



Town of Amherst, New Hampshire
Office of Community Development
Building · Code Enforcement · Planning · Zoning · Economic Development

STAFF REPORT

CASE #: PZ18273-120523
MEETING DATE: April 17, 2024
CREATED BY: Nic Strong, Community Development Director
ZONING DISTRICT: Residential Rural (RR) with Wetland & Watershed Conservation District (WWCD) and Aquifer Conservation & Wellhead Protection District (ACWPD) Overlays

APPLICATION DESIGNATION: Final Subdivision
PLAN TITLE and DATE: Subdivision Plan Tax Map 4 Lots 118, 119 & 121 and Tax Map 6 Lot 102 (County Road, Spring Road & Upham Road) Amherst, New Hampshire Prepared for and Land of: Vonderosa Properties, LLC 3 Huxley Lane, Amherst, NH 03031
Scale: 1" = 100' Dated: December 1, 2023

PROPERTY OWNER: Vonderosa Properties, LLC
APPLICANT/AGENT: Chad E. Branon, PE, Fieldstone Land Consultants, PLLC
MAP/LOT: Map 4 Lot 118, 119, 121 & Map 6 Lot 102
LOT SIZE: Map 4 Lot 118 = 44.150 acres
Map 4 Lot 119 = 19.7 acres
Map 4 Lot 121 = 56.4 acres
Map 6 Lot 102 = 149.6 acres

ROAD FRONTAGE: County, Spring & Upham Roads
LOCATION OF PROPERTY: County, Spring & Upham Roads

PROJECT OVERVIEW:

- The application is to subdivide Tax Map 4 Lots 118, 119 & 121 and Tax Map 6 Lot 102 into seven conservation lots and 37 residential lots.

BACKGROUND/CHRONOLOGY:

- The applicant appeared before the Board with a conceptual consultation on this property on March 2, 2022. At the time, the entirety of the Hazen property was under discussion. Vonderosa Properties, LLC, has since been approaching the lots individually.
- The design review application was heard at the July 5, 2023, meeting, and continued to August 12, 2023, at which meeting the design review was declared closed.
- This final application has been submitted within the year's timeframe specified by RSA 676:12, VI., meaning that it is not subject to the proposed zoning amendments discussed earlier this evening.
- At the design review stage, the Planning Board heard all three applications at the same time.
- The first hearing on the final application was held on January 3, 2024. See attached minutes.

- The second hearing was scheduled for February 21, 2024. A continuance was requested by the applicant and the hearing continued until April 3, 2024.
- The April 3, 2024, meeting was curtailed by a winter storm and the application continued until tonight's meeting.

SUBMISSION ITEMS:

- Subdivision Application Form completed and signed by Brett Vaughn, owner and applicant, was submitted on December 4, 2023, along with:
 - list of abutters with mailing addresses;
 - four full size copies of the subdivision/site plan;
 - ten 11" x 17" copies of the subdivision/site plan;
 - Subdivision Plan Review Checklist;
 - Authorization Letter dated June 1, 2023, for Fieldstone Land Consultants to act as agent;
 - certificate from Amherst tax collector that all tax liens are paid;
 - Cover Letter dated December 2, 2023, from Chad Branon, PE;
 - Waiver Letter dated December 1, 2023, from Chad Branon, PE;
 - Test Pit Logs from 4/13/22, 5/22/23, 5/23/23, and 5/26/23, logged by Kenneth Robinson, CWS;
 - Wetland Evaluation Methodology Report, unattributed, dated December 1, 2023;
 - Fiscal Impact Analysis prepared by Mark Fougere, AICP, Fougere Planning & Development, Inc., dated November 22, 2023;
 - County Road Traffic Evaluation, dated October 27, 2023, by Jason Plourde, PE, PTP, VHB;
 - Phase IA Archaeological Sensitivity Assessment and Phase IB Intensive Archaeological Investigation, Vonderosa [sic] Properties LLC Project, Amherst, New Hampshire, dated November 2023, by Matthew Labbe, MA, and Robert Goodby, Ph.D. - **Board note - this report contains confidential information and should not be shared.**
 - Environmental and Wildlife Survey Vonderosa Properties Residential Sub-Division Amherst, NH, dated November 23, 2023, by Peter Spear, Certified Wildlife Biologist, Natural Resource Consulting Services;
 - Hydrogeologic Evaluation by Terracon Consultants, Inc., dated October 10, 2023;
 - Overall Presentation Plan dated October 20, 2023.
- There are no outstanding application fees.

RECENT CORRESPONDENCE:

- No revised plans have been submitted.
- See Chad Branon's email dated March 27, 2024.

ITEMS REQUIRED PER SECTION 202.2 APPLICATION and 210.2 & 210.3

SUBMISSION DOCUMENTS FOR FINAL REVIEW PHASE: (received Y, N, N/A)

- The application was accepted as complete at the January 3, 2024, meeting, with "the understanding that at least the two issues identified (stormwater management and CUPs)

may be considered down the road, and that the applicant agrees to defer any deadlines until after the next meeting".

- **The deadline date for Board action is April 8, 2024, unless mutually agreed to be extended.**
- **The applicant agreed to extend the deadlines until April 17, 2024.**

REGIONAL IMPACT:

- At the meeting of December 6, 2023, the Board determined that the application had regional impact. Notice was made to the Town of Mont Vernon, the Town of Merrimack and the NRPC.

SITE WALK:

- A site walk was held on January 31, 2024. See attached minutes.

PLAN REVIEW:

- The Subdivision Plan dated December 1, 2023, was reviewed against the Subdivision Plan Review Checklist on February 18, 2024. The outstanding issues are as follows:
 - details to indicate storm runoff are missing;
 - the checklist indicates that existing structures on site have been included on the plan but I can find no structures so I am not sure to what this is referring;
 - area reserved for stump disposal is checked on the checklist but I can find no such areas on the plan;
 - storm water drain lines is checked on the checklist but I don't know to what it refers;
 - driveway culvert sizes and drainage calculations for storm water structures are not included;
 - storm water drainage calculations and report are missing;
 - in general the plan is cluttered and very hard to read. There are many areas of overtyping and missing lines. From past experience, I doubt that the Hillsborough County Registry of Deeds would record this plan. I suggest it be split onto further multiple sheets to clearly show all the information.
 - the plan notes a portion of the lot is in the floodplain. This is not indicated on the plan, but in the notes only so it is not possible to identify the area in question. Is any construction proposed in this area? How will this be called out on the plans for future purchasers?
 - the notations W.I.D. refer to the Wetland Evaluation Method Report but they are not identified in the legend. This should be clarified on the plans.
 - what exactly are the conservation lots? They have been shown with wells and 4K areas but are they proposed for building? The details and legal language have not been submitted. What is the difference between a conservation lot and those shown with conservation easements?
 - what are the details of the PSNH easement that encumbers some of the lots? Several lots seem to impact this easement with 4K areas or wells, or need to be crossed with water lines from the well to the building site: for instance, Map 6 Lot 102-10, and Map 4 Lots 118-7 & -8.

- the parent parcel numbers should remain on the plans and the new lots be created from them. For example, Map 4 Lot 121 should remain as one of the lot numbers and the new lots be numbered through 121-4 rather than 121-5.
- Map 6 Lot 102-5 & -6 frontages should be checked;
- there appears to be a missing distance in the middle of the northerly line of Map 4 Lot 121-4;
- the easterly lot line of Map 6 Lot 102-17 is actually I think the whole of the line of abutting Map 4 Lot 147-5;
- what is the actual building area of Map 4 Lot 121-1;
- the frontages have been rounded in the calculations and in most cases the rounding arrives at a longer distance than the addition of the different portions of the lines. However, Map 4 Lot 118-10 only adds up to 199.99 when the line lengths are added. This should be clarified.
- it appears that Map 4 Lot 119 will be consolidated and resubdivided with Map 6 Lot 102. This is not clearly spelled out on the plans.
- several lots appear to require dredge and fill permits and CUPs to cross wetlands to get to the buildable areas: Map 6 Lot 102-18 & -19; Map 6 Lot 102-14 & -15; Map 6 Lot 102-23 & 24 (additionally, what are the actual building area sizes on these two lots?); Map 4 Lot 118-14.
- the 4K area for Map 6 Lot 102-6 and Map 4 Lots 121-3 & -4 are in the scenic setback. While this is not prohibited, how will the required clearing for equipment and leach bed preparation not impact the scenic setback?
- what is the actual building area on Map 6 Lot 102-4?
- the frontage measurements on Map 4 Lot 118-5 are very hard to make out;
- some wells are proposed in the scenic setback. How is it proposed not to impact the scenic setback with clearing and equipment for well drilling?
- the wells and 4K areas on Map 4 Lots 118-3, -2, -1, -13, -12, and -11 are far apart and some are separated by steep slopes. Where is it intended that these lots be built upon and how will it be guaranteed that new test pits will be required when the house location is determined?
- Comments on the various studies:
 - Cover letter - Board note the contingencies listed on page 2 onto page 3.
 - Waiver letter - the applicant requests being allowed to not submit a drainage report since the driveway locations may change and the house locations are not yet known. The Subdivision Regulations require that the plans include driveway locations for each lot and include the following information:
 - (a) specify the location, dimensions and design elevations for driveway apron construction on each lot; (b) all season safe intersection sight distance as required in Amherst Driveway Regulations; and c) demonstrate such driveway construction can occur without interfering with utility installations and/or stormwater management improvements.However, the Stormwater Regulations require a Stormwater Management Plan for any site work performed in connection with a subdivision of more than three building lots and also state that for subdivisions comprising lots with frontage on existing private or public roadways, roadside drainage and any other stormwater

runoff from the new lots discharging to the roadside drainage system shall be managed for: stormwater runoff quantity/volume; and water quality treatment if stormwater is discharged to the municipality's drainage system subject to the EPA MS4 permit.

- A couple of the studies list the wrong number of lots, 55 as opposed to 51 residential lots.
- A common driveway agreement was received just prior to the January 3, 2024, meeting. No conservation easement deeds or documents have been received. These will require review by Town Counsel when all legal documents have been submitted.
- The soil types mentioned are slightly different between the Environmental Study to the Hydrogeological Report.
- The difference between conservation lots and conservation easements is not clear.
- The Archaeological Report does not list Lot 116 and also references Map 102 Lot 154 which I think is supposed to be Map 6 Lot 102.
- The Traffic Report submitted was only for County Road. I reached out to Chad Branon, PE, by email and phone to find out where the studies for the other roads were. He sent me a Trip Generation Letter for Map 4 Lot 116 and 4 Lot 145. The County Road Report is for Map 4 Lots 118, 119, 121 & Map 6 Lot 102.
- **No revised plans have been submitted as of April 11, 2024.**

WAIVER REQUESTS:

- The waiver request regarding a drainage study and stormwater management reports was denied by the Board at the January 3, 2024, meeting.
- **No drainage studies or stormwater management reports have been submitted as of March 29, 2024.**

GENERAL REGULATIONS

- 203.1 The Planning Board shall, in the exercise of the authority granted pursuant to NH RSA 674:36, review all proposed subdivisions with a view toward determining the impact that the proposed subdivision will have on various Town services; and to that end, determining whether such proposed subdivision, if permitted, would create one (1) of the following conditions:
 - A. Constitute a scattered or premature subdivision of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of water supply, drainage, transportation, schools, fire department, or other public services;
 - B. Necessitate an excessive expenditure of public funds for the supply of such services. If, after such review, the Board determines that the proposed subdivision would cause either of the aforementioned conditions, then the Board shall so inform the applicant and indicate that the applicant may modify the proposal to avoid the aforementioned conditions; and in doing so, the said Board may, considering all the circumstances, specify the extent to which the particular proposed subdivision may be developed in any given year, as well as establish the minimum duration of time for the total

development of such particular subdivision. The Board shall state in its records any modifications it will require.

- **The Board should discuss the subdivision in terms of the above.**

- 207 Character of Land for Subdivision

All land to be subdivided shall be, in the judgment of the Board, of such character that it can be used for building purposes without danger to public health or safety, or to the environment. Land subject to periodic flooding, poor drainage, or other hazardous conditions, shall not ordinarily be subdivided. Land with inadequate capacity for sanitary sewage disposal shall not be subdivided. Plats for the subdivision of land shall conform with all regulations of the Board, the Zoning Ordinances, and the Water Pollution Control Regulations and other applicable bylaws, ordinances, and regulations at both State and local levels.

- **The Board should discuss the land in terms of the above.**

- 209 Preservation of Existing Features

Due regard shall be given to the preservation and protection of existing features, trees, scenic points, brooks, streams, rock outcroppings, water bodies, high value ecological habitats, other natural resources, historic landmarks, stone walls, and other significant features. Originality in lot layout will be encouraged to achieve the best possible relationship between the development and existing features on the property.

- **Wetland buffers are shown. The Board should discuss.**

- 212.3 Trees and Plantings

Due regard shall be given to preservation of existing features, trees, scenic points, and other natural and historic resources within the subdivision. The Board may require additional tree planting and other landscaping appropriate to the area being developed. Removal of topsoil or surplus materials from the subdivision area shall not be permitted unless in accord with the Zoning Regulations. Existing trees on lots and open space land shall be preserved wherever feasible, unless otherwise directed by the Board. Species of street trees and other landscaping shall be in accordance with the requirements of the Non-Residential Site Plan Regulations.

- **The Board should discuss.**

DRIVEWAYS:

- 303 Driveway Standards

303.1 Prior to subdivision approval, the applicant shall demonstrate that each platted lot will enjoy at least one location along its frontage where a driveway for access to that lot can be safely accommodated. In order to satisfy this requirement, the plans shall: (a) specify the location, dimensions and design elevations for driveway apron construction on each lot; (b) all season safe intersection sight distance as required in Amherst Driveway Regulations; and c) demonstrate such driveway construction can

occur without interfering with utility installations and/or stormwater management improvements.

303.2 Refer to Section 3.10, Driveway Regulations for additional requirements.

303.3 A Driveway Permit is required for any new permanent or temporary driveway, and for any modification to an existing driveway.

- **Proposed driveway locations are shown but the dimensions and design elevations and construction details are not included.**
- **Driveway permits will be required from the Department of Public Works when the driveways are constructed.**

OFF-SITE ROAD IMPROVEMENTS:

- The Zoning Ordinance, Section 4.19 N., was amended in March 2023, to include the following language regarding Off-Site Road Improvements:
 1. Definition of Off-site Improvement. “Off-site improvements” means those improvements that are necessitated by a development but which are located outside the boundaries of the property that is subject to a subdivision plat or site plan approval by the Planning Board. Such off-site improvements shall be limited to any necessary highway, drainage, and sewer and water upgrades pertinent to that development. (3-14-23)
 2. Imposition of Off-site Improvements Exaction. Off-site improvements for site specific applications shall be assessed on a case-by-case basis and shall be in addition to other impact fees imposed pursuant to this ordinance. Upon receipt of an application that may necessitate any off-site improvement, the Planning Board shall request the Department of Public Works to identify off-site highway, drainage, sewer and water upgrades necessitated by the development and an estimate of the costs of those upgrades. If the Department requires outside engineering support in identifying and estimating the cost of such upgrades, the applicant shall bear the reasonable expense of such support. In a case in which it is determined that such an improvement is necessary for the proper operation of the project, the Planning Board shall so notify the applicant. (3-14-23)
 3. Determination of Proportionate Share of Off-Site Improvement Cost(s). The Planning Board shall determine the proportional share of municipal improvement costs not previously assessed against other developments, which is necessitated by the development, and which is reasonably related to the benefits accruing to the development from the improvements financed by the exaction. The Planning Board may, at the expense of the applicant, obtain a study by a consultant of its own choosing to advise on the proportionate share the Planning Board should have contributed by the applicant for the off-site improvements. The applicant shall provide its recommendations on and support for the proportionate share it believes is appropriate. The Planning Board shall determine the proportionate share and impose exactions it determines are necessary in conjunction with approval of the application. Payment of the exaction shall be a condition precedent of the Planning Board’s approval. (3-14-23)
 4. Reimbursement for Contributions in Excess of Proportionate Share. The applicant shall be assessed his/her proportionate share of the cost of the project. In cases where

it is determined that an improvement is necessary for the proper functioning of a new development but the applicant, for whatever reason, is determined to contribute more than his/her proportionate share to the improvement under this section, and, therefore, that the improvement will also accommodate other future development, the Selectmen, at the request and expense of the applicant, may establish a separate, project related impact fee that assesses other new development for their proportionate share of the improvement to reimburse the applicant for such disproportionate contribution. Such future impact fees shall provide for the payment to the original applicant, with any interest.

- **The DPW Director was asked to identify off-site highway, drainage, sewer and water upgrades necessitated by the development and an estimate of the costs of those upgrades. The DPW On-Call Engineer was asked for assistance with this task and submitted their scope of work. The applicant was notified of the cost of the analysis. The funds were submitted and the engineer's analysis was received and distributed on April 3, 2024.**

WETLAND AND WATERSHED DISTRICT:

- Section 4.11 Wetland and Watershed Conservation District.

F. DISTRICT BOUNDARIES.

The Wetland and Watershed Conservation District shall be comprised of all wetlands and surface waters, together with associated buffers, having the following dimensions:

1. Wetlands:

a.	Water protection wetlands:	100 feet
b.	Significant wetlands:	50 feet
c.	Other wetlands:	25 feet
d.	Vernal pools (*):	Tier One: 100 feet
		Tier Two: 50 feet

*For those lots created prior to March 11, 2014, the noted buffer widths for vernal pools shall not apply.

2. Surface Waters:

a.	Lakes and ponds:	100 feet
b.	Ephemeral streams:	25 feet
c.	Intermittent streams:	50 feet
d.	Perennial streams:	100 feet

- **It is not easy to decipher but I think the plans indicate 100' wetland buffers from wetlands.**
- **No Conditional Use Permit applications or plans have been submitted for driveways crossing wetlands.**

STORMWATER MANAGEMENT:

- The applicant is requesting a waiver to the submission of a drainage report, asking that it be done later due to the house and driveway locations not being known. See comments above under Plan Review.
- **The Board denied this waiver. No reports or plans have been submitted as of April 11, 2024.**

LEGAL REVIEW:

- Legal review will be required of the various agreements and easements, which have not been submitted yet, at the applicant's expense.

DEPARTMENTAL COMMENTS:

- Request for departmental comments was made on December 6, 2023.
- See email dated December 8, 2023, from SAU 39.
- See letter dated December 13, 2023, from Will Ludt, Chair, Heritage Commission.
- See email dated December 15, 2023, from ACC.
- See email dated December 15, 2023, from Fire Chief.
- See letter dated December 15, 2023, from DPW.
- **Board to discuss comments.**

PHASING:

- According to Section 3.19 Phasing of the Zoning Ordinance:
 - A. **PURPOSE.** To ensure that the rate of growth of the Town does not unreasonably interfere with the Town's capacity for planned, orderly, and tangible expansion of its services to accommodate such growth, the Planning Board, at its discretion, may require phasing of subdivisions, as provided in RSA 674:21. Prior to requiring phasing, the Planning Board shall inquire into the impact which the proposed subdivision will have on Town services and shall exercise its discretion to require phasing so as to lessen or mitigate such impact.
 - B. **PHASING.**
 - 1. In the event that the Board decides, in its discretion, that phasing is required, then each subdivision of land for a residential use producing four (4) lots or dwelling units and not more than six (6) lots or dwelling units shall be phased over a minimum of two (2) years, with not more than fifty percent (50 %) of the dwelling units receiving building permits in a one (1) year period. Every subdivision of seven (7) lots or dwelling units but not more than nine (9) lots or dwelling units shall be phased over a minimum of three (3) years, with not more than thirty-three percent (33 %) of the dwelling units receiving building permits in a one (1) year period. Every subdivision of ten (10) lots or dwelling units but not more than twenty (20) lots or dwelling units shall be phased over a minimum of four (4) years, with not more than twenty-five (25 %) of the dwelling units receiving building permits in a one (1) year period. Other larger subdivisions shall have phasing as determined by the Board at its discretion.
 - 2. The requirement shall apply to all forms of residential subdivision of land, as defined in RSA 672:14 (I), and RSA 674:21.

3. The Planning Board may require any subdivision to adhere to a longer phasing plan if such phasing is deemed necessary to protect the health, safety, welfare and environment of the Town.

- **See cover letter from Chad Branon, PE, dated December 2, 2023.**

IMPACT FEES:

- This development is subject to the impact fee ordinance and schedule of fees adopted by the Board of Selectmen.
- The impact fees have been set up on a square footage basis and there are five categories of residential development that are listed in the schedule.
- According to the Impact Fee Ordinance, the Planning Board has to assess the impact fee at the time of approval and the fee is collected at the time of Certificate of Occupancy.
- **The Board should discuss this impact fee and the categories available to use for the assessment and the assessment should be added to the approval.**

**DEFINITION OF "ACTIVE AND SUBSTANTIAL DEVELOPMENT AND BUILDING"
AND "SUBSTANTIAL COMPLETION OF IMPROVEMENTS UNDER RSA 674:39**

FIVE YEAR EXEMPTION:

- The Planning Board may, as a condition of subdivision approval, specify the threshold levels of work that shall constitute the following terms, with due regard to the scope and details of a particular project:
 - (A) 'Substantial completion of the improvements as shown on the subdivision plat';
 - and
 - (B). 'Active and substantial development or building.'
- According to State law a subdivision or site plan once approved has 24 months to begin active and substantial development or building on the property in order to qualify for five year vesting against changes to zoning, subdivision and site plan review regulations. Additionally, the applicant must make substantial completion of improvements on the property to become fully vested.
- For active and substantial development or building, other towns consider things such as: construction of subdivision roads to the level that would permit issuance of certificates of occupancy; construction of foundations; installation of utilities ready for connection to buildings/structures; installation of drainage improvements required for the subdivision/site plan, including detention basins, treatment swales, underdrain, etc.; installation of all required erosion control measures; site grading.
- For substantial completion of improvements, other towns consider things such as: all foundations to be installed; entire site drainage to be completed; establishment of all on- and off-site improvements specified as part of the approval; all roadways are constructed.
- If the town does not specify anything in the way of the above two sets of items the application automatically receives the five year exemption from regulation changes. BUT, the applicant can become subject to changes after the five year time frame.
- The Planning Board is able to extend the 24 months relative to "active and substantial development or building" for good cause shown.
- **The Board should discuss with the applicant what is appropriate for this subdivision, particularly bearing in mind the phasing of the subdivision.**

PLANNING BOARD OPTION(S):

- The Board could consider continuing the application to a future meeting since further information/discussion/documentation/a site walk is needed.

NOTE:

Please be aware that the staff report does not represent any opinion of the Planning Board as to the acceptability of the plans; it is only to verify that the standard details and issues are addressed in some manner for the Board to consider. **There may, therefore, be items discussed at the hearing that have not been mentioned as part of the staff report or that are in direct contradiction to information contained herein.**

NS/

4/11/24

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