

1 ESSEX PLANNING COMMISSION

2 August 12, 2021

3 **44 Brigham Hill Lane – Minor Subdivision (Sketch)**

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20 **Summary**

21 The applicant proposes a conventional 3-lot subdivision that meets most, but not all

22 applicable standards of the *Zoning & Subdivision Regulations*. The project also provides for

23 protection of interior forest habitat and wildlife connectivity through specific forest management

24 practices, though these should be adjusted to align with current recommendations by a

25 professional forester, and the applicant should consider clustering dwellings to avoid dividing

26 forestlands into separate parcels. Building and driveway locations must be adjusted to avoid

27 impacts to steep slopes and ensure conformance to the *Standard Specifications for Construction*.

28 The applicant must also must verify whether a local stormwater permit is required.

29 **Applicant**

30 Richard Jenny
 31 31 Brigham Hill Lane
 32 Essex Jct., VT 05452

33 **Proposal**

34 The applicant proposes a conventional subdivision of a 33.4-acre parcel at 44 Brigham Hill Lane

35 (Tax ID 2-017-003-000) into three new lots (10.1 acres, 10.2 acres, and 13.2 acres). Each new lot

36 would accommodate a new single-unit dwelling with individual driveways and on-site wells and

37 septic systems (though Lots 1 and 2 would share a mound system).

38 The parcel is located within the Conservation (C1) zoning district; neighboring uses are all large-
39 lot, single-unit residences as well as large expanses of forest and farmland. There is an equestrian
40 center located at 31 Brigham Hill Lane (which is exempt from municipal regulation under 24
41 V.S.A. §4413).

42 **Background**

43 The parcel in question was conveyed from Harold P. and Neva H. Desso to James L. and Phyllis
44 K. Monahan by warranty deed recorded in Book 69, Pages 86-87 of the Town of Essex Land
45 Records on August 27, 1964 (with a corrective deed recorded in Book 247, Pages 318-320 on
46 September 24, 1989). The Monahans already owned lands on the west side of Brigham Hill
47 Lane, which were assessed jointly with this parcel.

48 On September 24, 1989, James and Phyllis Monahan conveyed a 10.3-acre portion of said parcel
49 to Christopher D. Monahan by warranty deed recorded in Volume 247, Page 221 and depicted on
50 a survey recorded on slide 229. It does not appear that subdivision approval from the Town was
51 obtained to create this parcel; regardless, pursuant to 24 V.S.A. §4454 the statute of limitations
52 has passed to make any action, injunction, or enforcement related to any failure to obtain a
53 subdivision approval.

54 **I. Article II of the *Subdivision Regulations*: Subdivision Procedures**

55 The applicant has submitted the following plans:

- 56 • Sheet #1, “Conceptual Plan, Jenny Parcel, Brigham Hill Lane, Essex, VT,” prepared by
57 O’Leary-Burke Civil Associates, PLC, dated 06/23/2021, revised 07/06/2021;

58 **(A) SR Section 2.2: Classification**

59 The applicants have requested approval for a 3-lot subdivision, which falls under the
60 definition of “Minor Subdivision” according to the *Town of Essex Outside the Village of*
61 *Essex Junction Official Subdivision Regulations* (SR). Minor subdivisions must receive
62 sketch and final approval.

63 **(B) SR Section 2.6: Sketch Plan Review**

64 As stated in SR Section 2.6(A), the purpose of sketch plan review is

65 *to explore the options for the overall subdivision concept and layout, including uses*
66 *and open spaces, in relation to the objectives of the Town Plan, the characteristics of*
67 *the site and characteristics of the surrounding area, and to determine that the*
68 *proposed subdivision appears consistent with the requirements of these Regulations*
69 *and the Town’s Zoning Regulations.*

70 The applicant has submitted a complete application for sketch plan review under SR
71 Section 2.6(B) and a hearing was scheduled for August 12, 2021. Under SR Section
72 2.6(D), the Planning Commission must study the plan to ensure that it conforms to the
73 General Requirements in SR Article IV.

74 Upon sketch plan approval, the Planning Commission must also make a preliminary
75 residential phasing allocation review in accordance with SR Article III.
76 Because the project will not be developed in phases, and there is no remaining
77 developable land, a Master Plan is not required.

78 **II. Article IV of the Subdivision Regulations: Subdivision Standards**

79 The Planning Commission must evaluate any proposed subdivision according to the Subdivision
80 Standards in Article IV, and may require modification or phasing of the proposed subdivision in
81 light of findings relating to those standards.

82 **(A) SR Section 4.1: Standards Applicable to All Subdivisions**

83 Sketch plan applications are reviewed against the General Standards in Section 4.1. Not
84 all provisions of this section are reviewed here, as some are not relevant to this
85 development or are covered by other provisions of the *Zoning Regulations (ZR)* and/or
86 *Subdivision Regulations (SR)*.

87 **1. SR Standard 4.1(P): Conformance with the Essex Town Plan**

88 The proposal complies with the following goals and policies of the *Essex Town Plan*:

89 *Specific Policy 2(S).14: The provision of new housing in the community shall be*
90 *balanced with impacts on the environment and on public facilities and services.*

91 *Specific Policy 3(S).4: Critical wildlife habitat, including but not limited to deer*
92 *wintering areas, rare and/or endangered species habitat, local fisheries, and*
93 *identified travel corridors, shall be protected from in appropriate development and*
94 *land management activities.*

95 *Goal 6a: New development in floodplains, fluvial erosion hazard areas, and land*
96 *adjacent to streams, wetlands, and upland forests is avoided.*

97 Additional information and conditions may be needed to ensure the proposal
98 complies with the following policy:

99 *General Policy 8: To support large contiguous blocks and connectivity for wildlife,*
100 *agricultural and forest lands shall be protected from fragmentation by subdivisions.*

101 **2. SR Standard 4.1(G): Conformance with the Zoning Regulations**

102 The parcel is located in the Conservation (C1) district and must conform to the
103 dimensional requirements and development standards listed in Table 2.18 of the *Town*
104 *of Essex Outside the Village of Essex Junction Official Zoning Regulations (ZR)*, as
105 well as Article III, General Standards, and any applicable provisions of Article IV,
106 Specific Standards.

107

108 **(a) Table 2.18(A): Conservation (C1) District Standards**

109 **i. Purpose**

110 The project reflects the purpose of the C1 district in that it is low-density
 111 residential development that avoids impacts to sensitive natural resources and
 112 steep slopes (specifically by limiting forest clearing) as well as avoiding
 113 additional burdens on municipal services.

114 **ii. Permitted and Conditional Uses**

115 Single-unit dwellings are permitted in this district. No conditional uses are
 116 proposed.

117 **iii. District Dimensional Requirements**

118 The proposed project generally conforms to Table 2.18(D), Dimensional
 119 Requirements of the C1 district, as noted below:

Dimensional Requirement	Standard	Proposed		
		Lot 1	Lot 2	Lot 3
Minimum Lot Area	10 acres	10.1 acres	10.2 acres	13.2 acres
Minimum Lot Area per Dwelling Unit	10 acres	10.1 acres	10.2 acres	13.2 acres
Minimum Lot Frontage	200 ft.	479 ft.	282 ft.	250 ft.
Minimum Front Setback (from ROW)	50 ft.	90 ft.	166 ft.	236 ft.
Minimum Side Setback	25 ft.	148 ft.	102 ft.	25 ft.
Minimum Rear Setback	25 ft.	920 ft.	1,078 ft.	644 ft.
Maximum Height	40 ft.	Not provided	Not provided	Not provided

120 The setbacks noted above are calculated from the dwelling locations shown on
 121 the sketch plan; however, the plans state that the actual locations of dwellings
 122 may vary from what is depicted.

123 **iv. ZR Table 2.3(E): PUD Requirements**

124 The proposal is not for a Planned Unit Development.

125 **v. District Development Standards**

126 In the C1 zone, the Planning Commission may limit the height of structures to
 127 25 feet to avoid visual impacts. It is noted on the plans that proposed Lot 2 is
 128 set back approximately 150 feet to maintain views for the dwelling at 43
 129 Brigham Hill Lane. Since the dwellings are not located in the Scenic Resource
 130 Protection Overlay District, and in any case would be situated against the edge
 131 of a forest on a gradually downward sloping hill, no additional height
 132 restrictions are necessary to reduce visual impacts.

133

134 **3. SR Standards 4.1(B), 4.1(H), and 4.1(M): Natural Features**

135 The property contains several natural features that should be preserved or avoided
136 during development.

137 There are some small areas of steep slopes (mostly 15-20%, some greater than 20%),
138 including a ridge that runs along the overhead utility corridor. The proposed Lot 1
139 dwelling appears to be located on a portion of this ridge that exceeds 20% slope; this
140 and all other structures shall be relocated to areas of less than 20% slope.

141 Except for an acre or two of cleared land on the western portion of the site, the entire
142 parcel mapped as “contiguous habitat” in the Town Plan, which corresponds to a
143 “highest priority interior forest block” as mapped by BioFinder (maintained by the
144 Vermont Department of Fish and Wildlife). In addition, the Town Plan and BioFinder
145 note that this section of Brigham Hill Lane also has value for wildlife crossing from
146 one section of interior forest to another.

147 According to the Vermont Conservation Design (VCD) Report¹, interior forest blocks
148 not only maintain air and water quality and flood resilience, they also are crucial to
149 the survival of native and sometimes rare flora and fauna by providing food and
150 shelter. Forest blocks also allow for animals to move through varied landscapes to
151 fulfill their needs, including at wildlife road crossing locations, which is especially
152 important given the impacts of climate change and human development.

153 The goal for “highest priority” blocks is to avoid permanent fragmentation from
154 development (limited development on the margins may not have adverse effects) and
155 to maintain ecological functions through uneven-aged forest management. Note 2 of
156 the plans states, “The wooded portion of the lots to the east of the north-south power
157 line is contiguous habitat (Town Plan Map 19). Tree cutting in this area shall be
158 limited to dead, downed or snagged trees unless an amendment is obtained.” While
159 this would generally achieve the goal of avoiding fragmentation, some dead, downed
160 or snagged trees should be retained since they provide important habitat for some
161 species. Furthermore, depending on the current conditions, active forest management
162 and timbering could actually enhance wildlife habitat and need not be completely
163 prohibited.

164 To ensure continued ability for wildlife to cross the road, fences should be avoided
165 and vegetation should be maintained along the side of the road to the greatest extent
166 possible (though as noted by Public Works in Finding II(A)(6), the full right-of-way
167 width shall be cleared of vegetation). Clustering the dwellings closer together would
168 further reduce impacts.

¹ Sorenson, E. & Zaino, R. (2018). *Vermont Conservation Design*. Vermont Department of Fish and Wildlife. Retrieved 12 Feb., 2021 from [https://anr.vermont.gov/sites/anr/files/maps/biofinder/Vermont Conservation Design - Summary Report - February 2018.pdf](https://anr.vermont.gov/sites/anr/files/maps/biofinder/Vermont%20Conservation%20Design%20-%20Summary%20Report%20-%20February%202018.pdf)

169 Pursuant to SR Section 4.3(B)(6), it is recommended that the applicant consult with a
170 professional forester on forest management practices for the project.

171 **4. SR Standard 4.1(C): Flood Safety**

172 The property contains no flood hazard areas as mapped by the Federal Emergency
173 Management Agency (FEMA).

174 **5. SR Standard 4.1(N): Clustering of Lots**

175 All of the proposed dwellings are clustered in the western portion of the site, though
176 the lots divide the forested areas to the east. A planned unit development with
177 clustered housing and a shared open space area would allow for more coordinated
178 forest management.

179 As noted on the plans, the proposed lots meet the required depth-to-width ratio under
180 SR Section 4.4(B)(5).

181 **6. SR Standards 4.1(D), 4.1(F), and 4.1(I): Access and Street Planning Standards**

182 The proposed subdivision provides sufficient access to dwellings via individual
183 private driveways connected to a Class 3 minor gravel road (Brigham Hill Lane). As
184 the development numbers fewer than 50 dwelling units, a second permanent
185 connection meeting the standard for a public road is not required.

186 In a memorandum dated July 12, 2021, Public Works staff stated:

- 187 *a) The driveway edge must be at least six (6) feet from the adjacent property line. In*
188 *particular, the drive for Lot #2 is of concern as shown.*
- 189 *b) Driveways shall be constructed to meet the Town's construction standards as*
190 *shown on Detail 100.09 for Rural Driveways and Detail 100.10 for Driveway*
191 *(Type A) of the Town of Essex Standard Specifications for Construction, January*
192 *2017. The portion of all new driveways between the travel lane and the Right of*
193 *Way line must also slope away from Brigham Hill Lane between the travel lane*
194 *and the Right of Way line.*
- 195 *c) All trees and brush are to be removed in their entirety to include stumps between*
196 *the ROW/Property Line along the entire frontage of all three lots. Ditching and*
197 *culverts will not be necessary as the land slopes away from the road.*
- 198 *d) Minimum sight distances of 250 ft. to the left and 195 ft to the right must be*
199 *verified for all driveways on the final plan. Of particular concern are Lots #1 and*
200 *#3*
- 201 *e) A road improvement fee for additional gravel and other potential improvements*
202 *to Brigham Hill Lane is necessitated by the traffic increase due to the above*
203 *referenced development will be required. The gravel road impact fee for 1,011*
204 *linear feet of frontage is currently based on the following:*

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206 $(1,011 \text{ ft}) \times (0.25 \text{ ft}) \times (12') = 3,033 \text{ CF}$ (12 ft = half of road width)

207 $(3,033 \text{ CF}) \times (1 \text{ CY} / 27 \text{ CF}) = 112.33 \text{ CY}$

208 $(112.33 \text{ CY}) \times (\$35 / \text{CY}) = \$3,931.55$

209 In an e-mail dated July 12, 2021, the Fire Chief stated:

210 *The Fire Department would request that each driveway be marked with the street*
211 *address visible from the approaching side for emergency vehicles.*

212 **7. SR Standard 4.1(E) and 4.1(L): Pedestrian and Recreation Facilities**

213 As noted in the project narrative, Town Plan Map 5 includes the entirety of Brigham
214 Hill Lane as part of a proposed horseback trail network, but no other maps show
215 proposed non-motorized transportation facilities along Brigham Hill Lane. In an e-
216 mail dated August 3, 2021, the Parks & Recreation Director stated that because
217 Brigham Hill Lane is a low-traffic road that can accommodate horse travel, no
218 additional easements outside the public right-of-way are required to accommodate
219 this mode of transportation.

220 **8. SR Standard 4.1(L): Parking**

221 It appears that each driveway will be able to accommodate the required amount of
222 parking under ZR Section 3.9(B).

223 **9. SR Standard 4.1(R): Landscaping and Screening**

224 There are no specific landscaping objectives for the Conservation (C1) district
225 besides the preservation of forest cover, which is included as part of the proposal.

226 **10. SR Standard 4.1(K): Public Safety**

227 In an e-mail dated July 12, 2021, the Police Chief stated that there were no concerns
228 with this particular proposal.

229 **11. SR Standard 4.1(J): Utilities**

230 Though sketch plan applications need not include detailed engineering information,
231 the plan indicates that private well and septic systems will be used instead of public
232 water and sewer (Lots 2 and 3 will share a mound septic system). In a memorandum
233 dated July 12, 2021, Public Works staff stated:

234 *The proposed sewer will be constructed on site and will not be utilizing the*
235 *municipal sewer systems. The proposed water source is also on site and not*
236 *utilizing municipal water. The Applicant will be required to follow the on-site*
237 *rules for sewage disposal and water well installation as per the approval of the*
238 *State. Public Works will require the Applicant to submit, for their records, all*
239 *permitting applications and subsequent permitting approvals.*

240 Electric service to the new lots would be provided by overhead distribution lines
241 maintained by Vermont Electric Cooperative which run through the parcel; easements
242 for said lines should be included in the deeds for each new lot.

243 The project narrative states that less than one acre of impervious surfaces will be
244 created, negating the need for a state stormwater permit; however, depending on the
245 length of driveways and the size of the dwellings, it is possible that more than 0.5
246 acres of impervious surface would be created. If that is the case, the proposal must
247 obtain a Town stormwater permit under Section 10.20.072 of the Town Ordinances.
248 In any case, the narrative states that the project will require a state Construction
249 General Permit since more than 1 acre of ground would be disturbed.

250 In a memorandum dated July 12, 2021, Public Works staff stated:

- 251 a) *The applicant will be required to follow the Low-Risk Site Handbook for Erosion*
252 *Prevention and Sediment Control. The guide can be found on the Town's website.*
- 253 b) *The applicant shall contact the District Wetland Ecologist regarding any*
254 *potential impacts to wetlands caused by waterline and driveway installations.*
- 255 c) *A copy of the General Construction Permit must be submitted to Public Works*
256 *prior to commencement of construction.*

257 **12. SR Standard 4.1(S): Over-Sized Improvements and Future Expansion**

258 No further development is expected or even possible under current regulations, and
259 no additional public improvements are anticipated for this area; therefore, no over-
260 sized improvements or provisions for future expansion are required.

261 **13. SR Standard 4.1(O) and 4.1(T): Municipal Services and Impact Fees**

262 The new homes will be subject to recreation impact fees and gravel road impact fees.

263 **III. Article III of the Subdivision Regulations: Residential Phasing**

264 Any proposed development that contains dwelling units and requires Subdivision Approval is
265 subject to Article III, Residential Development Phasing. The goal of residential phasing is to
266 maintain an annual population growth rate set forth in the *2016 Town Plan* of between 184 and
267 226, aiming for the midpoint of the range at 205. Population growth is allocated to new
268 developments through Estimated Population Equivalents (EPEs), essentially equivalent to the
269 number of bedrooms in new dwelling units (5-bedroom units are counted as 4.5 EPEs).

270 Any single project outside the sewer core is allowed to add 5 dwelling units per calendar year.
271 The Planning Commission must act on a preliminary phasing request when a proposed
272 development obtains sketch plan approval. Final allotment is granted if the development secures
273 Final Plan approval.

274 The proposed project lies outside the sewer core area and would add a total of 2 dwelling units
275 with an unspecified number of bedrooms likely in year 2022; the applicant states that there is no
276 timetable for construction on the proposed Lot 2.

277 Currently, there are 41 EPEs available for allocation outside the sewer core in 2022 and beyond,
278 so it appears there will be sufficient allocation available for any number of bedrooms proposed
279 for all three dwelling units. For the purpose of assigning preliminary allocation, it is assumed
280 that each dwelling will contain 4 bedrooms, for a total of 12 EPEs. If all these were allocated for
281 2022, there would be 51 total EPEs remaining, 29 of which would be available outside the sewer
282 core. A summary of the running phasing tabulation is attached.

283 **IV. Additional Findings by the Planning Commission**

- 284 •

285 **Conditions of Approval**

- 286 1. All construction shall be in conformance with the plans listed above as may have been
287 amended by the Planning Commission and subject to other conditions and approvals.
- 288 2. All conditions from previous approvals shall continue to apply except as amended herein.
- 289 3. At the time of submission for Final Review, the plans shall be revised as follows:
 - 290 a) All proposed structures shall be relocated to areas with slopes less than 20%;
 - 291 b) Note 2 of the plans shall be eliminated or amended to read, "The wooded portion of the
292 lots to the east of the north-south power line is contiguous habitat (Town Plan Map 19).
293 Tree cutting in this area shall be consistent with the recommendations of a professional
294 forester;"
 - 295 c) Unless shared driveways are used, all driveways shall be located a minimum of 6 feet
296 from property lines and 30 feet from each other.
- 297 4. As part of the submission for Final Review, the applicant shall:
 - 298 a) Verify whether or not the project will create more than one-half acre of new impervious
299 surfaces;
 - 300 b) Verify minimum sight distances of 250 feet to the left and 195 feet to the right of each
301 driveway;
 - 302 c) Verify with the District Wetland Ecologist whether a permit is needed for any potential
303 impacts to wetlands caused by the proposed project.

- 304 5. An electronic copy of the plans as may have been revised shall be submitted to the E911
305 coordinator in .PDF file format. Another copy shall be submitted in geodatabase or shapefile
306 in Vermont State Plane Meters, NAD83 (NSRS or most current); alternatively, coordinated
307 CAD data – Vermont State Plane Coordinates, US Survey Feet, Grid Zone 4400, NAD 83
308 (2011) epoch 2010.0, NAVD 88 (geoid12b); alternatively, paper showing three (3) values of
309 State Plane Coordinates.
- 310 6. The applicant shall submit the mylar and three (3) paper copies to the Zoning Administrator
311 for review and Planning Commission signature at least two weeks prior to the 180-day
312 statutory recording deadline, otherwise the subdivision is void.
- 313 7. Prior to the filing of the mylar, all easements, deeds, and other legal documents shall be
314 submitted to the Community Development Department for review by the Town Attorney at
315 the expense of the applicant.
- 316 8. Prior to the recording of the mylar, the applicant shall install concrete monuments and lot
317 markers to the standards specified in Section 4.11 of the *Subdivision Regulations* and shall
318 submit a certified statement from the surveyor verifying the installation.
- 319 9. Upon recording of the mylar, the applicant shall submit to the E911 coordinator a shapefile
320 or PDF file of the plans containing all information specified in Section 2.10(H) and 2.10(I) of
321 the *Subdivision Regulations*.
- 322 10. The applicants shall be approved for a preliminary phasing schedule of 3 dwelling units with
323 12 EPEs in 2022.
- 324 11. Prior to the issuance of any zoning permit, the applicant shall obtain all applicable state
325 approvals and permits and shall submit copies to the Community Development Department.
- 326 12. Prior to the issuance of any zoning permit, the applicant shall pay a gravel road impact fee of
327 \$3,931.55.
- 328 13. Prior to the issuance of a zoning permit for each dwelling, the applicant shall pay any
329 recreation impact fees in place at the time of submittal.
- 330 14. All utility lines shall be installed underground.
- 331 15. All water, sewer, and storm water infrastructure shall be installed in accordance with the
332 specifications and details provided within the *Town of Essex Standard Specifications for*
333 *Construction* and American Water Works Association standards.
- 334 16. The applicant will be required to follow the Low-Risk Site Handbook for Erosion Prevention
335 and Sediment Control. The guide can be found on the Town's website.

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336 17. No occupancy of each structure shall occur until a certificate of occupancy inspection and
337 sign off is issued by the Zoning Administrator.

338 18. Prior to the issuance of a certificate of occupancy, all trees and brush are to be removed in
339 their entirety to include stumps within the Brigham Hill Lane right-of-way along the frontage
340 of all three lots.

341 19. By acceptance of the conditions of this approval without appeal, the applicants confirm and
342 agree for themselves and all assigns and successors in interest that the conditions of this
343 approval shall run with the land and the land uses herein permitted, and would be binding
344 upon and enforceable against the applicants and all assigns and successors in interest.

345 **List of Attachments**

- 346 • Residential Phasing Record, dated 08/12/2021.

347
348 cc: David Burke, O'Leary-Burke Civil Associates, PLC

349
350 G:\PC\REPORTS\Brigham Hill Lane 44 Sketch 20210812.docx