martin, P.E., Town Engineer/Utilities Director, dated 4/4/16.
- Email, “RE: 31 Allen Martin Drive,” from Chief Bradley J. LaRose, Essex Police Department, dated 4/11/16.
- Email, “Re: 31 Allen Martin Drive,” from Charles J. Cole, Fire Chief, Essex Fire Chief, dated 4/11/16.

cc: Bob Rushford, Gravel & Shea PC
Jeremy Matosky, Trudell Consulting Engineers
Debra Bell, Trudell Consulting Engineers
Brian Bertsch