

1 ESSEX PLANNING COMMISSION  
2 February 10, 2022

3 **44 Brigham Hill Lane – Minor Subdivision (Final)**  
4

5 **Summary**

6 The proposal for a conventional 3-lot subdivision meets all applicable standards of the  
7 *Zoning & Subdivision Regulations*. The project also provides for protection of interior forest  
8 habitat and wildlife connectivity through specific forest management practices. Several concerns  
9 identified by Public Works during sketch review still must be resolved prior to construction.

10 **Applicant**

11 Richard Jenny  
12 31 Brigham Hill Lane  
13 Essex Jct., VT 05452

14 **Proposal**

15 The applicant proposes a conventional subdivision of a 33.4-acre parcel at 44 Brigham Hill Lane  
16 (Tax ID 2-017-003-000) into three new lots (10.1 acres, 10.2 acres, and 13.2 acres), all located  
17 within the Conservation (C1) zoning district. Each new lot would accommodate a new single-  
18 unit dwelling with individual driveways and on-site wells and septic systems (though Lots 1 and  
19 2 would share a mound system).

20 **Background**

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

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

32 On August 12, 2021 the Planning Commission approved a sketch plan for the current proposal.  
33 Staff recommended that the project be presented as a PUD-R to provide a large contiguous open  
34 space lot that could be managed as forest and wildlife habitat, but agreed with the applicant that  
35 the clustered design and proposed restriction on tree cutting in the majority of the lots would  
36 achieve the applicable goals of the Town Plan. Also, the applicant and staff agreed that there  
37 were no known wetlands on the property.

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38 Neighboring uses are all large-lot, single-unit residences as well as large expanses of forest and  
39 farmland. There is an equestrian center located at 31 Brigham Hill Lane (which is exempt from  
40 municipal regulation under 24 V.S.A. §4413).

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

42 The applicant has submitted the following plans:

- 43 • Sheet #1, “Final Plan, 34 Brigham Hill Lane, Essex, VT,” prepared by O’Leary-Burke  
44 Civil Associates, PLC, dated 12/20/21;
- 45 • Sheet #2, “30 Scale Plan, 34 Brigham Hill Lane, Essex, VT,” prepared by O’Leary-Burke  
46 Civil Associates, PLC, dated 12/20/21;
- 47 • Sheet #3, “Driveway, E.C. + Storm Details + Specifications, 34 Brigham Hill Lane,  
48 Essex, VT,” prepared by O’Leary-Burke Civil Associates, PLC, dated 12/20/21;
- 49 • Sheet #4, “Sewage Disposal Details + Specifications, 34 Brigham Hill Lane, Essex, VT,”  
50 prepared by O’Leary-Burke Civil Associates, PLC, dated 12/20/21;
- 51 • Sheet #5, “Sewage + Water Details + Specifications, 34 Brigham Hill Lane, Essex, VT,”  
52 prepared by O’Leary-Burke Civil Associates, PLC, dated 12/20/21;
- 53 • Sheet PL1 of 1, “Subdivision Plat of a Portion of Lands of Richard J. Jenny, Easterly  
54 Side of Brigham Hill Lane, Town of Essex, County of Chittenden, State of Vermont,”  
55 prepared by O’Leary-Burke Civil Associates, PLC, submitted 1/12/22.

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

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

61 **(B) SR Section 2.3: Review Process**

62 As noted in SR Section 2.4, the purpose of final plan review is

63 *to compare the plat for consistency with the approved Preliminary Plan or approved*  
64 *Sketch Plan, to ensure that all engineering, survey and other data are complete, and*  
65 *to ensure that the proposed subdivision is in compliance with all appropriate*  
66 *regulations and standards.*

67 The Planning Commission must also study the plan to ensure that it conforms to the  
68 General Requirements in SR Article IV. Planned Unit Developments must also conform  
69 to Article VI of the *Zoning Regulations* (ZR). The Planning Commission must also make  
70 a final residential phasing allocation review in accordance with Article III. Because the  
71 project will not be developed in phases, and there is no remaining developable, a Master  
72 Plan is not required.

73

74 **II. Section 4.2 of the Subdivision Regulations: Subdivision Standards**

75 The Planning Commission must evaluate any proposed subdivision according to the subdivision  
76 standards in Article IV, and may require modification or phasing of the proposed subdivision in  
77 light of findings relating to those standards.

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

79 All subdivisions must conform to the general standards in SR Section 4.1. Not all  
80 provisions of this section are reviewed here, as some are not relevant to this development  
81 or are addressed through other provisions of the *Zoning and/or Subdivision Regulations*.

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

83 The proposed project complies with the following goals and policies of the *2016*  
84 *Essex Town Plan*:

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

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

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

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

95 **2. Dimensional limitations and provisions of the Zoning Regulations**

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

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

102 **i. Purpose**

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

107 **ii. Permitted and Conditional Uses**

108 Single-unit dwellings are permitted in this district. No conditional uses are  
109 proposed.

110 **iii. District Dimensional Requirements**

111 The proposed project generally conforms to Table 2.18(D), Dimensional  
 112 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

113  
 114 **iv. PUD Requirements**

115 The proposal is not for a Planned Unit Development.

116 **v. District Development Standards**

117 In the C1 zone, the Planning Commission may limit the height of structures to  
 118 25 feet to avoid visual impacts. It is noted on the plans that proposed Lot 2 is  
 119 set back approximately 150 feet to maintain views for the dwelling at 43  
 120 Brigham Hill Lane. Since the dwellings are not located in the Scenic Resource  
 121 Protection Overlay District, and in any case would be situated against the edge  
 122 of a forest on a gradually downward sloping hill, no additional height  
 123 restrictions are necessary to reduce visual impacts.

124 **3. Protection of public health, safety, and welfare**

125 The proposed project will not impact public health, safety, or welfare. In an e-mail  
 126 dated January 12, 2022, the Police Chief stated that there were no concerns with this  
 127 proposal.

128 In an e-mail dated January 12, 2022, the Fire Chief requested that each driveway be  
 129 marked with the street address visible from the approaching side for emergency  
 130 vehicles.

131 **4. Outstanding violations**

132 The property does not have any outstanding zoning violations.

133 **(B) SR Section 4.2: Standards Applicable to Minor Subdivisions**

134 In addition to the General Standards in SR Section 4.1, minor subdivision applications  
 135 are reviewed against the standards in SR Sections 4.2 – 4.11.

136 **(C) SR Section 4.3: Preservation of Natural and Scenic Features**

137 The property contains several natural features that should be preserved or avoided during

138 development.

139 There are some small areas of steep slopes (mostly 15-20%, some greater than 20%),  
140 including a ridge that runs along the overhead utility corridor. Note 5 on Sheet 1 specifies  
141 that homes shall be located in areas of 20% or less existing ground slope.

142 The property contains no flood hazard areas as mapped by the Federal Emergency  
143 Management Agency (FEMA), nor does it contain any wetlands mapped by the Vermont  
144 Wetlands Program.

145 Except for approximately two acres of cleared land on the western portion of the site, the  
146 entire parcel mapped as “contiguous habitat” in the Town Plan, which corresponds to a  
147 “highest priority interior forest block” as mapped by BioFinder (maintained by the  
148 Vermont Department of Fish and Wildlife). In addition, the Town Plan and BioFinder  
149 note that this section of Brigham Hill Lane also has value for wildlife crossing from one  
150 section of interior forest to another. According to the Vermont Conservation Design  
151 (VCD) Report<sup>1</sup>, interior forest blocks not only maintain air and water quality and flood  
152 resilience, they also are crucial to the survival of native and sometimes rare flora and  
153 fauna by providing food and shelter. Forest blocks also allow for animals to move  
154 through varied landscapes to fulfill their needs, including at wildlife road crossing  
155 locations, which is especially important given the impacts of climate change and human  
156 development. The goal for “highest priority” blocks is to avoid permanent fragmentation  
157 from development (limited development on the margins may not have adverse effects)  
158 and to maintain ecological functions through uneven-aged forest management.

159 All proposed construction is located within previously cleared areas, limiting additional  
160 impacts. The applicant has proposed a restriction on tree cutting except for down, dead,  
161 and snagged trees, which generally will achieve local and state habitat preservation goals,  
162 though it is noted that dead wood can provide important habitat for wildlife. Given the  
163 extensive areas of existing forest, provision of new trees under SR Section 4.3(C) is not  
164 required. Fences along the roadside should be avoided to ensure continued ability for  
165 wildlife to cross the road.

166 **(D) SR Section 4.4: Blocks and Lots – Planning and Design Standards**

167 The project is relatively small in scale and involves no new roads, so no new blocks are  
168 proposed. The proposed lots meet all the requirements of SR Section 4.4(B), and the  
169 structures are as clustered as possible while allowing for adequate sewage disposal.

170 **(E) SR Section 4.5: Streets**

171 The proposed subdivision provides sufficient access to dwellings via individual private  
172 driveways connected to a Class 3 minor gravel road (Brigham Hill Lane). As the  
173 development numbers fewer than 50 dwelling units, a second permanent connection

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<sup>1</sup> 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)

174 meeting the standard for a public road is not required.

175 In a memorandum dated January 14, 2022, Public Works staff stated that outstanding  
176 issues from prior reviews have been addressed except for the following:

177 a) *Driveways shall be constructed to meet the Town's construction standards as shown*  
178 *on Detail 100.09 for Rural Driveways and Detail 100.10 for Driveway (Type A) of the*  
179 *Town of Essex Standard Specifications for Construction, January 2017. The portion*  
180 *of all new driveways between the travel lane and the Right of Way line must also*  
181 *slope away from Brigham Hill Lane between the travel lane and the Right of Way*  
182 *line.*

183 b) *Minimum sight distances of 250 ft. to the left and 195 ft to the right must be verified*  
184 *for all driveways on the final plan. Of particular concern are Lots #1 and #3.*

185 i) *In consideration of the Applicant's response to Condition 4(b) of the Planning*  
186 *Commission's Sketch Plan Approval, please see the attached Town's Curb Cut*  
187 *Sight Distance Requirement Policy, dated January 13, 2022. The new Policy*  
188 *would require a minimum sight distance of 335ft to the left and 200ft to the right,*  
189 *increasing the original requirements from 250ft and 195ft respectively. However,*  
190 *since the conditions set forth for sight distance requirements for this subdivision*  
191 *predate the new policy, the original conditions will apply.*

192 On January 24, 2022 the applicant's engineer submitted a revision to Sheet 3 with the  
193 correct driveway specification, and also stated the following:

194 *We request that the town (DPW) consider safe stopping distance acceptable for the*  
195 *Lot 3 driveway looking to the left on the dead end gravel Brigham Hill Lane for*  
196 *which traffic tends to be below and/or at 25 mph as it does not pose a safety issue*  
197 *and certainly not a "substantial danger" which is the above noted Zoning*  
198 *requirement.*

199 Because the safe stopping distance standard is a requirement of the *Town of Essex*  
200 *Standard Specifications for Construction*, it falls outside the purview of the Planning  
201 Commission to consider this request and must be reviewed by the Public Works  
202 Department as part of the curb cut application process. If the request is not granted, staff  
203 recommend that any required changes to the Lot 3 driveway design be reviewed  
204 administratively prior to issuance of a zoning permit.

205 **(F) SR Section 4.6: Sidewalks**

206 Because the project is not located within a medium- or high-density residential zone, the  
207 provision of new sidewalks is not required. It is noted that Town Plan Map 5 shows the  
208 entirety of Brigham Hill Lane as part of a proposed horseback trail network. In an e-mail  
209 dated August 3, 2021, the Parks & Recreation Director stated that because Brigham Hill  
210 Lane is a low-traffic road that can accommodate horse travel within the traveled way, no  
211 additional easements are required to accommodate this mode of transportation.

212 **(G) SR Section 4.7: Land for Public Open Space and Recreational Use**

213 The applicant has not proposed any public or private civic or recreation space, therefore  
214 the new dwellings will be subject to recreation impact fees.

215 **(H) SR Section 4.8: Utility and Access Easements and Improvements**

216 The project will not require any public utility or access easements, as the stormwater  
217 infrastructure, septic systems and water service lines will be privately owned and  
218 maintained, and non-motorized transportation can be accommodated within the existing  
219 right-of-way.

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

223 **(I) SR Section 4.9: Water Supply and Wastewater Systems**

224 In a memorandum dated January 14, 2022 Public Works staff stated:

225 *The proposed sewer system will be constructed on site and will not be utilizing the*  
226 *municipal sewer system. The proposed water source is also on site and not utilizing*  
227 *municipal water. The Applicant will be required to follow the on-site rules for sewage*  
228 *disposal and water well installation as per the approval of the State. Public Works*  
229 *will require the Applicant to submit, for their records, all permitting applications and*  
230 *subsequent permitting approvals.*

231 **(J) SR Section 4.10: Stormwater Management and Erosion Control**

232 In a memorandum dated January 14, 2022, Public Works staff stated that outstanding  
233 issues from prior reviews have been addressed except for the following:

234 a) *Please be sure to contact the District Wetland Ecologist in regards to the impacts*  
235 *caused to the wetland by waterline and driveway installations.*

236 The applicant shall provide written confirmation from the District Wetland Ecologist that  
237 a state wetlands permit is not required, or else provide a copy of said permit to the Town.

238 **(K) SR Section 4.11: Monuments and Lot Markers**

239 Upon approval of the amendment and recording of the mylar, the applicants must adjust  
240 and/or install lot markers in accordance with SR Section 4.11.

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

242 Any proposed development that contains dwelling units and requires Subdivision Approval is  
243 subject to Article III, Residential Development Phasing. The goal of residential phasing is to  
244 maintain an annual population growth rate set forth in the 2016 Town Plan of between 184 and  
245 226, aiming for the midpoint of the range at 205. Population growth is allocated to new  
246 developments through Estimated Population Equivalents (EPEs), essentially equivalent to the  
247 number of bedrooms in new dwelling units (5-bedroom units are counted as 4.5 EPEs). Any  
248 single project outside the sewer core is allowed to add 5 dwelling units per calendar year. The  
249 Planning Commission must act on a preliminary phasing request when a proposed development

250 obtains sketch plan approval. Final allocation is granted upon Final Plan approval.

251 The proposed project lies outside the sewer core area and would add a total of 2 dwelling units  
252 with an unspecified number of bedrooms likely in year 2022; the applicant states that there is no  
253 timetable for construction on the proposed Lot 2. For the purpose of assigning preliminary  
254 allocation, it is assumed that each dwelling will contain 4 bedrooms, for a total of 12 EPEs. If all  
255 these were allocated for 2022, there would be 56 total EPEs remaining, 1 of which would be  
256 available outside the sewer core. A summary of the running phasing tabulation is attached.

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

- 258 •

259 **V. Proposed Conditions**

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

261 2. All construction shall be in conformance with the plans listed above as may be amended  
262 herein.

263 3. An electronic copy of the plans as may have been revised shall be submitted to the E911  
264 coordinator in .PDF file format. Another copy shall be submitted in geodatabase or  
265 shapefile in Vermont State Plane Meters, NAD83 (NSRS or most current); alternatively,  
266 coordinated CAD data – Vermont State Plane Coordinates, US Survey Feet, Grid Zone  
267 4400, NAD 83 (2011) epoch 2010.0, NAVD 88 (geoid12b); alternatively, paper showing  
268 three (3) values of State Plane Coordinates.

269 4. The applicant shall submit the mylar and three (3) paper copies to the Zoning  
270 Administrator for review and Planning Commission signature at least two weeks prior to  
271 the 180-day statutory recording deadline, otherwise the subdivision is void.

272 5. Prior to the filing of the mylar, all easements, deeds, and other legal documents shall be  
273 submitted to the Community Development Department for review by the Town Attorney  
274 at the expense of the applicant. The deed for each lot shall include a restriction on tree  
275 cutting as specified in Note 5 of Sheet 1 of the plans, as well as any required easements  
276 for septic systems that are shared or located on other lots.

277 6. Prior to the recording of the mylar, the applicant shall install concrete monuments and lot  
278 markers to the standards specified in Section 4.11 of the *Subdivision Regulations* and  
279 shall submit a certified statement from the surveyor verifying the installation.

280 7. Upon recording of the mylar, the applicant shall submit to the E911 coordinator a  
281 shapefile or PDF file of the plans containing all information specified in Section 2.10(H)  
282 and 2.10(I) of the *Subdivision Regulations*.

283 8. The applicants shall be approved for a final phasing schedule of 3 dwelling units with 12  
284 EPEs in 2022.



- 285 9. Prior to the issuance of any zoning permit, the applicant shall obtain all applicable state  
286 approvals and permits and submit copies to the Community Development Department.
- 287 10. Prior to the issuance of any zoning permit, the applicant shall pay a gravel road impact  
288 fee of \$3,931.55.
- 289 11. Prior to the issuance of a zoning permit for each lot, the applicant shall obtain a curb cut  
290 approval from the Public Works Department. Any required modifications to driveway  
291 design required by Public Works may be reviewed and approved administratively.
- 292 12. Prior to the issuance of a zoning permit for each dwelling, the applicant shall pay any  
293 recreation impact fees in place at the time of submittal.
- 294 13. All utility lines shall be installed underground.
- 295 14. All water, sewer, and storm water infrastructure shall be installed in accordance with the  
296 specifications and details provided within the *Town of Essex Standard Specifications for*  
297 *Construction* and American Water Works Association standards.
- 298 15. The applicant will be required to follow the Low-Risk Site Handbook for Erosion  
299 Prevention and Sediment Control. The guide can be found on the Town's website.
- 300 16. No occupancy of each structure shall occur until a certificate of occupancy inspection and  
301 sign off is issued by the Zoning Administrator.
- 302 17. Prior to the issuance of a certificate of occupancy, all trees and brush are to be removed  
303 in their entirety to include stumps within the Brigham Hill Lane right-of-way along the  
304 frontage of all three lots.
- 305 18. Prior to the issuance of a certificate of occupancy, each driveway entrance shall be  
306 marked with the street address clearly visible from the approaching side.
- 307 19. By accepting the conditions of this approval without appeal, the applicant confirms and  
308 agrees for themselves and all assigns and successors in interest that the conditions of this  
309 approval shall run with the land and the land uses herein permitted, and would be binding  
310 upon and enforceable against the applicants and all assigns and successors in interest.

311 **VI. Attachments**

- 312 • Residential Phasing Record, dated 02/10/2022.  
313 copy: David Burke, O'Leary-Burke Civil Associates, PLC  
314  
315 G:\PC\REPORTS\Brigham Hill Lane 44 Final 20220210.docx