

1 **ESSEX PLANNING COMMISSION**
2 **November 10, 2016**

3
4 **STAFF REPORT**
5

6 Prepared by Greg Duggan, Town Planner
7

8 **FINAL PLAN**
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10
11 **I. Applicant**
12

13 John and Donna Kunkel
14 87 Sawmill Road
15 Essex Junction, Vermont 05452
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18 **II. Proposal**
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20 The applicants are seeking Final Subdivision approval for a two-lot subdivision of 136 acres at
21 87 Sawmill Road, Tax Map 16, Tax Parcel 15-1. As part of the subdivision proposal, the
22 applicants are requesting a waiver from road frontage requirements on one lot, which would be a
23 non-developable conservation lot. The property is located in a Conservation (C1) zoning district.
24

25 As described in the project narrative dated October 5, 2016,
26

27 *Lot #1 (would be) 28 acres, and (encompass) the existing Kunkel residence and*
28 *outbuildings. Lot #2 is proposed as a non-developable conservation lot of 107.7 acres.*
29 *The proposed boundaries of Lot #2 follow the same limits as the conservation easement*
30 *over this 108 acres held by the Vermont Land Trust. This area will perpetually be*
31 *conserved, with restrictions on the development of the lot. No residential structures are*
32 *allowed on this parcel.*
33

34 Abutting properties in Essex are in the C1 district and include residential uses and undeveloped
35 land. The property also abuts the Town of Westford to the north and the Town of Jericho to the
36 east.
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38
39 **III. Background**
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41 In 1994 the applicants deeded a parcel of land at 91 Sawmill Road to the Town. The land
42 enabled the Town to improve a cul-de-sac as a turnaround for school buses and municipal trucks.
43 Deeding the land to the Town also provided the applicant with enough frontage to create another
44 building lot. As a result, the applicants were able to create a simple-parcel subdivision under
45 *Section 18.2, Special Lot Requirements*, of the zoning regulations in effect at the time. This
46 provision is similar to today's *Section 3.1(C), Reduced Frontage Requirements*. The original lot
47 was known as 91 Sawmill Road and consisted of 163 acres. The subdivision created two lots: a
48 27-acre parcel at 91 Sawmill Road and a 136-acre parcel at 87 Sawmill Road now being

49 reviewed for further subdivision. The subdivision plat was recorded on October 6, 1994 at Map
50 Slide 296.

51
52 At Planning Commission meetings on April 28, 2016 and June 23, 2016 the applicants discussed
53 the situation with commissioners and provided rationale for the waiver request.

54
55 In August 2016 the Planning Commission approved the Sketch Plan for the proposed two-lot
56 subdivision.

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58

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

61
62 The applicant has applied for Final Subdivision approval pursuant to the *Town of Essex Outside*
63 *the Village of Essex Junction Official Subdivision Regulations* (Articles II, III, IV). Section 2.9 of
64 the *Town of Essex Outside the Village of Essex Junction Official Subdivision Regulations*
65 requires final subdivision approval for all major and minor subdivisions. The proposed
66 subdivision is a minor subdivision. Per Section 2.9(A),

67
68 *The purpose of Final Subdivision Review shall be to compare the plat for consistency*
69 *with the approved Preliminary Plan or approved Sketch Plan, to ensure that all*
70 *engineering, survey and other data are complete, and to ensure that the proposed*
71 *subdivision is in compliance with all appropriate regulations and standards. Review by*
72 *the Planning Commission shall include a public hearing in accordance with the*
73 *provisions of Article V of these Regulations.*

74

75 **(A) Plans:**

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77 The applicant has submitted the following plan:

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- 79
- 80 • Sheet number 1, “2-Lot Subdivision, Final Plan, Kunkel Property, 87 Sawmill Rd,
81 Essex, VT,” prepared by Lamoureux & Dickinson Consulting Engineers, Inc., dated
82 9/21/2016.
 - 83 • Sht. No. PL, “2 Lot Subdivision Plat, Lands of John R. & Donna M. Kunkel, 87 Sawmill
84 Road, Essex, VT,” prepared by Lamoureux & Dickinson Consulting Engineers, Inc.,
85 dated 9/19/16.

86

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

88

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

93
 94 **1. Section 4.1, Standards Applicable to All Subdivisions**
 95

- 96 a) **Conformance with the *Town Plan*.** Section 4.1(P) of the *Subdivision Regulations*
 97 requires all subdivisions to conform to the *Town Plan*. The project complies with
 98 the following goals and policies of the 2016 *Town Plan*:
 99

100 *Goal 8a: Important agricultural and forest lands are protected from development.*

101
 102 *Specific Natural Resource Policy 3(S).3: Development shall be designed to prevent*
 103 *the destruction of important natural resources, including wetlands, floodplains,*
 104 *unique geological features, primary agricultural soils, and slopes exceeding 15*
 105 *percent.*

- 106
 107 b) **Conformance to the *Zoning Regulations*. Table 2.18, Conservation District**
 108 **(C1).** Section 4.1(G) of the *Subdivision Regulations* requires all subdivisions to
 109 conform to the *Zoning Regulations*. Table 2.18 of the *Zoning Regulations* describes
 110 the purpose of C1 districts:
 111

112 *The purpose of the Conservation District is to protect the sensitive natural*
 113 *resources and steep slopes which make these areas inappropriate for*
 114 *intensive development. These areas are remote from municipal services and*
 115 *facilities and lack accessibility. Low density residential and related uses are*
 116 *permitted in this district only if applied to a land unit of ten acres or more.*
 117

- 118 i) **Permitted Uses.** The applicant is not requesting any new uses on the property.
 119

- 120 ii) **District Dimensional Requirements.**
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Dimensional Requirement	Standard	Proposed Lot 1	Proposed Lot 2
Minimum Lot Area	10 acres	28.04 acres	107.7 acres
Minimum Lot Area per Dwelling Unit	10 acres	28 acres	n/a
Minimum Lot Frontage	200 ft.	150 ft.	0 ft.
Minimum Front Setback (from ROW)	50 ft.	50 ft.	n/a
Minimum Side Setback	25 ft.	40 ft.	n/a
Minimum Rear Setback	25 ft.	630 ft.	n/a
Minimum Buffer/Surface Waters	50 ft.		
Maximum Height	40 ft.		

122
 123 Lot 1 fronts a cul-de-sac, and has already been approved to have 75 percent of
 124 the road frontage typically required for the C1 district, as permitted by Section
 125 3.1(C)(1) of the *Zoning Regulations*.
 126

127 Lot 2 would not have any frontage, and the applicants have requested a waiver

128 from the frontage requirements. Section 3.1 of the *Zoning Regulations* prohibits
129 the creation of new lots without required frontage. Section 2.1 of the
130 *Subdivision Regulations* specifies when the Planning Commission may grant
131 waivers:

132
133 *Where the Planning Commission finds that extraordinary and*
134 *unnecessary hardships may result from strict compliance with these*
135 *Regulations, or where there are special circumstances of a particular*
136 *subdivision, it may make the minimum modifications to the Regulations*
137 *necessary to afford relief without nullifying or adversely affecting the*
138 *intent and purpose of the Town Plan or the Zoning Regulations.*

139
140 (A) *Where the Planning Commission finds that, due to special*
141 *circumstances of a particular subdivision, the provision of certain*
142 *required improvements is not requisite in the interest of public*
143 *health, safety, and general welfare, or that connecting facilities are*
144 *not adjacent or in proximity to the proposed subdivision, it may*
145 *waive such requirements, subject to appropriate conditions.*

146
147 ...

148
149 (C) *In granting waivers, the Planning Commission shall require such*
150 *conditions as will, in its judgment, secure substantially the objectives*
151 *of the requirements so waived.*

152
153 The applicant originally requested a waiver from the frontage requirements as
154 part of the Sketch plan application submitted in July 2016. The applicant
155 reiterated the request in the narrative for the Final Subdivision Plan, dated
156 October 5, 2016:

157
158 *As discussed at the Sketch Plan hearing of the Planning Commission,*
159 *the applicants are requesting a waiver from the Zoning Regulations with*
160 *regards to new lots needing road frontage. Lot #1 will retain the existing*
161 *150' of road frontage along the perimeter of the cul-de-sac at the end of*
162 *Sawmill Road. Lot #2 is proposed to be accessed via a 25' right-of-way*
163 *in lieu of frontage. The right-of-way will allow for maintenance*
164 *personnel (such as foresters) to access the site for forest management*
165 *activities, or other agricultural or passive recreational purposes (maple*
166 *sugar production, hunting, hiking, etc).*

167
168 During Sketch Plan review, the Vermont Land Trust, which holds the
169 conservation easement on the property, confirmed that the 108-acre conserved
170 parcel cannot be developed with the exception of a primitive camp with no
171 utilities. Staff from the Vermont Land Trust monitor conserved parcels at least
172 once a year.

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In approving the Sketch Plan for the proposed subdivision, the Planning Commission referenced the “special circumstances” of the proposal and commented,

The application is a unique opportunity to further conserve land. The fact that the land cannot be developed and there is a right-of-way on the lot creates a special circumstance for the issuance of a waiver.

2. 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 may require building envelopes to be specified for some or all buildings where it is necessary to carefully define building locations and heights in order to protect the natural features listed in this section or identified on the Significant Features Reference Map.

Both proposed lots contain contiguous habitat and core habitat shown on the *Town Plan’s* Significant Features Map. The Vermont Agency of Natural Resources’ Natural Resource Atlas shows much of the property, including all of proposed Lot 2, as being in a habitat block that is scored 9 on a scale of 1 to 10, with 10 being the highest priority.

According to the conservation easement held by Vermont Land Trust, the site contains 108 acres of managed woodlands, 20 acres of Site Class I forest soils and 5 acres of Site Class II forest soils, at least one vernal pool, and black bear habitat.

As required by Sketch Plan approval, the Final Plat includes a note specifying that no further development or subdivision can occur on Lot 2, in accordance with the terms and conditions of the Grant of Development Rights and Conservation Restrictions in favor of the Vermont Land Trust.

b) Water Bodies and Adjacent Buffer Areas. Abbey Brook originates on the property. Although the proposed subdivision would not include any construction or alterations to the stream, the applicant will need to adhere to buffer requirements if structures are added or development occurs in the future.

3. Section 4.4, Blocks and Lots

The proposed subdivision does not contain any blocks.

Lots must meet the dimensional requirements of the *Zoning Regulations*, and must be of

218 sufficient size to provide an adequate building site and suitable areas for septic disposal
219 and water supply. Lots need to have satisfactory access to a public street, and must be
220 laid out to provide positive drainage away from all buildings. Individual lot drainage
221 needs to be coordinated with the stormwater management plan for the entire subdivision.
222

223 As noted in Section IV(B)(1)(b)(ii) of this staff report, Lot 2 would not have road
224 frontage, and the applicants have requested a waiver from that requirement of the *Zoning*
225 *Regulations*. Lot 2 would have access to a public road via a right-of-way over Lot 1.
226

227 **a) Fire Department.** In an email dated October 6, 2016, the Fire Chief said he had no
228 concerns about the proposed subdivision as long as Lot 2 cannot be developed.
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230 **b) Police Department.** The Police Chief did not have any concerns about the proposed
231 subdivision.
232

233 **c) Public Works.** In an email dated October 31, 2016, Public Works wrote,
234

235 *Public Works has no issues with the curb cut to these lots or the lack of*
236 *frontage for Lot #2 on the referenced project, since Lot #2 will be a*
237 *Conservation lot in perpetuity.*
238

239 **5. Section 4.7, Land for Public Open Space and Recreational Use**

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241 The *Subdivision Regulations* allow the Town to accept land reserved for public
242 recreation purposes in lieu of all or part of recreation impact fees. Trails and
243 conservation greenways identified in the *Town Plan* must be accommodated within open
244 space and recreation areas.
245

246 The applicant has not proposed any public open space.
247

248 The Parks and Recreation Director, in an email dated October 20, 2016, wrote,
249

250 *After reviewing the proposed 2-lot sub-division there are no concerns or issues.*
251 *Any future residential construction will be subject to Recreation impact fees;*
252 *otherwise, the conserved land does not impact the department.*
253

254 **6. Section 4.8, Utility and Access Easements and Improvements**

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256 The Planning Commission can require perpetual, unobstructed easements to facilitate
257 non-motorized, multi-use facility user access to public open space or adjacent properties
258 as part of a proposed contiguous access plan.
259

260 Lot 2 would be accessed via a right-of-way over Lot 1. Lot 1 would retain its access via
261 a driveway and access easement over the neighboring lot to the west, 91 Sawmill Road.
262

263 **7. Section 4.10, Stormwater Management and Erosion Control**
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265 The project does not require stormwater review.
266

267 **8. Section 4.11, Monuments and Lot Markers**
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269 If the project obtains Final Plan approval, the applicant shall install concrete monuments
270 and lot markers to the standards specified in Section 4.11 of the *Subdivision*
271 *Regulations*.
272
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274 **V. Planning Commission Comments**
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276 While reviewing the project on August 25, 2016, the Planning Commission reviewed the project
277 and recognized that the application is a unique opportunity to further conserve land. The fact that
278 the land cannot be developed and there is a right-of-way on the lot creates a special circumstance
279 for the issuance of a waiver.
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281 While reviewing the project on November 10, 2016, the Planning Commission commented ...
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284 **VI. Proposed Conditions**
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286 1. All conditions from previous approvals shall remain in effect except as modified herein.
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288 2. All construction shall be in conformance with the plans listed in Section IV(A) of this
289 Staff Report and as may be amended subject to other conditions and approvals.
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291 3. The applicant shall receive a waiver from the road frontage requirements of the *Zoning*
292 *Regulations* due to the special circumstances of the lot being conserved in perpetuity, and
293 whereas the provision of certain required improvements is not requisite in the interest of
294 public health, safety, and general welfare, subject to appropriate conditions.
295

296 4. Any future structures on either lot shall adhere to setback requirements for surface
297 waters.
298

299 5. The applicant shall submit any and all deeds and legal documents as a result of this
300 approval for review by the Town Attorney.
301

302 6. The applicant shall install concrete monuments and lot markers to the standards specified
303 in Section 4.11 of the *Subdivision Regulations*.
304

305 7. The applicant shall record a mylar in the Land Records no more than 180 days from the
306 date of the written Final approval, otherwise the subdivision is void. The mylar and three

307 paper copies shall be submitted to the Community Development Department at least one
308 week prior to the 180-day expiration.

- 309
- 310 8. The applicant shall obtain all applicable State approvals and permits.
- 311
- 312 9. By accepting the conditions of this approval without appeal, the applicant confirms and
313 agrees for himself and all assigns and successors in interest that the conditions of this
314 approval shall run with the land and the land uses herein permitted, and will be binding
315 upon and enforceable against the applicant and all assigns and successors in interest.
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318 **VII. Attachments**

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- 320 • Narrative, "Proposed 2-Lot Subdivision- Kunkel Property at 87 Sawmill Road, Final Plan
321 Application," from Doug Goulette, P.E., Lamoureux & Dickinson, dated 10/5/16.
- 322 • Email, "Re: 87 Sawmill Road," from Charlie Cole, Essex Fire Chief, dated 10/6/16.
- 323 • Email, "RE: 87 Sawmill Road," from Chief Bradley J. LaRose, Essex Police Department,
324 dated 10/7/16.
- 325 • Email, "87 Sawmill Road," from Ally Vile, CPRP, Director, Essex Parks and Recreation,
326 dated 10/20/16.
- 327 • Memorandum, "2 -Lot Subdivision Plan for Kunkel Property at 87 Sawmill Road," from
328 Dennis Lutz, P.E., Public Works Director, dated 10/31/16.
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331 cc: Doug Goulette, Lamoureux & Dickinson

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