

Appeal Period Expires 9/17/16
 Zoning District H
Town of Essex, Vermont
Application for Zoning Permit
 www.essex.org
 Application Date 1/1
 Permit Number 2016-142

All construction is to be completed in accordance with the Town of Essex Zoning Regulations and any/all federal or state regulations now in effect. You are required to post this permit in a conspicuous location on the property during the appeal period and it must remain posted throughout the construction period. **You are required to contact the necessary state agencies to obtain state permits @ 477-2241 (Jeff McMahan, Permit Specialist).**

Any interested person may appeal the decision of the Zoning Administrator to the Zoning Board of Adjustment within fifteen (15) days of the permit's date of issuance. Commencing construction within this fifteen (15) day appeal period is prohibited by law.

Signed: Bryan Cussler

A Parcel Account Num. (Map-Parcel-Lot) 2- 006-021-000
 (found in Town Assessor's Office)
 Property Address: 123 OLD COLCHESTER ROAD
 Owner: A+C REALTY LLC (c/o AL SENECA)
 Owner Address: 31 COMMERCE AVE., SOUTH BURLINGTON, VT
 Owner Phone: (work) (802) 862-0517 (home) CELL
 (cell) (802) 338-0911 (Email) aseneca@comcast.net
 Contractors name: OMEGA EXCAVATION Phone: (802) 862-0517
 Cell: (802) 373-3350
 Estimated Construction Dates: Start: 9/1/16 Completion: / /
 Sq. Feet: 24000 Estimated Cost (labor & materials): \$ 1.2M

B Sewage Disposal (Please attach Sewer or Septic Application).
 Public Private Connection Fee \$ N/A Date Paid: / /
 Proposed New Bedrooms: Existing Bedrooms

C Water (Please attach Water Service Application).
 Public Private Fee \$ N/A Date Paid: / /

D Driveway (Please attach copy of approved Curbcut / Utility Application).
 Date of approval 12/11/14

E Stormwater
 Project disturbs an area greater than or equal to 1 acre – Erosion Control Permit Required. Attach completed permit application.
 Project creates new or expands existing impervious surface greater than or equal to 1/2 acre – Erosion Control Permit and Stormwater Management Permit required. Attach completed permit application.

F Diagram – Show a sketch of project on reverse of this application with property lines, building, and setbacks or attach separate sheet.

G To Be Constructed pursuant to Planning Commission Approval # PC: 2014-34
Site work - Blasting only
 Signature of Tenant and Signature of Owner [Signature]

G

Check box(es) which describe proposed use or construction (circle choice in parenthesis).
 N = New A = Addition R = Remodel

Residential:	N	A	R
Single Family	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Two-family (duplex)(other)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Multi-family	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Condominium / Townhouse	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mobile home	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Inclusions or Additions:			
Garage (attached) (detached)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Porch (enclosed) (open)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Deck	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pool (in) (above) ground	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Barn (residential) (agriculture)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Non-residential:			
Commercial / Industrial	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stormwater:			
Stormwater	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Erosion Control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: <u>Site work Blasting only</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Change in use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Miscellaneous	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Renewal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

no building construction yet

Office Use Only

Fees:	Type	Amount	Date Pd.
Permit		\$ <u>100.00</u>	<u>8/31/16</u>
Recreation		\$ <u> </u>	<u> / / </u>
Recording		\$ <u>10</u>	<u>8/31/16</u>
Certificate of Occ		\$ <u> </u>	<u> / / </u>
Other		\$ <u> </u>	<u> / / </u>

Building Permit 9/2/16
 Approved Rejected Date 9/2/16
 Issued to: A+C Realty LLC
 Zoning Administrator: [Signature]
 Notes: _____
 C.O. Required Yes No



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/17/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USI Insurance Services LLC 3 Executive Park Drive, Suite 300 Bedford NH 03110	CONTACT NAME: PHONE (A/C, No, Ext): 855-874-0123 FAX (A/C, No): E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
INSURED MAINEDRI Maine Drilling and Blasting, Inc. PO Box 1140 Gardiner ME 04345	INSURER A: Ace American Insurance Company NAIC # 22667	
	INSURER B: American Guarantee & Liability Ins 26247	
	INSURER C:	
	INSURER D:	
	INSURER E:	
INSURER F:		

COVERAGES **CERTIFICATE NUMBER: 292405504** **REVISION NUMBER:**

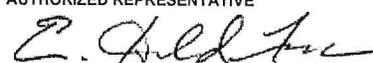
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> BI & PD Ded:\$50K <input checked="" type="checkbox"/> Contractual Liab GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	HDOG24557959	8/1/2016	8/1/2017	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$250,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	Y	Y	CALH09033774	8/1/2016	8/1/2017	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ \$0	Y	Y	AUC019951500	8/1/2016	8/1/2017	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WLRC47861767	8/1/2016	8/1/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Blanket As Required By A Written Contract: Additional Insured CG2033;CG2037;CA2048, Waiver of Right to Recover From Others CG2404;WC000313A;CA0444;Primary & Non-Contributory LD20287- per forms attached to the policies.

Town of Essex, VT

CERTIFICATE HOLDER Omega Electric Construction 25 Omega Drive Williston VT 05495	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

A & C Realty, LLC

To: Sharon Kelly, Zoning Administrator

From: Brian Bertsch, P.E.

CC: Bryan. Currier, P.E.

Date: August 17, 2016

Re: 123 Old Colchester Road, Essex

Attached please find a zoning permit application for blasting and crushing at 123 Old Colchester Road. The project has been approved for site work under ZP #2016-112. A separate zoning permit application will be submitted for the building and site infrastructure.

As a follow-up to Site Plan Approval #PC:2014-34 signed on December 11, 2014 and Conditional Use approval #ZBA-2015-1 signed on March 13, 2015 the following items specific to blasting and crushing have been addressed, modified, or provided as requested.

Planning Commission Approval #PC: 2014-34:

- **Condition #6, Blasting Insurance:** Once a blasting contractor has been selected a copy of their blasting insurance policy will be submitted for review.
- **Condition #8, Blasting and Processing Hours:** Understood, blasting and rock processing will be limited to 8:30 am to 4 pm M-F.

Zoning Board of Adjustment Approval #ZBA: 2015-1:

- **Condition #3, Railroad Contact:** Attached please find comments from the New England Central Railroad stating their review and approval for the project. Deb Bocash from NECR will be the point of contact for all issues regarding the railroad. Deb can be reached at 802-527-3444 (office) or 802-393-3444 (cell).
- **Condition #4, Blasting Plan Third Party Review:** A copy of the revised blasting plan has been previously submitted for review and approval.
- **Condition #5, Hours of Operation:** Understood.
- **Condition #6, Use Permit Application:** Understood, attached please find a zoning permit application to blast.
- **Condition #7, Blasting Plan, Aggregate Processing Plan and Spill Plan:** Understood, all components of the blasting plan will be adhered to.
- **Condition #8, Storage of Explosives:** Understood all explosives will be stored offsite.
- **Condition #9, Vertical Slopes of Rock Face:** Understood, a note that the slope of all working faces shall not exceed 4(vertical):1 (horizontal) has been added to plan sheet 9.

27 Commerce Ave.
South Burlington, VT 05403
Phone: (802) 862-0517 x227
Fax: (802) 865-2334
E-Mail: bbertsch@omegavt.com
Web: www.omegarealtyvt.com

- **Condition #10, Noise Kits for Construction Equipment:** Understood, noise kits will be installed to the extent allowed by OSHA/MSHA and simple fixes will be used as much as possible in order to reduce noise.
- **Condition #11, Sound Monitoring:** Understood, sound monitoring during all blasting and rock processing will be performed and submitted to town staff for review.
- **Condition #12, Equipment Idling:** Understood, no idling of trucks or equipment will be allowed on the site.
- **Condition #13, Sweeping of Old Colchester Road:** Understood, a note that requires wet sweeping of Old Colchester Road if determined to be needed by the Town has been added to plan sheet E2.
- **Condition #14, Use of Old Colchester Road and Pinecrest Drive:** Understood, no truck traffic shall use Old Colchester Rd or Pinecrest Drive for any activity related to the extraction project.
- **Condition #19, Extraction Duration:** Understood, extraction will not exceed five years without an approval for extension from the Zoning Board.

Please find attached the following:

- 1.) Zoning Permit application to blast and crush rock;
- 2.) Certificate of Liability Insurance from Maine Drilling and Blasting;
- 3.) Letter from NECR re: project approval.

If you have any questions or require any additional information please do not hesitate to call, (802) 862-0517

Bryan Currier

From: Rick T. Boucher <rick.boucher2@gwrr.com>
Sent: Friday, August 26, 2016 11:20 AM
To: Bryan Currier
Cc: Brian Bertsch; Debra-Ann Bocash; Ronald Boucher; Al Senecal; David Carroll
Subject: Re: 123 Old Colchester Road

Good morning Bryan

It is OK to proceed once you have your right of entry and flagging request as discuss submitted to Donna and Deb as required.

Thank you

Sent from my iPhone

> On Aug 24, 2016, at 12:48 PM, Bryan Currier <bcurrier@olearyburke.com> wrote:

>
> Hey Rick,
>
> Just wanted to check in and see if you needed anything additional from us.
>
> Thank you
> Bryan

> -----Original Message-----

> From: Rick T. Boucher [mailto:rick.boucher2@gwrr.com]
> Sent: Tuesday, August 16, 2016 1:30 PM
> To: Brian Bertsch; Bryan Currier
> Cc: Debra-Ann Bocash; Ronald Boucher; 'Al Senecal'
> Subject: RE: 123 Old Colchester Road

> Hey Brian,

> We have one final approval needed and we can get you a letter. Hope to
> expedite ASAP

> Thanks

> RT

> -----Original Message-----

> From: Brian Bertsch [mailto:bbertsch@omegavt.com]
> Sent: Tuesday, August 16, 2016 1:24 PM
> To: 'Bryan Currier'; Rick T. Boucher
> Cc: Debra-Ann Bocash; Ronald Boucher; 'Al Senecal'
> Subject: RE: 123 Old Colchester Road

>
> Thank you Bryan!
>
> Rick,
>
> As you can tell Bryan Currier has designed the site to fully comply with all state stormwater requirements and that peak discharge off the site and to the railroad culvert will be lower than it is today from the undeveloped site.
>
> In addition, as you're probably aware, that the stormwater pond will require an engineer's certification after it has been built, it is also required to be inspected annually, and those reports must be filed with the state stormwater department. If you'd like we can also send the RR copies of each annual inspection report.
>
> The other comments offered by Larry are fine, we'll comply with all. Prior to us getting a permit from the Town of Essex we're required to submit a letter from the RR stating that you have looked at and reviewed our development plan. Is that something you can email me so that I can apply for a building permit?
>
> This is the only thing we are waiting on. Your prompt attention is
> appreciated. Please contact myself, Al Senecal (owner) or Bryan
> Currier
> (engineer) if you have any additional questions. If you have no further questions we ask that you submit your approval and conditions in writing so that we can share them with the Town.
>
> Thank you very much,
>
> Brian
>
> -----Original Message-----
> From: Bryan Currier [mailto:bcurrier@olearyburke.com]
> Sent: Tuesday, August 16, 2016 11:36 AM
> To: Brian Bertsch; 'Rick T. Boucher'
> Cc: 'Debra-Ann Bocash'; 'Ronald Boucher'
> Subject: RE: 123 Old Colchester Road
>
> Hey Rick,
>
> The main stormwater pond has a design volume of 42,429 cf (POI#2), see attached Sheet ST - Storm Calcs REVISED 9-30-15. During the 1-year storm the peak runoff from the pond is estimated to be 0.18 cfs. The estimated peak runoff during the 1-year storm for the existing conditions is 1.90 cfs.
> . During the 10-year storm the peak runoff from the pond is estimated
> to be
> 1.03 cfs. The estimated peak runoff during the 10-year storm for the existing conditions is 7.73 cfs. The pond was designed to be over sized with the thought that it may be used in the future development of the parcel.
>
> The approved stormwater maintenance plan for the storm system is on the top left corner of the attached Sheet 2 - Stormwater Details REVISED 9-30-15.
>
>
> The state stormwater permit for the project is also attached (7167-INDS).
>
> Please let me know if you have any questions.
>
> Thank you

>
> Bryan Currier, PE
> O'Leary-Burke Civil Associates
> 13 Corporate Drive | Essex Jct., VT 05452
> p: (802)878-9990
> bcurrier@olearyburke.com
>
>
> -----Original Message-----
> From: Brian Bertsch [mailto:bbertsch@omegavt.com]
> Sent: Tuesday, August 16, 2016 10:15 AM
> To: 'Rick T. Boucher'
> Cc: 'Debra-Ann Bocash'; Bryan Currier; 'Ronald Boucher'
> Subject: RE: 123 Old Colchester Road
>
> Bryan,
>
> Could you answer Rick's stormwater question below about the new pond? Ie.
> how much storage volume it is, what the pre and post peak discharge is, and maintenance plan. I know the pond has
> received a state stormwater discharge permit for the new impervious area.
>
> I think that's Rick's last question before granting permission to blast.
> Thank you!
>
> Brian
>
> -----Original Message-----
> From: Rick T. Boucher [mailto:rick.boucher2@gwrr.com]
> Sent: Monday, August 15, 2016 3:56 PM
> To: Brian Bertsch
> Cc: Debra-Ann Bocash; 'Bryan Currier'; Ronald Boucher
> Subject: RE: 123 Old Colchester Road
>
> See answers below,
>
> Have been traveling the last two weeks, sorry for the late response.
>
>
>
> -----Original Message-----
> From: Brian Bertsch [mailto:bbertsch@omegavt.com]
> Sent: Wednesday, August 10, 2016 2:22 PM
> To: Rick T. Boucher
> Cc: Debra-Ann Bocash; 'Bryan Currier'; Ronald Boucher
> Subject: RE: 123 Old Colchester Road
>
> Hi Rick,
>
> Ron and I met onsite last week and took a look at the drainage as well as tracks' proximity to blasting. It did not sound
> like blasting was going to be a problem provided we stay in close communication with each other. Our plans are still to
> start blasting first week of September and go through December before breaking for the winter. = What is the

maintenance plan for the retention pond to maintain its holding capacity. What is the expected volume of storm water to flow from the retention pond ? Need this info be for granting permission.

>

> Would you be able to provide me a written response with what exactly you are looking for from us and our blaster? Ie how much notice you would like, who to call, etc etc. = A right of entry will be needed for working on any portion of RR property contact donna.killingsworth@gwrr.com for permit est.

> 2 weeks to get and deb.bocash@gwrr.com for flagging est. 2 week to get .

> Blasting will require a flagger for each occasion notification to the RR at request of flagging will be sufficient. Follow the Provided directions for blasting from Larry Romain.

>

> Ron gave me the name of Gene from ECI for when we started getting closer to the tracks but what is the distance where we should have Gene there? Need to contact Deb for this .

>

> We are trying to coordinate everything now so that everything runs smoothly come September. Thank you very much!

>

> Brian

>

> -----Original Message-----

> From: Rick T. Boucher [mailto:rick.boucher2@gwrr.com]

> Sent: Monday, August 01, 2016 5:37 AM

> To: Brian Bertsch

> Cc: Debra-Ann Bocash; Bryan Currier; Ronald Boucher

> Subject: Re: 123 Old Colchester Road

>

> Hi Brian,

>

> Sorry for the late response , Will this Friday at 11:00 work for you to meet with Ron Boucher from NECR?

>

> Thank

>

> RT

>

>

> Sent from my iPhone

>

>> On Jul 29, 2016, at 8:34 AM, Brian Bertsch <bbertsch@omegavt.com> wrote:

>>

>> Hi Rick,

>>

>> Were you able to find a good day and time that works with everyone?

>> We're looking to get started soon out there. Thanks,

>>

>> Brian

>>

>> -----Original Message-----

>> From: Brian Bertsch [mailto:bbertsch@omegavt.com]

>> Sent: Monday, July 25, 2016 12:05 PM

>> To: 'Rick T. Boucher'

>> Cc: 'Debra-Ann Bocash'; 'Bryan Currier'; 'Ronald Boucher'

>> Subject: RE: 123 Old Colchester Road

>>

>> Hi Rick, Sounds like a great plan. Just let me know what day and

>> time next week you'd like to meet and I will be there. Thanks!

>> -Brian

>>

>> -----Original Message-----

>> From: Rick T. Boucher [mailto:rick.boucher2@gwrr.com]

>> Sent: Monday, July 25, 2016 10:36 AM

>> To: Brian Bertsch

>> Cc: Debra-Ann Bocash; 'Bryan Currier'; Ronald Boucher

>> Subject: RE: 123 Old Colchester Road

>>

>> Good morning Brian,

>>

>> We should have a site visit with both NECR and yourself to review the

>> project and plan. We could possibly have our Road Master RW. Boucher

>> meet up with sometime mid next week .

>>

>> Thanks

>>

>> RT

>>

>> -----Original Message-----

>> From: Brian Bertsch [mailto:bbertsch@omegavt.com]

>> Sent: Monday, July 25, 2016 10:19 AM

>> To: 'Brian Bertsch'; Rick T. Boucher

>> Cc: Debra-Ann Bocash; 'Bryan Currier'

>> Subject: RE: 123 Old Colchester Road

>>

>> Hi Rick and Debra,

>>

>> Could you please give me a quick update on where things stand with

>> your drainage concerns? It sounded like the blasting concerns could

>> be alleviated by staying in close contact with each other

>> coordinating with an RR inspector from your office.

>>

>> Thanks in advance for any info.

>>

>> Brian

>>

>> -----Original Message-----

>> From: Brian Bertsch [mailto:bbertsch@omegavt.com]

>> Sent: Tuesday, July 05, 2016 11:38 AM

>> To: 'Rick T. Boucher'

>> Cc: 'Debra-Ann Bocash'; 'Bryan Currier'

>> Subject: RE: 123 Old Colchester Road

>>

>> Hi Rick and Debra,

>>

>> I hope you both had a nice 4th! I was driving by the old Colchester

>> road site this morning so I stop in to take pictures of the existing

>> culvert because you had asked about that. It's a beautiful stone box

>> culvert apx.

>> 3'x3' which runs 10-15' under the tracks. Image 219 is a panorama

>> which shows the area this culvert collects, its seems to be a very
>> healthy wetland and the stream depth was only 1-2 inches.
>>
>> I hope this helps! Please keep me posted on your review, we have
>> been talked with Austin Powder about blasting this site. Thank you!

>>
>> Brian

>>
>> -----Original Message-----

>> From: Rick T. Boucher [mailto:rick.boucher2@gwrr.com]
>> Sent: Wednesday, June 29, 2016 6:57 PM
>> To: Brian Bertsch
>> Cc: Debra-Ann Bocash; 'Bryan Currier'
>> Subject: RE: 123 Old Colchester Road

>>
>> Hey Brian,

>>
>> We would still like to look at the drainage plans a bit more and have
>> a sight visit if possible to review.

>>
>> Thanks

>>
>> RT

>>
>> -----Original Message-----

>> From: Brian Bertsch [mailto:bbertsch@omegavt.com]
>> Sent: Wednesday, June 29, 2016 1:01 PM
>> To: Rick T. Boucher
>> Cc: Debra-Ann Bocash; 'Bryan Currier'
>> Subject: RE: 123 Old Colchester Road

>>
>> Hi Rick,

>>
>> Thank you for forwarding Larry's email, once we a little closer to
>> the blast date will certainly coordinate with your crews and we agree
>> to all of Larry's conditions below. I will pass all of this to those
> bidding.

>>
>> Is the email from Larry below written permission? The Town of Essex
>> has asked that we provide a point of contact at the Rail Road (I
>> assume that is you and Deb), and demonstrate that we have addressed
>> your concerns. This email would suffice if you're agreeable.

>>
>> We are still 2 months away from blasting but need something in
>> writing before the Town will issue us a building permit so that we
>> can get into the site to cut trees and prep the area.

>>
>> Maybe once we have the area cleared and its crystal clear where the
>> ledge is we can all meet onsite to go through the blasting plan.

>>
>> Just trying to keep this moving in the right direction. Thanks for

>> your help!

>>

>> Brian

>>

>> -----Original Message-----

>> From: Rick T. Boucher [mailto:rick.boucher2@gwrr.com]

>> Sent: Wednesday, June 29, 2016 12:37 PM

>> To: Brian Bertsch

>> Cc: Debra-Ann Bocash; Bryan Currier

>> Subject: Re: 123 Old Colchester Road

>>

>> Hi Brian ,

>>

>> Below are some guidelines from corporate to utilize where they

>> pertain to your project around the blasting scope .

>>

>> On Jun 28, 2016, at 4:12 PM, Larry Romaine

>> <larry.romaine@gwrr.com<mailto:larry.romaine@gwrr.com>> wrote:

>>

>>

>> A. Blasting is not permitted on or adjacent to Railroad right-of-way
>> without prior written approval from the Engineer. Mechanical and
>> chemical means of rock removal must be explored before blasting is
>> considered. If written permission for the use of explosives is
>> granted, the Agency or Contractor must comply with all of the following:

>>

>>

>>

>> 1. Blasting shall be done with light charges under the direct
>> supervision of a responsible officer or employee of the Agency or
>> Contractor.

>>

>>

>> 2. Electronic detonating fuses shall not be used because of the
>> possibility of premature explosions resulting from operation of
>> two-way train radios.

>>

>>

>> 3. No blasting shall be done without the presence of an authorized
>> representative of Railroad. Advance notice to the Engineer as
>> required by the Railroad Special Provisions is required to arrange
>> for the presence of an authorized Railroad representative and any
>> flagging that Railroad may require.

>>

>>

>> 4. Agency or Contractor must have at the project site adequate
>> equipment, labor and materials, and allow sufficient time, to clean
>> up debris resulting from the blasting and correct any misalignment of
>> tracks or other damage to Railroad property resulting from the
>> blasting. Any corrective measures required must be performed as
>> directed by the Engineer at the Agency's or Contractor's expense
>> without any delay to trains. If Agency's or Contractor's actions

>> result in the delay of any trains including passenger trains, the
>> Agency or Contractor shall bear the entire cost thereof.
>>
>>
>> 5. The Agency or Contractor may not store explosives on Railroad
>> property.
>>
>>
>> 6. At any time during blasting activities, the Engineer may require
>> revisions to the previously approved procedures to address weather,
>> site conditions or other circumstances that may create a potential
>> hazard to rail operations or Railroad facilities. Such revisions may
>> require immediate interruption or termination of ongoing activities
>> until such time the issue is resolved to the Engineer's satisfaction.
>> Railroad and its GEC shall not be responsible for any additional
>> costs or time claims associated with such revisions.

>> Sent from my iPhone

>> On Jun 29, 2016, at 12:28 PM, Brian Bertsch
>> <bbertsch@omegavt.com<<mailto:bbertsch@omegavt.com>>> wrote:

>> Hi Deb,

>> I wanted to give you a quick update .. Al Senecals' project on Old
>> Colchester Road in Essex received its final state permit yesterday
>> (attached). We're are lining up subs and trying to schedule the
>> start of the project. we currently have the blasting component out to
>> bid, while we haven't received any questions yet but I'd like to be
>> about to pass on any special requests you may have. Thanks in
>> advance for any
> info.

>> Brian

>> From: Debra-Ann Bocash [<mailto:deb.bocash@gwrr.com>]
>> Sent: Tuesday, June 21, 2016 7:11 AM
>> To: 'Brian Bertsch'
>> Cc: Rick T. Boucher; 'Bryan Currier'
>> Subject: RE: 123 Old Colchester Road

>> Good morning Brian,

>> Thank you for the information. I have updated the email to fix
>> Rick's email address for further communication.

>> I will forward this to our VP of Engineering in Jacksonville, FL for
>> his comments, questions, and any concerns.

>> I will keep you informed with any updates from him.

>> Thank you,

>> Deb
>>
>> Debra-Ann Bocash
>> Regional Coordinator | Northeast Region*
>> 2 Federal Street, Suite 201
>> St. Albans, VT 05478
>> Office: 802-527-3444
>> Cell: 802-393-3444
>> Fax: 802-527-3482
>> Email: deb.bocash@gwrr.com<mailto:deb.bocash@gwrr.com>
>>
>> *Northeast Region Railroads: CSO Connecticut Southern Railroad; MSTR
>> The Massena Terminal Railroad Company; NECR New England Central
>> Railroad
>>
>>
>> From: Brian Bertsch [mailto:bbertsch@omegavt.com]
>> Sent: Monday, June 20, 2016 12:39 PM
>> To: Debra-Ann Bocash
>> Cc: rick.bouscher2@gwrr.com<mailto:rick.bouscher2@gwrr.com>; 'Bryan
> Currier'
>> Subject: 123 Old Colchester Road
>>
>> Hi Deb and Rick,
>>
>> Thank you for the call this morning, as discussed I've attached a
>> copy of the excavation plans, site plans, blast plan, town Zoning
>> Board approval, and both the multisector and operating stormwater permits.
>> I have also cc'd our engineer Bryan Currier from O'Leary-Burke Civil
>> Associates in case you had any specific questions of him.
>>
>> Town approval condition #3 specifically requested that "Prior to the
>> issuance of any town permits, the applicant shall confirm that
>> contact was made with the Railway office and provide the Railway
>> contact information, including telephone number. The Railway shall
>> be notified of
> all blasting
>> sessions." After your review, and hopefully approval, it would be
> helpful
>> if you could write us something "official" to share with the Town
>> which could include any special conditions (such as having personal
>> in the area during all blasting).
>>
>> In addition I have verified the closest point there will be blasting
>> is
> apx.
>> 125' feet away from the tracks and that our records show the size of
>> the existing culvert under the tracks as being a 36" diameter
>> concrete
> pipe.
>>
>> I've sent a lot of information (and have more!) so please just let me

>> know if you have any comments or questions,
>>
>> Brian
>>
>>
>> Brian J. Bertsch, P.E., CPESC | Project Manager Allen Brook
>> Development Inc, LNP Inc, and A & C Realty LLC
>> 27 Commerce Ave., South Burlington, VT 05403 p. (802) 862-0517 x227 |
>> bbertsch@omegavt.com<https://urldefense.proofpoint.com/v2/url?u=http-
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>> c. (802) 238-5020 |
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State of Vermont

LAND USE PERMIT

Case No: 4C1290
A&C Realty LLC
c/o Al Senecal
31 Commerce Avenue
South Burlington, VT 05403

LAWS/REGULATIONS INVOLVED
10 V.S.A. §§ 6001 - 6093 (Act 250)

District Environmental Commission #4 hereby issues Land Use Permit #4C1290, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6093. This permit applies to the lands identified in Book 445, Page 588, of the land records of Essex, Vermont, as the subject of a deed to A&C Realty LLC.

This permit specifically authorizes the construction of 48 residential units in six 4-plex buildings and one 24 multi unit building and an additional 16,500sf multi-tenant commercial building. The Project is located on Gardenside Lane in Essex, Vermont.

Jurisdiction attaches because the Project constitutes a material change to a permitted development or subdivision, and thus requires a permit amendment pursuant to Act 250 Rule 34.

1. The Permittee, and its assigns and successors in interest, is obligated by this permit to complete, operate and maintain the project as approved by the District Commission in accordance with the following conditions.
2. The project shall be completed, operated and maintained in accordance with: (a) the conditions of this permit; (b) Findings of Fact and Conclusions of Law, and Order #4C1290; and (c) the permit application, plans, and exhibits on file with the District Environmental Commission and other material representations.

The approved plans are:

Sheet C1-00 - "Boundary Plat, A & C Realty LLC" dated 1/26/13, last revision 1/26/16 (Exhibit #022a);

Sheet C1-01 - "Legend & Notes, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #023);

Sheet C1-02 - "Existing Conditions Plan, A & C Realty LLC" dated 1/26/13, last revision 1/29/16 (Exhibit #024)

Sheet C1-03 - "Demolition Plan, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #025);

Sheet C2-01 - "Master Site Plan, A & C Realty LLC" dated 1/23/13, last revision 5/27/16 (Exhibit #026b);

- Sheet C2-02 - "Master Utility Plan, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #027);
- Sheet C2-03 - "West Site Plan, A & C Realty LLC" dated 8/28/13, last revision 1/29/16 (Exhibit #028);
- Sheet C2-04 - "East Site Plan, A & C Realty LLC" dated 8/28/13, last revision 1/29/16 (Exhibit #029);
- Sheet C2-05 - "West Utility Plan, A & C Realty LLC" dated 8/28/13, last revision 1/29/16 (Exhibit #030);
- Sheet C2-06 - "East Utility Plan, A & C Realty LLC" dated 8/28/13, last revision 1/29/16 (Exhibit #031);
- Sheet C3-01 - "Water & Sanitary Profiles, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #032);
- Sheet C3-02 - "Sanitary Force Main Plan & Profile, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #033);
- Sheet C3-03 - "Sanitary Force Main Plan & Profile, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #034);
- Sheet C3-04 - "Sanitary Force Main Plan & Profile, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #035);
- Sheet C3-05 - "Sanitary Force Main Plan & Profile, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #036);
- Sheet C3-06 - "Sanitary Force Main Plan & Profile, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #037);
- Sheet C3-07 - "Sanitary Force Main Plan & Profile, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #038);
- Sheet C4-01 - "Stormwater Watershed Delineation Plan, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #039);
- Sheet C5-01 - "Erosion Prevention & Sediment Control Plan, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #040);
- Sheet C8-01 - "Water Details, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #041);
- Sheet C8-02 - "Water Details, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #042);
- Sheet C8-03 - "Sewer Details, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #043);
- Sheet C8-04 - "Sewer Details, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #044);
- Sheet C8-05 - "Pump Station Plan View, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #045);

Sheet C8-06 - "Pump Station Profile View, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #046);

Sheet C8-07 - "Pump Station Notes & Details, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #047);

Sheet C8-08 - "Stormwater Details, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #048);

Sheet C8-09 - "Stormwater & Site Details, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #049);

Sheet C8-10 - "Site Details, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #050);

Sheet C8-11 - "Site Details, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #051);

Sheet C8-12 - "Erosion Prevention & Sediment Control Details, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #052);

Sheet C8-13 - "Erosion Prevention & Sediment Control Details, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #053);

Sheet L1-01 - "Landscape Plan, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #054);

Sheet L1-02 - "Lighting Plan, A & C Realty LLC" dated 1/23/13, last revision 1/29/16 (Exhibit #055);

Sheet A1 - "Elevations, Garden Side - Multi-Family" dated 08/21/14, (Exhibit #056);

Sheet A1 - "Flats - Unit Type A - Proposed, Gardenside" dated 05/15/14, (Exhibit #057);

Sheet B1 - "Flats - Unit Type B - Proposed, Gardenside" dated 05/15/14, (Exhibit #058);

"[Elevations Type B" dated 05-14-14, (Exhibit #059);

Sheet B1 - "Flats - Unit Type B - Proposed, Gardenside" dated 05/14/14, (Exhibit #060);
and

Sheet R1 - "Retail Building - Proposed, Gardenside" dated 05/14/14, (Exhibit #061).

3. The Permittee shall comply with all of the conditions of the following Agency of Natural Resources Permits:
 - a. Wastewater System and Potable Water Supply Permit #ww-4-4597 issued on August 9, 2016 by the ANR Drinking Water and Groundwater Protection Division;
 - b. Authorization of Notice of Intent #7538-9020 under Construction General Permit #3-9020 issued on 3/25/16 by the ANR Watershed Management Division;
 - c. Individual Stormwater Discharge Permit #7538-INDS issued on July 25, 2016 by the ANR Watershed Management Division.
4. Any nonmaterial changes to the permits listed in the preceding condition shall be automatically incorporated herein upon issuance by the Agency of Natural Resources.

5. Representatives of the State of Vermont shall have access to the property covered by this permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.
6. A copy of this permit and plans shall be on the site at all times throughout the construction process.
7. No change shall be made to the design, operation or use of this project without a permit amendment issued by the District Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
8. No further subdivision, alteration, and/or development on the tract/tracts of land approved herein shall be permitted without a permit amendment issued by the District Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
9. Pursuant to 10 V.S.A. § 8005(c), the District Commission may at any time require that the permit holder file an affidavit certifying that the project is in compliance with the terms of this permit.
10. The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittee and their successors and assigns.
11. Construction hours are limited to 7:00 AM to 6:00 PM Monday through Friday and 8:00 AM to 5:00 PM on Saturday.
12. The Permittee shall apply and maintain water and/or other agents approved by the Watershed Management Division in the Project's Erosion Prevention and Control Plan on all roadways or disturbed areas within the project during construction and until pavement and/or vegetation is fully established to control dust.
13. Immediately upon initial roadway clearing, a stabilized construction entrance must be installed and maintained as shown on Sheets C5-01 and C8-12 (Exhibits #040 and #052) at the proposed access onto Gardenside Lane. At a minimum, this entrance must be constructed and maintained in accordance with the specifications as described in the Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (2006). No further clearing or construction beyond the stabilized construction entrance may occur until the stabilized construction entrance is complete.
14. The building approved herein is not approved for any manufacturing use or the on-site disposal of any process wastes. The Permittee shall apply and receive amended approval from the District Commission for any change in the use of the buildings that involves the storage or handling of any regulated substances or the generation of hazardous wastes.
15. There shall be no floor drains installed at the Project without first acquiring the required permit from the ANR Drinking Water and Groundwater Protection Division and/or the Wastewater Management Division.

16. The Permittee and all subsequent owners or lessees shall install and maintain only low-flow plumbing fixtures in any buildings. Any failed water conservation measures shall be promptly replaced with products of equal or better performance.
17. The Permittee shall comply with Exhibits #40, #052 and #053 (Sheets C5-01, C8-12 & C8-13 and Individual Construction Permit) for erosion prevention and sediment control. The Permittee shall prevent the transport of any sediment beyond that area necessary for construction approved herein. All erosion prevention and sediment control devices shall be periodically cleaned, replaced and maintained until vegetation is permanently established on all slopes and disturbed areas.
18. All mulch, siltation dams, water bars and other temporary devices shall be installed immediately upon grading and shall be maintained until all roads are permanently surfaced and all permanent vegetation is established on all slopes and disturbed areas. Topsoil stockpiles shall have the exposed earth completely mulched and have siltation checks around the base.
19. All areas of disturbance must have temporary or permanent stabilization within 14 days of the initial disturbance. After this time, any disturbance in the area must be stabilized at the end of each work day. The following exceptions apply: i) Stabilization is not required if work is to continue in the area within the next 24 hours and there is no precipitation forecast for the next 24 hours. ii) Stabilization is not required if the work is occurring in a self-contained excavation (i.e. no outlet) with a depth of 2 feet or greater (e.g. house foundation excavation, utility trenches).
20. All disturbed areas of the site shall be stabilized, seeded and mulched immediately upon completion of final grading. All disturbed areas not involved in winter construction shall be mulched and seeded before October 1. Between the periods of October 15 to April 15, all earth disturbing work shall conform with the "Requirements for Winter Construction" standards and specifications of the Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (2006).
21. Prior to construction of the approved work, the Permittee shall: a) clearly delineate the construction limits with flagging or snowfencing; b) place diversion ditches on the uphill limits of the construction area; and c) place temporary siltation controls on the downhill limits of construction.
22. In addition to conformance with all erosion prevention and sediment control conditions, the Permittee shall not cause, permit or allow the discharge of waste material into any surface waters. Compliance with the requirements of this condition does not absolve the Permittee from compliance with 10 V.S.A. (§§ 1250-1284) Chapter 47, Vermont's Water Pollution Control Law.
23. At least 7 days prior to demolition, the buildings slated for demolition shall be inspected by VT Fish & Wildlife Small Mammal Biologist for the presence or probable absence of threatened and endangered bat species (Northern Long-eared, Indiana, Little Brown, or Eastern Small-footed bats). If bats or bat evidence is found within the buildings, the applicant shall follow The Vermont Fish and Wildlife Department's Best Management Practices (Exhibit #063) for excluding bats in structures, which include time of year

restrictions on when bats can be evicted or excluded. Alternatively, the Permittee would need to apply for and obtain a threatened and endangered species takings permit from the Agency.

24. The Permittee will hire a qualified architectural historian to complete a Historic Resource Documentation Package according to VT. Department of Historic Preservation ("VDHP") guidelines. The report will be submitted to, reviewed, and approved by VDHP prior to project commencement.
25. The Permittee will produce an interpretative panel at the site that incorporates information from the historic Resource Documentation Package. Planning to be done in coordination with a qualified historic preservation consultant. VDHP and/or Chittenden County Historical Society, and/or Essex community Historical Society.
26. The Permittee shall, prior to commencement of construction, submit the calculated off-site mitigation fee payment of **\$12,052** to the Vermont Housing and Conservation Board (VHCB, General Counsel, 58 East State Street, Montpelier, VT 05602). The off-site mitigation fee is calculated as follows: 4.6 acres (number of acres of Primary Agricultural Soils to be mitigated) \$2,620 (cost to acquire conservation easements for primary agricultural soils in the same geographic region) = \$12,052. If the mitigation fee is not paid within one year from the date that a Land Use Permit is issued, the amount of the fee will be subject to a simple interest annual inflation factor increase of 2.8% and the fee will increase each year on the anniversary of the Land Use Permit to an amount equal to 102.8% of the previous year's amount, rounded to the nearest dollar.
27. The Permittee and all assigns and successors in interest shall continually maintain the landscaping as approved in Exhibit #054 (Sheet L1-01) by replacing any dead or diseased plantings within the season or as soon as possible after the ground thaws, whichever is sooner.
28. The Permittee shall pay a proportional fair-share monetary contribution towards the preferred mitigation (I289/Susie Wilson Road intersection improvements (STP 5400(7))). The fair share calculation has been determined by the Commission to be \$241 per PM peak vehicle generated (based on the 6,973, which is the increased capacity that the I289/Susie Wilson Road intersection improvements provides divided by the cost which has been estimated at \$1,677,440). The money ($\$241 \times 102 = \mathbf{\$24,582}$) shall be paid to the Vermont Agency of Transportation before commencement of construction.
29. The Permittee shall install infrastructure and pre-wiring for electric vehicle charging stations pursuant to C708.1 (Commercial stretch code guidelines).
30. The installation of exterior light fixtures is limited to those approved in Exhibits #055 (Sheet L1-02 and lighting cut sheets), and shall be mounted no higher than 22 feet above grade level. All exterior lighting shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated.
31. The Permittee shall not erect exterior signage, other than road signs (right-in, right-out) without prior written approval from the District Coordinator or the Commission, whichever is appropriate under the Act 250 Rules. Signage includes banners, flags, and other

advertising displays, excepting temporary real estate marketing signs and temporary Grand Opening signs.

32. Pursuant to 30 V.S.A. Section 51, the Permittee and/or subsequent lot owner, at a minimum, shall construct the two family home and multi-family home three stories or less in accordance with Vermont's Residential Building Energy Standards (RBES-Stretch Code) effective at the time of construction.
33. Pursuant to 30 V.S.A. § 53, energy design and construction shall, at a minimum, comply the *2015 Vermont Commercial Building Energy Standards*. (More information on this update can be found at (http://publicservice.vermont.gov/topics/energy_efficiency/cbes).
34. The installation and/or use of electric resistance space heaters are specifically prohibited without prior written approval from the District Environmental Commission.
35. The Permittee shall reference the requirements and conditions imposed by Land Use Permit 4C1290 in all deeds of conveyance and leases.
36. The Permittee shall provide each prospective purchaser of any interest in this Project a copy of the Land Use Permit and the Findings of Fact before any written contract of sale is entered into.
37. Pursuant to 10 V.S.A. § 6090(b)(1) this permit is hereby issued for an indefinite term, as long as there is compliance with the conditions herein. Notwithstanding any other provision herein, this permit shall expire three years from the date of issuance if the Permittee has not commenced construction and made substantial progress toward completion within the three year period in accordance with 10 V.S.A. § 6091(b).
38. All site work and construction shall be completed in accordance with the approved plans by **October 31, 2019**, unless an extension of this date is approved in writing by the Commission. Such requests to extend must be filed prior to the deadline and approval may be granted without public hearing.
39. Upon completion of the construction of each building and prior to occupancy, the Permittee shall submit to the District Commission copies of the certifications submitted to the Public Service Department as described under 30 V.S.A. § 53(d) [Commercial] and 51(f) [residential].
40. The Permittee shall file a Certificate of Actual Construction Costs, on forms available from the Natural Resources Board, pursuant to 10 V.S.A. § 6083a(g) within one month after construction has been substantially completed or two years from the date of this permit, whichever shall occur first. Application for extension of time for good cause shown may be made to the District Commission. If actual construction costs exceed the original estimate, a supplemental fee based on actual construction costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of application. Upon request, the Permittee shall provide all documents or other information necessary to substantiate the certification. Pursuant to existing law, failure to file the certification or pay any supplemental fee due constitutes grounds for permit revocation. The certificate of actual construction costs and any supplemental fee (by check payable to the "State of Vermont") shall be mailed to: Natural Resources Board, Dewey Building, National Life Drive, Montpelier, VT 05620-3201; Attention: Certification.

41. Failure to comply with all of the above conditions may be grounds for permit revocation pursuant to 10 V.S.A. § 6027(g).

Dated at Essex Junction, Vermont, this 31st day of August, 2016.

By /s/ Thomas A. Little
Thomas A. Little Chair
District #4 Commission

Members participating in
this decision:

Parker Riehle
Monique Gilbert

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the \$265 entry fee required by 32 V.S.A. § 1431.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, Dewey Building, National Life Drive, Montpelier, VT 05620-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal. See 10 V.S.A. § 8504(k).

For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 828-1660. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401

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State of Vermont
NATURAL RESOURCES BOARD
DISTRICT #4 ENVIRONMENTAL COMMISSION
111 West Street Essex Junction VT 05452

A&C Realty LLC
c/o Al Senecal
31 Commerce Avenue
South Burlington, VT 05403

Application #4C1290
Findings of Fact
Conclusions of Law, and Order
10 V.S.A. §§ 6001-6093 (Act 250)

I. INTRODUCTION

On March 2, 2016, A&C Realty LLC filed an application for an Act 250 permit for a project generally described as the construction of 48 residential units and a 16,500 sf multi-tenant commercial building. The tract of land consists of 5.47 acres. The Applicant's legal interest is ownership in fee simple described in a deed recorded in Book 445, Page 588 on January 1, 2001 in the land records of the Town of Essex, Vermont.

The application, first submitted on March 2, 2016, was deemed complete.

The Commission held a hearing on this application on April 18, 2016. The Commission also conducted a site visit that immediately preceded the hearing and placed its observations on the record. At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on May 16, 2016 after receipt of the additional information, an opportunity for parties to respond to that information, and the completion of Commission deliberations. As set forth below, the Commission finds that the Project complies with 10 V.S.A. § 6086(a) (Act 250).

II. JURISDICTION

Jurisdiction attaches because the Project constitutes a development or subdivision pursuant to 10 V.S.A. § 6001(3)(iv).

III. PARTY STATUS AND FRIENDS OF THE COMMISSION

A. Parties by Right

The following persons have party status pursuant to 10 V.S.A. § 6085(c)(1):

1. The **Applicants**, were represented at the hearing by Al Senecal; Debra Bell & Andrew Mills, P.E. of Trudell Consulting Engineers; Rich Bryant of Stantec Consulting; and Kaitlin O'Shea of VHB.
2. The **Agency of Natural Resources ("ANR")** through an Entry of Appearance, dated April 15, 2016, by Jennifer Mojo, Regulatory Planning Analyst.
3. The **Vermont Division of Historic Preservation ("VDHP")** was represented at the hearing by Elizabeth Peebles, Historic Resource Specialist & Dale Azaria, Esq. and through an Entry of Appearance, dated April 15, 2016.
4. The **Chittenden County Regional Planning Commission ("CCRPC")** through an Entry of Appearance, dated April 7, 2016, by Charlie Baker, Executive Director.
5. The **Vermont Agency of Transportation ("VTrans")** was represented at the Hearing by Joe Segale and Chris Clow and through an Entry of Appearance dated April 14, 2016.

6. The **Town of Essex** was represented at the hearing by Greg Duggan.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicant has met the burden of proving compliance with the following criteria through submittal of the application:

- | | |
|---------------------------------------|--|
| 1 - Air Pollution | 8 - Aesthetics |
| Water Pollution | 8 – Natural Areas |
| 1(A) - Headwaters | 8(A) - Wildlife Habitat & Endangered Species |
| 1(B) - Waste Disposal | 9(A) - Impact of Growth |
| 1(C) - Water Conservation | 9(C) - Productive Forest Soils |
| 1(D) - Floodways | 9(D) - Earth Resources |
| 1(E) - Streams | 9(E) - Extraction of Earth Resources |
| 1(F) - Shorelines | 9(F) - Energy Conservation |
| 1(G) - Wetlands | 9(G) - Private Utility Services |
| 2 - Water Supply | 9(H) - Costs of Scattered Development |
| 3 - Impact on Existing Water Supplies | 9(J) - Public Utility Services |
| 4 - Soil Erosion | 9(K) - Effects on Public Investments |
| 6 - Educational Services | 10 - Local and Regional Plans |
| 7 - Municipal Services | |

Therefore, the application shall serve as the Findings of Fact on these criteria.

The findings of fact are based on the application, Exhibits # 1 - #083, and other evidence in the record. Findings made in this decision are not limited to the specific criterion in which they appear, and may apply to other sections of the decision. To the extent that any proposed findings of fact are included in this decision, they are granted; otherwise, they are denied.

Under Act 250, projects are reviewed for compliance with the ten criteria of Act 250, 10 V.S.A. § 6086(a)(1)-(10). Before granting a permit, the District Commission must find that the Project complies with these criteria and, therefore, is not detrimental to the public health, safety or general welfare. The burden of proof under Criteria 1 through 4 and 9 and 10 is on the applicant, and on the opponent under Criteria 5 through 8, and 9A if the municipality does not have a duly adopted capital improvement program.

General Findings:

1. The Project includes 48 residential units, consisting of six (6) - 4 Plex buildings and one 24 multi-unit building. Additionally, there will be a 16,500 square feet multi-tenant commercial building. The Project is to be constructed on a 5.47-acre lot. The Project includes new municipal utility (water and sewer) connections, landscaping, stormwater management, and 174 parking spaces within the site. Exhibit #001.
2. The commercial building is expected to include a food market with delicatessen and specialty retail. Exhibits #001 and #007.

Criterion 5 - Traffic:

Findings of Fact

3. The Project is not in a Transportation Improvement District (TID). VTrans has created a capital plan to address the transportation demands in the general area and the project will benefit from that transportation improvement.
 - a. The proposed project's peak hour trip generation (using 10th Edition ITE) is 138 per PM peak hour. Bypass trips reduce this total to 102 PM peak hour trips. Exhibits #002 and #066.
 - b. The Town has agreed to waive the payment of a municipal impact fee for Susie Wilson Drive transportation improvements. Exhibit #083.
 - c. The developer will provide the following transportation traffic demand management techniques: 1) contribute a 15-foot wide pedestrian easement (for construction of a 10-ft wide pedestrian path) along Route 2A and a monetary contribution of \$19,800 toward its construction; 2) conversion of one existing two-way Route 2A access to a right-in, right-out only access; 3) Bicycle racks will be provided; and 4) The project will provide an internal sidewalk circulation. Exhibits #002 and #083.
4. The 174 parking spaces are adequate for the demands of the Project. Exhibit #002.
5. Existing intersection Levels of Service ("LOS") in the area operate at are "D" for the AM WB VT 289/Vt 2A intersection ("C" for PM peak hour); "F" for the AM Gardenside Lane /VT 2A intersection ("C" for PM peak hour); "B" for AM EB Susie Wilson Bypass / VT 2A ("D" for PM peak hour). These LOS are not expected to change with construction. However, the PM Gardenside Lane /VT 2A intersection is expected to worsen to "D" in the 2018 design year. Exhibit #007.
6. Volume to capacity ratios (v/c) for AM WB VT 289/Vt 2A intersection and PM EB Susie Wilson Bypass / VT 2A intersections exceed 1.0. The v/c for the AM EB Susie Wilson Bypass / VT 2A intersection exceeds 0.9. Exhibit #007.
7. The Project incorporates minimal transportation demand management strategies. Exhibit #002.
8. Approximately three months after full occupancy or 12 months after initial occupancy, whichever comes first, the Applicant will complete a traffic monitoring analysis to include:
 - a. Record entering and exiting vehicles at the two driveways.
 - b. Record all turning movements at the Gardenside Lane/Vt Route 2A intersection.
 - c. Record vehicle queues on Gardenside Lane at the Gardenside Lane/Vt Route 2A intersection.
 - d. Observe and note any dangerous behaviors associated with cars exiting Gardenside Lane or the site driveway on Route 2A.
 - e. Review crash reports from VTrans for the Gardenside Lane and site driveway intersections with Vt Route 2A for the time span from initial occupancy to full occupancy.

Exhibits #007, #071.

9. VTrans has recommended that, pursuant to Act 145, the Applicant shall pay a transportation fee for work at the I289/Susie Wilson Road intersection (VTrans Capital Program project STP 5400(7)). The fair share payment is calculated to be \$241 (cost of project (\$1,677,440) divided by the capacity of the intersection after improvements (6,973 = \$241) per PM peak hour vehicle trip generated. The fee for the Project is calculated as \$24,582 (\$241 x 102). Exhibit #066.

Conclusions of Law

Prior to granting a permit, the Commission must find that the Project “will not cause unreasonable congestion or unsafe conditions with respect to use of the highways...” See 10 V.S.A. § 6086(a)(5). Notwithstanding the requirement for a positive finding, the Commission may not deny a permit solely on the reasons set forth under Criterion 5. See 10 V.S.A. § 6087(b). The Commission may, however, attach reasonable conditions to alleviate traffic burdens. Id.

The Commission concludes that the Project with payment of an Act 145 fee and the municipal transportation impact fee, will not cause unreasonable congestion or unsafe conditions with respect to use of roads, highways, waterways, railways, airports, and other existing or proposed means of transportation.

The Project complies with Criterion 5(A).

Given the type, scale and transportation impacts of this project, the following transportation measures are appropriate: donation of 10-foot wide easement of pedestrian path; monetary contribution to construction of the path; conversion of existing access from Route 2A to a right-in, right-out only access; internal sidewalk system, and provision of bicycle racks. With these conditions, the Project complies with Criterion 5(B).

Criterion 8 - Aesthetics, Historic Sites and Rare and Irreplaceable Natural Areas:

Findings of Fact

Aesthetics, Scenic or Natural Beauty

10. The majority of the existing project site is open meadow. There are four existing residential buildings with associated driveways. There is a small wooded area on the west side of the property of which about ¾ acre will be removed. There are numerous small trees and shrubs along the southern property line with I-289 and these will stay in place. Exhibit #002.
11. Noise that occurs during construction hours will be limited to 7:00 AM to 6:00 PM Monday-Friday and 8 AM to 5 PM on Saturday. After construction the Project will not generate noise impacts. Exhibit #002.
12. The Project will be landscaped as outlined on Exhibit #054 (Sheet L1-01). The applicant agreed to continually maintain the landscaping as approved.
13. Exterior lighting will consist of pole mounted fixtures not to exceed 22-feet and will be installed as depicted on Exhibit #055 (Sheet L1-02). All fixtures will have concealed light sources.
14. The buildings colors will be as shown in Exhibits #076 - #077. Colors will be darker (greens and “shadow”) with contrasting trim. The proposed architectural style (Exhibits #056 - #060) has been coordinated with the municipality, including giving the commercial building a more residential feel.
15. Other than road signs, no signage has been proposed. Exhibit #002.

16. Goal 5.2.3 of the 2011 Town of Essex Municipal Plan ("Plan") says: Encourage the location of housing at suitable locations adjacent to commercial centers where employment and public transportation exists.
17. Goal 5.3 of the Plan says: Encourage housing development of designs and in locations that promote and enhance neighborhood centers and preserve the Town's more rural areas and character.
18. Objective 10.5 of the Plan says: Promote historic preservation and promote development that enhances historic resources of the Town.
19. Goal 11.4 of the Plan says: Encourage the development of the Essex West area as a subregional growth center which will provide greater development opportunities, broaden the tax base, increase retail and personal services and provide a diversity of housing opportunities.
20. Goal 11.6 of the Plan says: Ensure a well-integrated, aesthetically pleasing mix of uses.

Historic Sites

21. The Project proposes to demolish two single family homes that are considered historic resources. The property at 202 Colchester Road is older than 50 years and is a good example of an early 20th Century bungalow. VDHP has determined that this property is not individually significant and alterations to the neighborhood have eliminated its potential as an historic district and thus the project site should not be considered as an "historic site." Exhibit #062a.
22. The property at 200 Colchester Road was listed on the State Register of Historic Places on July 9, 1989 (R.A. Parizo House #0405-2). Exhibit #062a.
23. The Applicant completed a Phase I archaeological site investigation. No evidence of Native American or significant Euroamerican activity was documented. Exhibits #011 and #0062a.
24. VDHP has recommended that the Applicant:
 - a. Hire a qualified architectural historian to complete a Historic Resource Documentation Package according to VDHP guidelines. The report will be submitted to, reviewed, and approved by VDHP prior to project commencement.
 - b. Produce an interpretative panel at the site that incorporates information from the historic Resource Documentation Package, with planning to be done in coordination with a qualified historic preservation consultant, such as VDHP and/or Chittenden County Historical Society, and/or Essex community Historical Society.

Exhibit #062a.

Rare and Irreplaceable Natural Areas

25. No Rare and Irreplaceable Natural Areas have been identified on the property. Exhibit #002.

Conclusions of Law

Prior to granting a permit, the Commission must find that the subdivision or development under Criterion 8 "will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas." 10 V.S.A. § 6086(a)(8). This Project involves concerns under Criterion 8 related to aesthetics and historic sites.

AESTHETICS and NATURAL AND SCENIC BEAUTY

The Commission uses a two-part test to determine whether a Project meets the portion of Criterion 8 relating to aesthetics and natural and scenic beauty. First, it determines whether the Project will have an adverse effect. Second, it determines whether the adverse effect, if any, is undue. *In re Rinkers, Inc.*, No. 302-12-08 Vtec, Decision and Order at 12 (Vt. Env'tl. Ct. May 17, 2010)(citations omitted); see also, *Re: Quechee Lakes Corporation*, #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law, and Order at 18-20 (Vt. Env'tl. Bd. Nov. 4, 1985); *In re Halnon*, 174 Vt. 514 (mem.)(applying Quechee test in Section 248 context).

The burden of proof under Criterion 8 is on any party opposing the Project, 10 V.S.A. § 6088(b), but the applicant must provide sufficient information for the Commission to make affirmative findings. *In re Rinkers*, No. 302-12-08 Vtec, Decision and Order at 10-11 (Vt. Env'tl. Ct. May 17, 2010)(citing *Re: Susan Dollenmaier*, #3W0125-5-EB, Findings, Conclusions and Order at 8 (Vt. Env'tl. Bd. Feb. 7, 2005); *In re Eastview at Middlebury, Inc.*, No. 256-11-06 Vtec, slip op. at 5 (Vt. Env'tl. Ct. Feb. 15, 2008), *aff'd*, 2009 VT 98. "Either party's burden, however, may be satisfied by evidence introduced by any of the parties or witnesses..." *In re McShinsky*, 153 Vt. 586, 589 (1990) (quoting *In re Quechee Lakes Corp.*, 154 Vt. 543, 553-54 (1990)).

1. Adverse Effect

To determine whether the Project will have an adverse aesthetic effect, the Commission looks to whether the Project will "fit" the context in which it will be located. In making this evaluation, the Commission examines a number of specific factors, including: the nature of the project's surroundings; the compatibility of the project's design with those surroundings; the suitability of the colors and materials selected for the project; the locations from which the project can be viewed; and the potential impact of the project on open space. *Quechee Lakes Corp et al.* #3W0411-EB and #3W0439-EB Findings of Fact, Conclusions of Law and Order at 18 (Vt. Env'tl. Bd., Nov. 4, 1985)(cited in *Rinkers*, No. 302-12-08 Vtec, Decision and Order at 12-13).

The Project is in an area that is growing commercially and the Project represents one of the last vestiges of the former farms from the area. It will also convert an open mowed field along the road to a commercial building and parking.

This Project will have an adverse aesthetic impact. Accordingly, we must determine whether that impact is undue.

2. Undue Adverse Effect

An adverse aesthetic impact is undue if any of the following is true: (1) the Project violates a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area; (2) the Project offends the sensibilities of the average person, or is offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area; or (3) the Applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with its surroundings. *In re Rinkers*, 302-12-08 Vtec, Decision and Order at 15 (May 22, 2010)(citing *In re: Times & Seasons, LLC*, 2008 VT 7, ¶ 8; *In re McShinsky*, 153 Vt. at 592).

(a) Clear, Written Community Standard

In evaluating whether a project violates a clear written community standard, the Commission looks to town plans, open land studies, and other municipal documents to discern whether a clear, written community standard exists to be applied in review of aesthetic impacts of a project. *Hannaford Brothers*

Co. and Southland Enterprises, Inc., #4C0238-5-EB, Findings of Fact, Conclusions of Law, and Order at 18 (Vt. Env'tl. Bd. April 9, 2002). A clear, written community standard must be intended to preserve the aesthetics or scenic beauty of the area where the project is located. *Re: Green Meadows Center, LLC, The Community Alliance and Southeastern Vermont Community Action*, #2WO694-I-EB, Findings of Fact, Conclusions of Law, and Order at 36 (Vt. Env'tl. Bd. 12/21/00).

A plan that states "consideration should be made..." is not a clear, written community standard. *Barre Granite Quarries, LLC and William and Margaret Dyott*, #7C1079(Revised)-EB, Findings of Fact, Conclusions of Law, and Order at 81 (Vt. Env'tl. Bd. Dec. 8, 2000). Although the proposed Project does not meet the specific goals or objectives cited above, there are no clear community standards relevant to the proposed Project's impacts on aesthetics.

The Commission has reviewed relevant portions of the 2011 Essex Town Plan. The Plan has no specific standards relating to the aesthetics of the area in which the Project is located.

Therefore, the proposed Project does not violate a clear community standard.

(b) Offensive or Shocking Character

Criterion 8 "was not intended to prevent all change to the landscape of Vermont or to guarantee that the view a person sees from their property will remain the same forever." *Re: Okemo Mountain, Inc.* #2S0351-S-EB Findings of Fact, Conclusions of Law, and Order (Dec. 18, 1986). Criterion 8 was intended to ensure that as development occurs, reasonable consideration will be given to visual impacts on neighboring landowners, the local community, and on the special scenic resources of Vermont. *Rinkers*, No. 302-12-08 Vtec, Decision and Order at 11-12; *Horizon Development Corp.*, #4C0841-EB, Findings of Fact, Conclusions of Law, and Order (Vt. Env'tl. Bd. Aug. 21, 1992).

The proposed buildings are consistent with other buildings in the area and have been reviewed by the municipal DRB.

Given all of these considerations and conditions, we find that the Project is not offensive or shocking.

(c) Generally Available Mitigating steps

The question under this factor of the aesthetics analysis is whether the Applicant has "failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings." *In re Times & Seasons*, 2008 VT 7, ¶ 8. If a project does have an adverse aesthetic effect, the applicant must "take generally available mitigating steps to reduce the negative aesthetic impact of a particular project," otherwise, "[f]ailure to take advantage of available alternatives may render an aesthetic impact unduly adverse." *In re Stokes Communications Corp.*, 164 Vt. 30, 39 (1995)(quoted in *In re Rinkers*, 302-12-08 Vtec, Decision and Order at 19 (May 22, 2010). A generally available mitigating step "is one that is reasonably feasible and does not frustrate [either] the project's purpose or Act 250's goals."

To mitigate the aesthetic impacts of the Project, the Applicant has proposed a Landscaping Plan and will use architectural styles and colors consistent with the area.

Given all of these considerations, we find that the Applicant has taken the available mitigating steps to minimize the adverse impacts of the proposed Project on the scenic or natural beauty of the area.

(d) Conclusion

Based on the above, the Commission concludes that the Project will not have an undue adverse effect on the aesthetics or natural and scenic beauty of the area.

HISTORIC SITES

The Commission uses a three-part test to determine whether the Project meets the portion of Criterion 8 relating to historic sites. The Commission determines:

Whether the Project site is or contains a historic site;

Whether the proposed Project will have an adverse effect on the historic site; and

Whether the adverse effect will be undue.

Re: Steven L. Reynolds and Harold and Eleanor Cadreact, #4C1117-EB, Findings of Fact, Conclusions of Law, and Order at 5 (Vt. Env'tl. Bd. May 27, 2004); *Re: Manchester Commons Associates*, #8B0500-EB Findings of Fact, Conclusions of Law, and Order at 18 (Vt. Env'tl. Bd. Sept. 29, 1995).

1. Whether the proposed project site is or contains a historic site.

“Historic site” is defined as “any site, structure, district or archeological landmark which has been officially included in the National Register of Historic Places and/or the state register of historic places or which is established by testimony of the Vermont Advisory Council on Historic Preservation as being historically significant.” 10 V.S.A. § 6001(9).

Listing on the national and state registers is a question of fact. *Re: Manchester Commons*, supra, at 19. If a structure is listed on the State register as an historic site, Act 250 has no discretion to declare such structure not to be historic. *Re: Stonybrook Condominium Owners Association*, Declaratory Ruling #385, Findings of Fact, Conclusions of Law, and Order at 9 (Vt. Env'tl. Bd. Sep. 18, 2001); *Re: OMYA, Inc. and Foster Brothers Farm, Inc.*, #9A0107-2-EB, Findings of Fact, Conclusions of Law, and Order at 39 (Vt. Env'tl. Bd. May 25, 1999), aff'd, *OMYA Inc. v. Town of Middlebury*, 171 Vt. 532 (2000).

Even if a site has not been listed on the national or state register, 10 V.S.A. § 6001(9) allows the Commission to declare it to be an “historic site” if it is established by testimony of the Vermont Advisory Council on Historic Preservation as being historically significant. Accordingly, the Commission must consider whether such testimony establishes a site, structure, district, or archeological landmark as historically significant. The Commission is not bound by the opinion provided by the Council, but rather, must weigh the testimony and make the determination. *Re: Manchester Commons*, #8B0500-EB Findings of Fact, Conclusions of Law, and Order at 20 (Vt. Env'tl. Bd. Sept. 29, 1995).

The site is a listed site on the State Register, therefore, the Commission concludes that the site contains an historic resource.

2. Whether the proposed Project will have an adverse effect on the historic site.

The next question is whether the Project will have an adverse effect on the historic site, or whether the Project is in harmony with or fits the historic context of the site.

Important guidelines in evaluating this fit include: (1) whether there will be physical destruction, damage, or alteration of those qualities which make the site historic, such as an existing structure, landscape, or setting; and (2) whether the proposed project will have other effects on the historic structure, landscape, or setting which are incongruous or incompatible with the site's historic qualities, including, but not limited to, such effects as isolation of an historic structure from its historic setting, new property uses, or new visual, audible or atmospheric elements.

Re: Middlebury College, #9A0177-EB, Findings of Fact, Conclusions of Law and Order at 10 (Vt. Env'tl. Bd. Jan. 26, 1990); cited in *Re: OMYA, Inc. and Foster Brothers Farm, Inc.*, #9A0107-2-EB, Findings of

Fact, Conclusions of Law, and Order at 39 (Vt. Envtl. Bd. May 25, 1999), *aff'd*, *OMYA Inc. v. Town of Middlebury*, 171 Vt. 532 (2000).

The Project proposes to demolish the historic resource; therefore, the Commission concludes that there will be an adverse impact on the historic site. *Re: Middlebury College*, #9A0177-EB, Findings of Fact, Conclusions of Law and Order at 10 (Vt. Envtl. Bd. Jan. 26, 1990) [physical destruction...of those qualities that make the site historic]

3. Whether the adverse effect will be undue.

An adverse effect is undue if any of the following factors exists:

1. the applicant has failed to take generally available mitigating steps that a reasonable person would take to preserve the character of the historic site;
2. the proposed project will interfere with the ability of the public to interpret or appreciate the historic qualities of the site;
3. the cumulative effects on historic qualities of the site by the various components of a proposed project, when taken together, are so significant that they create an unacceptable impact; and
4. the project violates a clear, written community standard that is intended to preserve the historic qualities of the site.

Middlebury College, #8B0500-EB Findings of Fact, Conclusions of Law, and Order at 10 (Vt. Envtl. Bd. Sept. 29, 1995); cited in *Re: OMYA, Inc. and Foster Brothers Farm, Inc.*, #9A0107-2-EB, Findings of Fact, Conclusions of Law, and Order at 40 (May 25, 1999), *aff'd*, *OMYA Inc. v. Town of Middlebury*, 171 Vt. 532 (2000); see also, *Manchester Commons*, #8B0500-EB Findings of Fact, Conclusions of Law, and Order at 22 (Vt. Envtl. Bd. Sept. 29, 1995).

The applicant has consulted with VDHP to consider alternatives to demolition, completed an Archaeological Phase I Survey, and completed an Historic Sites Analysis. The Commission concludes that the Applicant has taken the generally available mitigating steps that a reasonable person would take to preserve the character of the historic site.

By providing an interpretative panel at the site that incorporates information from the historic Resource Documentation Package, with planning done in coordination with a qualified historic preservation consultant, such as VDHP and/or Chittenden County Historical Society, and/or Essex community Historical Society, the Commission concludes that the proposed project will not interfere with the ability of the public to interpret or appreciate the historic qualities of the site.

Given the change in the area over the years with construction of I289, the cumulative impact from this Project is not significant.

There are no written community standards specifying preservation of the historical resources in this area.

Given the specific situation, the Commission concludes that the Project will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas.

Criterion 9(B) - Primary Agricultural Soils

Findings of Fact

26. The Project tract contains 5.08 acres of mapped NRCS Statewide soils, including 1.71 acres of Belgrade and Eldridge soils (3-8% slopes) with an agricultural value of 2; 0.63 acres of Enosburgh and Whately soils (0-3% slopes) with an agricultural value of 4; 2.06 acres of Adams and Windsor loamy sands (0.5% slopes) with an agricultural value of 6; 0.75 acres of Belgrade and Eldridge soils (8-15% slopes) with an agricultural value of 7; and 0.39 acres of Adams and Windsor loamy soils (12-30% slopes) with an agricultural value of 8. Exhibits #012 and #078.
27. The 0.38 acres of the Belgrade and Eldridge soils (8-15% slopes) referenced in the above finding have a slope that has been field verified to exceed 25%. Exhibits #013 and #078.
28. A 2.71-acre area of mapped primary agricultural soils referenced in the above finding have been previously disturbed by regrading for prior development, excavation for installation of wastewater disposal fields and building development. Exhibit #013.
29. No soils are concurrently classified as a class I or II wetland as defined by 10 V.S.A. ch. 37.
30. The AAFM has determined that 1.99 acres of primary agricultural soils will be impacted directly or indirectly by the proposed Project. Exhibits #016, #072 and #078.
31. There are no agriculture or forestry activities on adjoining lands. Exhibits #013 and #072.
32. The Applicant attests that he does not own or control any lands other than primary agricultural soils which are reasonably suited to the purpose of the project. Other lands owned by the Applicant in the area are not zoned for residential development. Exhibits #013 and #072.
33. The Project has been planned to maximize the development on the site. All on-site primary agricultural soils will be impacted either directly or indirectly by the proposed Project. Exhibit #013.
34. The Project is located in the Essex Retail-Business (B1) zone bordered to the north by Gardenside Lane, to the east by Route 2A, and to the south by Susie Wilson Bypass. Existing residential and commercial development already exist within this area. Dense residential developments are found across Susie Wilson Bypass. Exhibits #003 and #072.
35. A variety of commercial and industrial uses surround the Project. Within a ½ mile radius of the project there are approximately 13 commercial and/or industrial businesses. A landfill is located on the north side of Gardenside Lane and beyond that a self-storage business, Got That Rental, and Paya's North. Across Route 2A to the Northeast is the Mobil gas station, mini-mart, and Bob's Automotive, and Southwest below I289 is a gas storage and distribution center (Pyrofax), an equipment rental facility, and McLure Moving & Storage. To the west are three additional businesses, two buildings that belong to two industrial businesses, Bushey & Sons, Inc, and Omega Electric. Exhibit #072.
36. The Secretary of Agriculture, Food, and Markets (AAFM) has determined that the recent, per-acre cost to acquire conservation easements for primary agricultural soils in the geographic region of the project is \$2,620.

Conclusions of Law

Presence of Primary Agricultural Soils

Under criterion 9(B), a subdivision or development may not result in any reduction in the agricultural potential of the primary agricultural soils or significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential. Act 250 defines primary agricultural soil as either (1) important farmland soils map unit identified by the Natural Resources Conservation Service of the United States Department of Agriculture (NRCS) as prime, statewide, or local importance, or (2) “soils on the project tract that the District Commission finds to be of agricultural importance, due to their present or recent use for agricultural activities...” 10 V.S.A. §6001(15).

The Commission finds that 5.08 acres of primary agricultural soils on the site have been identified by the NRCS as prime, statewide, or local importance.

Although 5.54 acres of soils have been identified by NRCS as prime, statewide, or local importance, the Applicant and AAFM have determined that some of the identified soils have lost their agricultural potential. To determine whether soils have lost their agricultural potential the District Commission considers each of the factors listed in 10 V.S.A. §6001(15):

- i. Impacts to the soils relevant to the agricultural potential of the soil from previously constructed improvements;

The agricultural potential of 2.71 acres of primary agricultural soils have been severely reduced by previous activities.

The District Commission concludes that previously constructed improvements negatively impact the agricultural potential of the soils.

- ii. The presence on the soils of a Class I or Class II wetland under 10 V.S.A. Ch. 37;

No Class I or II wetlands are found on the site.

- iii. The existence of topographic or physical barriers that reduce the accessibility of the rated soils so as to cause their isolation and that cannot reasonably be overcome; and

The District Commission concludes the steep slopes of 0.38 acres of primary agricultural soils do not meet the definition.

Based on the District Commission’s evaluation of the factors above, the District Commission concludes that 1.99 acres of mapped primary agricultural soils have lost their agricultural potential.

In summary, the Commission concludes that 2.08 acres of soils on the project tract meet the Act 250 definition of primary agricultural soils at 10 V.S.A. § 6001(15).

Reduction in Agricultural Potential of Soils

The Commission finds that the project will result in a reduction in the potential of 1.99 acres of primary agricultural soils, through direct and indirect impacts to the soils. Because there will be a reduction in the agricultural potential of 1.99 acres of primary agricultural soils, the District Commission must conduct a review under the subcriteria of Criterion 9(B).

Subcriteria (i), (ii), (iii) and (iv)

Subcriterion (i)

Subcriterion (i) is met through a representation that the proposed Project will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential. The Project will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential for the following reasons. Therefore, the Commission concludes that the Applicant has met subcriterion (i).

Subcriterion (ii)

Subcriterion (ii) is met if the Applicant does not own or control any non-agricultural soils which are reasonably suited for this Project. The Applicant does not own or control lands other than primary agricultural soils that are reasonably suited to the purpose of the development or subdivision. Therefore, the Commission concludes that the Applicant has met subcriterion (ii).

Subcriterion (iii)

For projects located outside designated growth centers, applicants, in most instances, are required to provide "on-site" mitigation through the use of "innovative land use design resulting in compact development patterns which will preserve primary agricultural soils on the project tract for present and future agricultural use." The remaining soils must be capable of supporting or contributing to an economic or commercial agricultural operation.

The project is located outside a designated growth center. The project will result in the reduction of the agricultural potential of 1.99 acres of soils while there are 0 acres of primary agricultural soils that could be permanently preserved onsite through permit conditions in a configuration that would enable their continued use for agriculture.

The Commission has the flexibility to approve alternate mitigation proposals both inside and outside of designated centers in appropriate circumstances. In appropriate circumstances, the District Environmental Commission may, in lieu of the provisions of 10 V.S.A. § 6093(a)(1) or (2), require payment of an off-site mitigation fee; or, in the alternative, the Commission may require a combination of on-site or off-site mitigation. In all instances, however, the applicant must demonstrate that the Project has been planned to minimize the reduction of agricultural potential of the primary agricultural soils through innovative land use design resulting in compact development patterns. If the commission concludes that the applicant has used such innovative design, it must also find that that the remaining primary agricultural soils on the Project tract are capable of supporting or contributing to an economic or commercial agricultural operation or that the applicant qualifies for mitigation flexibility based on appropriate circumstances.

The applicant has designed the Project to make maximum use of the parcel. The Project will combine residential both single family and multi-family plus have a multi-tenant commercial building.

The applicant has asked for a finding of appropriate circumstances, which the commission discusses below.

In accordance with the Statement of Procedure on Protection of Primary Agricultural Soils adopted by the Land Use Panel of the Natural Resources Board on September 11, 2012, appropriate circumstances may be based on a finding of the following:

- a) the tract of land containing primary agricultural soils is of limited value in terms of contributing to an economic or commercial agricultural operation and devoting the land to agricultural uses is

- considered impracticable based on the size of the land or its location in relationship to other agricultural and nonagricultural uses; or
- b) the project tract is surrounded by or adjacent to other high density development with supporting infrastructure and, as a result of good land design, the project will contribute to the existing compact development patterns in the area; or
 - c) the area contains a mixture of uses, including commercial and industrial uses and a significant residential component, supported by municipal infrastructure, and
 - d) the District Commission determines that payment of an off-site mitigation fee, or some combination of on-site or off-site mitigation, will best further the goal of preserving Primary Agricultural soils for present and future agricultural use with special emphasis on protecting Prime Agricultural soils this serving to strengthen the long-term economic viability of Vermont's agricultural resources.

The Commission must also determine that such action is consistent with the agricultural elements of local and regional plans, as well as the pertaining goals of section 4302 of Title 24.

Regarding a) above, the tract of land is of a sufficient size and location to provide an agricultural operation.

Regarding b) above, the project tract is adjacent to another high density development with supporting infrastructure.

Regarding c) above, the area contains a mixture of uses or a significant residential component supported by municipal infrastructure. Within a ½ mile radius of the project there are approximately 13 commercial and/or industrial businesses.

Regarding d) above, the commission concludes that payment of an off-site mitigation fee will best further the goal of preserving primary agricultural soils for present and future agricultural use with special emphasis on protecting prime agricultural soils thus serving to strengthen the long-term economic viability of Vermont's agricultural resources. The commission also concludes that such action is consistent with the agricultural elements of local and regional plans, as well as the goals of section 4302 of Title 24.

Subcriterion (iv)

Subcriterion (iv) is met through a representation that suitable mitigation will be provided for any reduction in the agricultural potential of the primary agricultural soils caused by the development or subdivision in accordance 10 V.S.A. § 6093.

The Project is located outside a designated area and suitable mitigation will be provided for any reduction in the agricultural potential of the primary agricultural soils caused by the development or subdivision, in accordance with 10 V.S.A. § 6093. The findings under subcriterion 9(B)(iii) above are hereby incorporated by reference.

Summary

The District Commission concludes that the Project will result in a reduction in the agricultural potential of primary agricultural soils on the project site, however the applicant has satisfied the applicable provisions of subcriteria (i) – (iv).

Criterion 9(L) – Settlement Patterns:

Findings of Fact

Existing Settlement

37. There is no dispute that the Project tract is not in a village center, downtown development district, growth center, new town center, Vermont neighborhood or neighborhood development area designated pursuant to 24 V.S.A. Chapter 76A.
38. Nor does the Applicant dispute that the area surrounding the Project tract is not an existing center that is compact in form and size; that contains a mixture of uses that include a substantial residential component and that are within walking distance of each other; that has significantly higher densities than densities that occur outside the center; and that is typically served by municipal infrastructure such as water, wastewater, sidewalks, paths, transit, parking areas, and public parks or greens. 10 V.S.A. § 6001(16)

Efficient Use

39. The Project makes efficient use of land, energy, roads, utilities, and other supporting infrastructure as follows: consolidating and coordinating municipal utilities; consolidating and coordinating access (Gardenside Lane); a mix of uses, residential and retail; using shared parking; and redeveloping an existing site. Exhibit #002.

Strip Development

40. The Project is not confined¹ to a general area of pre-existing linear commercial development along a public highway. Exhibits #003 and #073.

41. The Project has the following characteristics (Exhibits #002, #026a, #027, #061, and #073):

Broad road frontage: Topographic conditions (lowest point of land) dictate that the stormwater pond should be located along the public highway and that is where the pond is located.

Predominance of single-story buildings: The commercial building proposed for the road frontage of the tract is a single story structure. (Exhibit #077(Sheet R1)). There are seven residential buildings proposed for the balance of the tract running from just behind the commercial structure up the slope to the rear of the tract; of these, six are two-story structures and one is a three-story structure. (Exhibits #057 and #058 (Sheets A1 and B1).

Limited reliance on shared highway access: The Project uses existing Gardenside Lane, rather than Route 2A for the main access. Gardenside Lane also provides access for several existing residences. The Project will eliminate one curb cut and the other provides access onto Route 2A to right turn in and out only.

Lack of connection to any existing settlement except by highway: There is no connection to the existing settlement approximately two miles away except by VT Rt. 2A. The dedication of the sidewalk easement is not concrete enough to provide a connection as there is no immediate plans to construct it. Moreover, the vehicular speed along Rt. 2A is 35 mph in this area; considering

1. A project is “confined to” existing strip development if it is surrounded by strip development on both sides of the project along the same side of the public highway, not merely near other strip development or in an area of scattered development or sprawl. NRB ACT 250 Criterion 9(L) Guidance, adopted 3/8/2016, effective 3/15/16.

the distance to the existing settlement, this stretch of road is not safely walkable. There is no bicycle lane. Therefore, the only connection to the existing settlement is by highway.

Lack of connection to surrounding land uses except by highway: The shared Gardenside Lane is the only connection to other land uses that does not utilize the public highway.

Lack of coordination with surrounding land uses: The Project is compatible with other land uses and could provide needed services.

Limited accessibility for pedestrians: The Project is not building any pedestrian facilities but is dedicating an easement for future construction of such facilities. The proposed sidewalk is speculative or indefinite. Furthermore, the lack of on-street parking eliminates a potential buffer between a walkway and moving traffic. Access to transit shops, stores and community spaces is not feasible given the distances involved to the existing settlement. The rated highway speed is considered too fast under the *Guidelines* for a compact development.

42. The Project is in a generally built-up area but with some empty, undeveloped parcels.

Conclusions of Law

Criterion 9(L) is intended to “promote Vermont’s historic settlement pattern of compact village and urban centers separated by rural countryside” by requiring that projects outside an existing settlement: (1) make efficient use of land, energy, roads, utilities, and other supporting infrastructure; and (2) not contribute to a pattern of strip development; or, if confined to existing strip development, the project must infill and minimize strip characteristics. 10 V.S.A. § 6086(a)(9)(L).

Under this Criterion, the threshold question is whether the proposed Project is in an “existing settlement.” Act 250 defines “existing settlement” as any designated center pursuant to 24 V.S.A. Chapter 76A, or:

An existing center that is compact in form and size; that contains a mixture of uses that include a substantial residential component and that are within walking distance of each other; that has significantly higher densities than densities that occur outside the center; and that is typically served by municipal infrastructure such as water, wastewater, sidewalks, paths, transit, parking areas, and public parks or greens.

10 V.S.A. § 6001(16). Strip development outside a designated center is not an existing settlement. *Id.*

Strip development is “linear commercial development along a public highway” that, considering any topographic constraints of the area, includes three or more of the following characteristics:

1. broad road frontage
2. predominance of single-story buildings
3. limited reliance on shared highway access
4. lack of connection to any existing settlement except by highway
5. lack of connection to surrounding land uses except by highway
6. lack of coordination with surrounding land uses
7. limited accessibility for pedestrians.

10 V.S.A. § 6001(36).

In this analysis we first assess whether the proposed commercial development is “linear.” Act 250 and the NRB Rules do not define the term. The recent guidance adopted by the Natural Resource Board states that “Linear commercial development” means development that is arranged along a road and lacks depth or additional layers of development away from the primary road.” NRB ACT 250 Criterion 9(L)

Guidance at p. 12. This gives “linear” its ordinary dictionary meaning in this context², i.e., commercial development arranged in a straight line along a roadway.

The proposed Project is a PUD with both substantial residential and commercial components. The residential component is tied to the commercial component through use of shared parking and an internal sidewalk system. The commercial building does not dominate the overall Project; on the contrary, the residential buildings, which are taller and arranged along a rising slope behind it, would be clearly visible. By itself the commercial building would be a linear development, but the Project is multi-use and takes up the full depth of the tract. The Project as a whole is not linear hence, cannot be considered strip development as defined in Criterion 9(L).

For these reasons, the Commission finds that the Project does not meet the § 6001(36) definition of strip development and could not contribute to a pattern of strip development in the area. Therefore, the Commission concludes that the Project complies with Criterion 9(L).

V. SUMMARY CONCLUSION OF LAW

Based upon the foregoing Findings of Fact, the Commission concludes that the Project, if completed and maintained as represented in the application and other representations of the Applicant, and in accordance with in the findings and conclusions of this decision and the conditions of Land Use Permit #4C1290, will comply with the Act 250.

² ² “Of, relating to, or resembling a line; straight” The American Heritage Dictionary, Second College Edition 1985

VI. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit #4C1290 is hereby issued.

DATED at Essex Junction, Vermont, this 31st day of August, 2016.

By /s/Thomas A. Little, Chair
Thomas A. Little, Chair
District #4 Environmental Commission

Commissioners participating in this decision:
Parker Riehle
Monique Gilbert

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the \$265 entry fee required by 32 V.S.A. § 1431.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, Dewey Building, National Life Drive, Montpelier, VT 05620-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal. See 10 V.S.A. § 8504(k).

For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 828-1660. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.

E	DATE	E	A = Applicant
X	R	N	T = Town
H	E	T	O = Opponent
I	C	E	RPC = Regional Planning Commission
B	E	R	ANR = Agency of Natural Resources
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T	V	D	DPS = Department of Public Services
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	D		VDHP = Vt. Division for Historic Preservation
			WMD = Wastewater Management Division
N			L = Landowner
		B	DOH = Department of Health
O.		Y	
			Nature of Exhibit and Date Entered

001	03/02/16	A	Trudell Cover Letter (03/02/16)
002	"	"	Act 250 Application Form and Schedules AEFG
002a	03/15/16	"	New Schedule E (03/15/16)
003	03/02/16	"	Project Location Map
004	"	"	Town of Essex Sewer Allocation Agreement (05/23/13)
005	"	"	Construction Waste Management Plan
006	"	"	Town Traffic Impact Fee Ltr. 03/06/14)
007	"	"	Stantec Traffic Report with Figures 11-9-15
008	"	"	CCTA Bus Routes
009	"	"	Housing and Vermont's School Enrollment
010	"	"	Lighting Specifications
011	"	"	Northeast Archaeology Research Center Report for Phase I (06/05/13)
012	"	"	Soils Impact Map
013	"	"	Supplement to Criterion 9b – Primary Agriculture Soils
014	"	"	Green Mountain Power Ability to Serve Letter (03/26/14)
015	"	"	Vermont Gas Ability to Serve Letter (05/07/14)
016	"	"	Agency of Agriculture Prime Ag Soils Comments (04/25/14)
017	"	"	REScheck Compliance Certificates
018	"	"	Essex Town Plan Excerpts, 2011 – Essex West
019	"	"	CCRPC Future Planning Areas, 2013
020	"	"	Act 250 Municipal Impact Questionnaire (03/21/16)

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021	03/02/16	A	Index Sheet
022	"	"	Plan: Boundary Plat, C1-00 (Rev 01/26/13)
022a	05/16/16	"	Plan: Boundary Plat, C1-00 (Rev 01/26/16)
023	03/02/16	"	Plan: Legend & Notes, C1-01 (Rev 01/29/16)
024	"	"	Plan: Existing Conditions Plans, C1-02 (Rev 01/29/16)
025	"	"	Plan: Demolition Plan, C1-03 (Rev 01/29/16)
026	"	"	Plan: Master Site Plan, C2-01 (Rev 01/29/16)
026a	05/16/16	"	Plan: Master Site Plan, C2-01 (Rev 05/16/16)
026b	06/02/16	"	Plan: Master Site Plan, C2-01 (Rev 05/27/16)
027	03/03/16	"	Plan: Master Utility Plan, C2-02 (Rev 01/29/16)
028	"	"	Plan: West Site Plan, C2-03 (Rev 01/29/16)
029	"	"	Plan: East Site Plan, C2-04 (Rev 01/29/16)
030	"	"	Plan: West Utility Plan, C2-05 (Rev 01/29/16)
031	"	"	Plan: East Utility Plan, C2-06 (Rev 01/29/16)
032	"	"	Plan: Water & Sanitary Profiles, C3-01 (Rev 01/29/16)
033	"	"	Plan: Sanitary Force Main Plan & Profiles, C3-02 (Rev 01/29/16)
034	"	"	Plan: Sanitary Force Main Plan & Profiles, C3-03 (Rev 01/29/16)
035	"	"	Plan: Sanitary Force Main Plan & Profiles, C3-04 (Rev 01/29/16)
036	"	"	Plan: Sanitary Force Main Plan & Profiles, C3-05 (Rev 01/29/16)
037	"	"	Plan: Sanitary Force Main Plan & Profiles, C3-06 (Rev 01/29/16)
038	"	"	Plan: Sanitary Force Main Plan & Profiles, C3-07 (Rev 01/29/16)

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039	03/03/16	A	Plan: Stormwater Watershed Delineation Plan, C4-01 (Rev 01/29/16)
040	"	"	Plan: Erosion Prevention & Sediment Control Plan, C5-01 (Rev 01/29/16)
041	"	"	Plan: Water Details, C8-01 (Rev 01/29/16)
042	"	"	Plan: Water Details, C8-02 (Rev 01/29/16)
043	"	"	Plan: Sewer Details, C8-03 (Rev 01/29/16)
044	"	"	Plan: Sewer Details, C8-04 (Rev 01/29/16)
045	"	"	Plan: Pump Station Plan View, C8-05 (Rev 01/29/16)
046	"	"	Plan: Pump Station Profile View, C8-06 (Rev 01/29/16)
047	"	"	Plan: Pump Station Notes & Details, C8-07 (Rev 01/29/16)
048	"	"	Plan: Stormwater Details, C8-08 (Rev 01/29/16)
049	"	"	Plan: Stormwater & Site Details, C8-09 (Rev 01/29/16)
050	"	"	Plan: Site Details, C8-10 (Rev 01/29/16)
051	03/02/16	"	Plan: Site Details, C8-11(Rev 01/29/16)
052	"	"	Plan: Erosion Prevention & Sediment Control Details, C8-12 (Rev 01/29/16)
053	"	"	Plan: Erosion Prevention & Sediment Control Details, C8-13 (Rev 01/29/16)
054	"	"	Plan: Landscape Plan, L1-01 (Rev 01/29/16)
055	"	"	Plan: Lighting Plan, L1-02 (Rev 01/29/16)
056	"	"	Plan: Garden Side Multi-Family Elevations, A1 (08/21/14)
057	"	"	Plan: Flats – Unit Type A – Proposed Elevations, A-1 (05/15/14)
058	"	"	Plan: Flats – Unit Type B – Proposed Elevations, B1 (05/15/14)
059	"	"	Plan: Flats – Unit Type B – Front, Back and Side Elevations (05/14/14)

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O.		Y	
			Nature of Exhibit and Date Entered
060	03/02/16	A	Plan: Flats – Unit Type B – Front, Rear and Side Elevations, B1 (05/14/14)
061	"	"	Plan: Retail Building, Proposed Front Elevation R1 (05/14/14)
062	4/15/16	VDHP	Entry of Appearance Comments of the Division of Historic Preservation (4/15/16)
062a	"	"	VDHP Letter re Site Visit & Consultant w/Applicant re 200 & 202 Colchester Road
063	"	ANR	ANR Office of Planning and Legal Affairs Entry of Appearance Comments/Little Brown Bat Information (4/15/16)
064	"	A	Letter by Kaitlin O'Shea, VHB re Criterion 8 Historic Sites Analysis (4/13/16)
065	"	"	Act 250 Criterion 8 – Historic Sites Analysis by VHB for A&C Realty (04/11/16)
066	"	"	CCRPC Letter by Charlie Baker, CCRPC re Review of Project Comments (4/7/16)
067	4/18/16	A	VTrans Letter by Joe Segale, VTrans re ROW Permit (4/14/16)
068	05/16/16	"	Trudell Transmittal Sheet and COS for Supplemental Information 05/16/16)
069	"	"	Trudell Cover Letter Response to HRO (05/16/16)
070	"	"	NOI - Stormwater Discharges #7538-9020 Construction General Permit (3/25/16)
071	"	"	Traffic Monitoring Plan by Stantec (05/04/16)
072	"	"	Trudell Letter re Criterion 9B – Agri Soils - Appropriate Circumstances (05/16/16)
073	"	"	Trudell Criterion 9L Response Letter (05/16/16)
074	04/29/16	DOH	Dept. of Health Email re State Asbestos & Lead Regulatory Program (04/29/16)
075	6/02/16	CCRPC	Letter by Charlie Baker, CCRPC-Supplement to Letter Dated April 7, 2016 (6/2/16)
076	"	A	Plan: Apart Colored Elevations, A2.1 (05/13/16)
077	"	"	Plan: Retail Building – Proposed, R1 (05/15/14)
078	6/7/16	"	Primary Agricultural Soils Clarification

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079	8/11/16	A	Memo by Brian Bertsch re Additional Information as Mentioned in HRO Dated April 22, 2016
080	"	ANR	Stormwater Discharge Permit 7538-INDS Issued July 25, 2016
081	"	WMD	Wastewater System and Potable Water Supply Permit WW-4-4597 Issued August 9, 2016
082	"	ANR	Public Water System Construction Permit #C-3326-16.0 EJ16-0039 Issued August 3, 2016
083	8/15/16	T	Final Plan Approval #PC 2016-7 (4/14/16)

CERTIFICATE OF SERVICE

I hereby certify on this 31st day of August 2016, a copy of the foregoing ACT 250 LAND USE PERMIT AND FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER #4C1290, was sent by U.S. mail, postage prepaid to the following individuals without email addresses and by email to the individuals with email addresses listed.

Note: any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes. All email replies should be sent to nrb-act250essex@vermont.gov. You can now fill out and submit the Act 250 survey online at: <http://permits.vermont.gov/act250-survey>.

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FOR YOUR INFORMATION

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Thomas Little, Chair
Parker Riehle/Monique Gilbert
111 West Street
Essex Junction, VT 05452

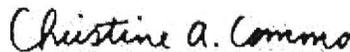
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Dated at Essex Junction, Vermont, this 31st day of August, 2016.



Natural Resources Board Technician
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