

1 TOWN OF ESSEX
2 PLANNING COMMISSION
3 DRAFT MINUTES
4 OCTOBER 28, 2021
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6 **Note: This meeting was in-person and virtual on Teams.**
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8 **PLANNING COMMISSION (PC) PRESENT:**

9 **IN PERSON:** Dustin Brusco, Chair; Ned Daly; and Tom Furland.

10 **VIRTUAL:** Josh Knox, Vice-Chair; John Mangan, Clerk; David Raphael and Jonathan
11 Schumacher.

12
13 **OTHERS PRESENT:**

14 **IN PERSON:** Owiso Makuku, Community Development Director; Sharon Kelley, Zoning
15 Administrator; Darren Schibler, Planner; John Stuart, P.E.; and Betsy Dunn;

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17 **VIRTUAL:** Blair Haxel; Meredith Mann; Kemener Whalen; John Egan; Brian Armstrong; Ken
18 Signorello; and Patty (unidentified).

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20 Chairman Brusco called the meeting to order at 6:30 p.m.; called out the Commissioners who were
21 in attendance virtually and in person; and noted the changes to the Agenda being additional topics
22 under to include discussion on PC Operating Procedures, Cannabis and a Bylaw modernization
23 grant resolution.
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25 **AGENDA ITEM 1: PUBLIC COMMENTS:**
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27 Commissioner Raphael noted for the record that with the landowner's permission, he walked the
28 site visit prior to the schedule date as he was scheduled to be out of town.
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30 **AGENDA ITEM 2: CONTINUED SKETCH PLAN- PUBLIC HEARING FROM**
31 **6/25/2020 & 10/14/2021- RENEE & BRAD LAFOUNTAIN: PROPOSAL FOR A 3 LOT**
32 **PLANNED UNIT DEVELOPMENT-RESIDENTIAL (PUD-R) LOCATED AT 109**
33 **BRIGHAM HILL ROAD IN THE AGRICULTURAL RESIDENTIAL (AR) ZONE.**
34 **TAX MAP 14, PARCEL 15-602.**
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36 Chairman Brusco noted the Public Hearing remained open, provided the public oath, and again
37 to the late arrivers.
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39 Darren Schibler, Planner, noted the site visit was completed. The PC saw where the houses
40 would be situated on the lot, relative to where they stand and to other buildings. He noted the
41 fundamental issues the PC should address relate to the wetland impact; potential for scenic
42 impact; clustering and performance to the Planned Unit Development (PUD) standards. He
43 believed the issue for this meeting was for the PC to address the following questions, discuss
44 and determine is if the competing elements, namely clustering, wetland encroachment, and
45 scenic vistas justify a waiver. Schibler stated the proposal does not meet the Planned Unit
46 Development (PUD) standards.
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48 John Stuart, P.E., stating that it was well discussed at the last meeting, and re-iterated the
49 following comments:

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- The plan represents two lots on 9+ acres of land;
- Both house sites would preserve the scenic beauty;
- The house proposed closest to the road and property line is allowable by the Regulations; and the lawn will preserve the scenic view. The second house will have zero impact on the scenic views;
- The existing driveway will be upgraded and will require a state wetlands permit;
- An open space lot, which has existing trails, is proposed wherein the lot owners could enjoy;
- A mound system is proposed in the area of agricultural soils that continue to be discussed. He reported that the agricultural soils have minimal value;
- He noted that the plan speaks for itself;
- He believes this is the best use for this piece of land; and
- He noted that the PC has visited the site so they should be able to realize the scenic vista is more important.

Commissioner Daly stated that now that he has inspected the site, he was not convinced that where the buildings are located would have any serious impact with the scenic views. He noted that you can't see Mount Mansfield if you walk the two-house sites. He was okay with the locations of the house. He asked the planner if the project was approved as a PUD, could more things be built on the property.

Owiso Makuku stated that the development pattern in this area is for large structures on the same property. Her big concern was if one takes a bird's eye view of Brigham Hill Road, the PC would be opening the door for a lot more PUD subdivisions to come in the door. She felt it was a shortcut from skirting the minimum subdivision regulations without any public benefit. She believes this would set a bad precedent. She noted the PC has already set a precedent of denying projects like this proposal.

Daly agreed and that was his concern as well.

Vice-Chair Knox agreed with Commissioner Daly and Owiso's comments. He was uncomfortable with the idea that this could open the door to a lot of other things.

Commissioner Schumacher said, "Ditto to what's been said." At some point, he would like to understand what a conventional subdivision would look like for this lot. He would like to proceed in that direction so that the PC is not doing a disservice to the PUD regulations.

Schibler replied that the staff report noted that the lot could accommodate the additional home, without a boundary adjustment. Two houses can go on one lot without a subdivision and with just the issuance of a zoning permit; it could also be a duplex which would have a lesser visual impact. He stated that the Staff Report notes that two houses could be placed by the road, but even then, it would not be a PUD. He stated the lot could not further be subdivided under conventional zoning.

Chairman Bruso asked if under conventional, the lot could only support one house. Schibler clarified that it would only be one lot, but the regulations allow for two homes on one lot.

98 Commissioner Schumacher stated the lot could not be subdivided, but that you could put two
99 houses on the lot.

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101 Commissioner Furland noted that with the proposal they are reviewing, there could be 4 units
102 as each house could have an accessory dwelling unit. Schibler was not aware if we have a
103 situation where two houses on one lot both have an accessory dwelling unit.

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105 Sharon Kelley stated that every single-family house is allowed to have an accessory dwelling
106 unit.

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108 Commissioner Furland like the proposal as he liked preserving the visual view. He suggested
109 that if the PC approves the application they need to insert some language to capture the reason
110 being the visual view.

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112 Commissioner Mangan said, "Ditto" as everything has been covered.

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114 Commissioner Raphael said, "He was good."

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116 The following public comments were received:

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118 John Egan, stated that he was looking at this project as a lay person and his standouts were:

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- The land itself offers wonderful views of the mountains and he believes this feature is more important to be kept preserved;

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- He believes where the houses are situated is a better proposal than a condo situation; and

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- He felt it would be better for everyone to approve where the two houses are proposed to be situated.

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Chairman Brusco agreed with the sentiment that if the application was not a PUD, he does believe the two-house placements are ideal for that parcel. The first house site with minimal visual impact, the second house with no visual impact. He agrees with Commissioner Daly regarding the visual forestation, you do not see the mountains once you get down into the parcel. He stated that he does not challenge the layout as proposed but, he does not see it as a PUD. He said, "It's not the right application now." He said it felt like the PC was trying too hard to make the application fit with what the regulations allow. Brusco appreciated the work, the layout, the placement of the house behind the treeline. He stated that "it feels like we are trying to put a square peg in a round hole."

Commissioner Daly suggested the PC could get a lot worse under the existing regulations. He felt the only stumbling block was that he did not feel the proposal was a PUD.

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147 Commissioner Schumacher ditto's Commissioner Daly's comments. He was struggling to say
148 how it benefits the community and all the other various criteria that define a PUD.

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150 Chairman Brusco asked the Commission if they have enough information and were they at a
151 point or did they need to go into deliberative session.

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153 Commissioner Furland asked about the civil settlement. Schibler said the civil settlement "is
154 neither here nor there when it comes to town zoning. The civil issue is outside their purview."
155 Commissioner Furland was struggling because he liked the layout, and if the PC can't go with
156 a PUD, they could do something different, go bigger, and get more money.

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158 Owiso Makuku stated that they can build what they propose, it will just be on two separate lots.
159 Commissioner Furland did not think that was viable.

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161 Schibler stated that although the regulations allow for two single family homes on one parcel,
162 with adequate density, the landowner would need to adhere to the legal agreement, which
163 states, in part that the structure would need to be 200' away from the road; within 150' of the
164 northerly boundary; and no higher than 30 feet. Schibler went on to say that the only reason
165 the boundary adjustment is proposed was to position the house on land that was not subject to
166 the legal agreement. Schibler noted that the applicant may still come in with the boundary
167 adjustment if the application is denied.

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169 John Stuart suggested there were three options: 1) put a duplex on the parcel, which would be a
170 massive building and potentially impacting the visibility; 2) the existing plan, which was an
171 attempt to make it as consistent as possible with the PUD provisions; and 3) place two houses
172 on the land without any restrictions at all as far as placement of the houses. He stated that he
173 felt the proposed plan preserves the resources better than the other options.

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175 Chairman Brusco stated that he felt the question before the PC was, "Is this a PUD" and not "Do
176 you like the layout."

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178 **Commissioner Daly Moved and Commissioner Furland Seconded a Motion to close the**
179 **Public Hearing. The Motion passed 7-0.**

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181 A brief discussion ensued on whether the PC should go into deliberative session.

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183 **At 7:06 p.m. Commission Mangan Moved and Commissioner Schumacher Seconded a**
184 **Motion to go into Deliberative Session at the end of 'Other Business' as noted on the**
185 **Agenda. The Motion passed 7-0.**

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187 **AGENDA ITEM 3: DISCUSSION/WORK SESSION:**

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 - Discussion on PC Operating Procedures. The PC reviewed the proposed draft changes,
190 made modifications and accepted the amended Operating Procedures.
 - Proposed Amendments to Zoning & Subdivision Regulations. Staff reported additional
191 additions to the proposed changes since the time the packet went out to the PC. Minor
192 edits were received. Staff reported that due to the upcoming and expected legislative law
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194 on cannabis, the amendments will be on hold so that they can be captured and inserted
195 with this round of amendments.

- 196 • Zoning related to Cannabis. Commissioner Schumacher noted that the memo accurately
197 reported the issues and, that the question comes down to whether the town wants to
198 regulate or not regulate cannabis retail. He noted that only the State regulates large
199 integrated operations, and this does not bother him as he believes the State will be “pretty
200 tough.”

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202 Owiso Makuku stated that zoning was the only way to regulate cannabis and that the
203 Selectboard will address items like densities and whether-or-not to allow onsite
204 consumption in the Town. Owiso stated the PC could consider where they would allow
205 cannabis shops are allowed; any applicable design review; lighting and signage; parking
206 requirements; hours of operation; minimum or maximum size; and school mandates from
207 the property line. Owiso stated that the purpose of this discussion was to serve as a
208 preliminary introduction on this issue if it were approved by the voters in March.

209

210 Chairman Brusco stated it would be his thought to not allow the sales in any zones that has
211 a school; and have the same lighting standards that we currently have for site plan. The
212 PC determined to see how the Selectboard was going to go forward with this issue.

213 Chairman Brusco accepted comments from citizens on this topic.

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215 Betsy Dunn stated that Massachusetts has “state run things you go to there”, but
216 Washington State and Maine have bouncers that are at the door who asked how old you
217 are and makes sure you’re the right age to even get in the door.

218

219 Brian Armstrong thanked the PC for the forum; provided a brief background of himself;
220 he was born and raised in Essex; currently lives in South Burlington; is currently a CEO
221 of a real estate company; has a small property management and other smaller companies.
222 He hopes that Essex creates a “very welcoming environment for this opportunity” for
223 responsible welcome for a variety of reasons. There is a significant opportunity to bring
224 jobs to the community. He stated that it looks like in the next year or two there will be an
225 option for some type of local tax and if it is welcomed into the Essex community, it is an
226 opportunity to add to the community. A responsible, adult cannabis shop, which will aid
227 in keeping cannabis out of the black market and bring financial opportunity to the Town
228 is good. He believes the State is going to evolve in the next two years and will bring
229 clarity to the topic. He stated Meredith Mann is well versed on this topic, they have a
230 business in the Essex Experience which is a location area. They currently sell CDB and
231 cannabis will fit into the area at this location.

232

233 Kemener Whalen, is currently an Essex resident, has an 11 year old and, wanted to weigh
234 in and frame the thought process. The economic development with an expansion of a
235 business is good. He stated there is currently a large black market and getting cannabis
236 under a regulated structure creates all sorts of revenue opportunities. A local option tax
237 would be a great benefit to Essex however, he believes frame of mind is more important.
238 He noted the process of licensing for cannabis is different than the Department of Liquor
239 Control. Cannabis is still a very controlled State licensing process for an adult use
240 recreation product and will be no different than alcohol. He urges the Board and
241 Commission to allow the same as they do for alcohol sales. He noted that “nobody freaks

242 out about a liquor store anymore.” He encouraged the PC to consider, and not make
243 assumptions, on zoning districts where these types of facilities would be allowed. He
244 fully supports retail cannabis for Vermont on a whole and the opportunity is significant.

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246 Chairman Brusco thanked all for the comments and noted the PC is on a “wait and see”
247 pattern. Owiso agreed.

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249 **AGENDA ITEM 4: MINUTES 10/14/2021:**

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251 **Chair Brusco MOVED and Commissioner Furland SECONDED a MOTION to approve the**
252 **10/14/2021 Planning Commission hearing minutes as written. The MOTION passed 7-0.**

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254 **ITEM 5: OTHER BUSINESS:**

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- 256 • Bylaw Modernization Grant Resolution. The PC agreed to sign a Resolution needed for
257 the grant application.

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259 **At 8:43 p.m., the PC came out of Deliberative Session.**

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261 **Vice-Chair Knox Moved to Deny the application due to its lack of conformance to defined**
262 **goals, policies, and regulations relating to clustering of development and open space**
263 **preservation, affordable housing and efficient development of the site, I move that the**
264 **Planning Commission deny the application by Brad and Renée LaFountain for a Boundary**
265 **Adjustment and 2-lot Residential Planned Unit Development at 109 Brigham Hill Road**
266 **(Tax Map 14, Parcel 15, Lot 602) and 113 Brigham Hill Road (Tax Map 14, Parcel 18).**

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268 **Commissioner Furland Seconded the Motion. The MOTION passed 7-0.**

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270 The meeting adjourned at 8:47 p.m.

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PLANNING COMMISSION

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By: _____

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Dustin R. Brusco, Chair