



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

## STAFF REPORT

**CASE #:** PZ18271-120523  
**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 Lot 145 (County 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, rev. 3/27/24

**PROPERTY OWNER:** Vonderosa Properties, LLC  
**APPLICANT/AGENT:** Chad E. Branon, PE, Fieldstone Land Consultants, PLLC  
**MAP/LOT:** Map 4 Lot 145  
**LOT SIZE:** Map 4 Lot 145 = 15.927 acres  
**ROAD FRONTAGE:** County & Upham Roads  
**LOCATION OF PROPERTY:** County & Upham Roads

### PROJECT OVERVIEW:

- The application is to subdivide existing lot 4-145 into five (5) 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 2024 zoning amendments.
- 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, Vnderosa [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:**

- Revised Subdivision Plan dated March 27, 2024.
- Stormwater Management Report dated March 26, 2024.
- Subdivision Plan Sheet 1 for recording example, 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, most recently revised March 27, 2024, was reviewed against the Subdivision Plan Review Checklist on March 29, 2024. See also Chad Branon's email of March 27, 2024, with his responses to the issues mentioned in the last staff report. The outstanding issues are as follows:
  - in general the plan is cluttered and very hard to read. There are still many areas of overtyping and missing lines. The applicant has submitted a single sheet "clean" version that would be recorded. However, there are still areas where lines or text obscure other lines or text. From past experience, I doubt that the Hillsborough County Registry of Deeds would record this plan. I suggest it be split onto multiple sheets to clearly show all the information.
  - what is the actual buildable area of Map 4 Lots 145-4 and 145-5? Although the net area meets the Zoning Ordinance minimum requirements, the actual building area appears to be very small. How is it proposed that future owners will not impact the wetland buffer areas?
  - the shared driveway serves three lots and per Subdivision Regulations Section 210.3 A. 7., needs to have a road name approved by the Board of Selectmen.
- Comments on the various studies:
  - Cover letter - Board note the contingencies listed on page 2 onto page 3.
  - A common driveway agreement was received just prior to the January 3, 2024, meeting. This will require review by Town Counsel when all legal documents have been submitted.
  - 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.

**WAIVER REQUESTS:**

- The waiver request regarding a drainage study and stormwater management reports was denied by the Board at the January 3, 2024, meeting.
- **Stormwater management report was received March 27, 2024, and has been sent to Keach Nordstrom for an estimate for review.**

**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.
- **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

- **The plans indicate 100' wetland buffers from wetlands.**
- **As noted above, there are a couple of very small building envelopes shown on the plans. Particularly Map 4-145-4 & -5. The Board should discuss how the lots will be developed to keep the buffer untouched both during construction and once a homeowner lives there. The buffer cannot be landscaped or turned into lawn or used for construction activities now or in the future. The buffer should be placarded and left in natural condition. This should be noted on the plans and the Board should discuss with the applicant how to make sure that this is communicated to future lot owners.**
- **Board to discuss.**

**STORMWATER MANAGEMENT:**

- A Stormwater Management Report was submitted on March 27, 2024. It has been sent to Steve Keach, PE, Keach-Nordstrom Associates, Inc., for his estimate for the cost of review. The funds were received and Steve Keach, PE, notified that his review could begin.
- The Common Driveway plans note that the purpose of the plan is to "depict potential layout for each lot meeting local regulations. Final house placement is subject to change based on individual land owners preferences." The Board should discuss having this note expanded to require a revised Stormwater Management Plan should the house locations change.

**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 for further information/discussion/documentation.

**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