

**DEVELOPMENT REVIEW BOARD sketch plan hearing scheduled for May 8, 2024 @ 8:00 pm**

<b>General Information</b>	
Applicants:	George and Claire Aube Consultant: Jason Barnard, Barnard and Gervais
Application No.: <b>DRB 24-044-SK</b>	Parcel ID: 00014-1052
Status of Applicant:	Owner
Requested Action:	Sketch Plan Review Two-Lot Subdivision
Purpose:	Classify Subdivision
Zoning:	Rural District, Conservation District
Location:	1052 Carpenter Road and 1814 Dorset Street
Size:	100 +/- acres
Existing Land Use:	Residential lots, agriculture
Surrounding Land Uses:	Residential and agriculture
Permitting / Subdivision History:	<p><b>1052 Carpenter Road (Lot 1) – Parent Parcel</b>                      89-25-GD: Single-family residence permit (replaced former residence)                      1995: Planning Commission approved creation of a 10 +/- acre lot around the Aube residence, resulting in a 90-acre lot for agriculture to the south, as well as a 5.02-acre lot on the north side of Carpenter Road.                      PC-13-19-SD: created a 5.71-acre lot at 1732 Dorset Street                      PC-15-10: created a 5.07-acre lot at 1450 Dorset Street                      2002: agricultural exemption for barn                      2007: exemption for private family cemetery</p> <p><b>1450 Dorset Street (Lot 2)</b>                      PC-15-10-SD: two-lot subdivision                      16-79-ZP: Three-bedroom single-family residence</p> <p><b>1732 Dorset Street (Lot 3)</b>                      PC-13-19-SD: two-lot minor subdivision                      20-65-ZP: Three-bedroom single-family residence</p> <p><b>1814 Dorset Street (Proposed Lot 4)</b>                      HAP-22-08                      WW-138-22101: wastewater permit for three-bedroom single-family residence and one-bedroom accessory dwelling                      22-122-ZP: Three-bedroom single-family residence</p>
Applicable Regulations:	Land Use Regulations, as amended 2023 Charlotte Town Plan, 2019 Recommended Standards for Developments & Homes, 1997

**Background:** George and Claire Aube seek to subdivide the 100-acre parcel at 1052 Carpenter Road (Lot 1) to carve out a 5.8-acre lot around a single-family residence currently being constructed at 1814 Dorset Street (proposed Lot 4). The parent parcel has been subdivided on three previous occasions. In 1995, the Planning Commission approved a ten-acre lot around the George and Claire Aube residence, with 90 acres remaining in agricultural use to the south. Those two lots remain under common

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ownership of George and Claire Aube. In 2013, the Aubes subdivided a 5.7-acre lot that became 1732 Dorset Street. In 2015, the Aubes subdivided a 5.06-acre lot that became 1450 Dorset Street.

The Aubes presented a subdivision sketch plan to separate 1814 Dorset Street in 2022, which they withdrew in March of that year because it appeared the Board would classify the project as a major subdivision. No sketch letter was issued. After that, the Selectboard approved a highway access permit to convert a farm road to a residential driveway at 1814 Dorset Street. Former Zoning Administrator Keith Osborne issued a permit for a three-bedroom house in May 2022. A wastewater permit followed in June 2022.<sup>1</sup>

Today, more than ten years have passed since the creation of Lot 2 (PC-13-19-SD), and the Aubes seek approval to create a lot for the residence at 1814 Dorset Street. The proposed lot configuration is as follows:

**Lot 1:** 94.1 +/- acres (includes the 10-acre sub-parcel)

**Lot 4:** 5.8 +/- acres

The Planning Commission's 2015 decision contains the following finding: "The Commission noted this project [PC-15-10-SD] does not directly affect any [Areas of High Public Value] as it is a partial redevelopment of the existing farm complex. The Commission did, however, note the presence of AHPV on the parent parcel and stated that any future applications would require a master plan for the entire parcel" (PC-15-10-SD at Section 7.2).

The Land Use Regulations authorize the appropriate municipal panel to require a master plan when there is a likelihood of future subdivision on lands with Areas of High Public Value. However, the LURs do not specify what should comprise a master plan.

The question of lot frontage will likely dictate whether the Board classifies the project as a minor subdivision or a major subdivision/planned residential development.

### **Section 2.3 Application of District Standards - Table 2.5 Rural District (RUR) –**

**(C)** Single-family residences and accessory dwellings are a permitted use. A single-family residence is under construction at 1814 Dorset Street, and this subdivision application states there are plans for an accessory dwelling unit on proposed Lot 4. No further development is currently proposed for Lot 1.

**(E) Dimensional Standards** – Lot 1 has 739 feet of road frontage on Dorset Street, and proposed Lot 4 is served by an existing driveway and proposed right-of-way. Proposed Lot 4 would be landlocked, and the application lists "334 feet" for frontage. According to consultant Jason Barnard, that figure should be updated to 396 feet and reflects the length of LaPlatte River frontage on proposed Lot 4.

### **Section 2.3 – Table 2.8 Conservation District –**

Portions of the existing driveway were developed within the parcel's land in the Conservation District. Table 2.8, Subsection F(5) states that "driveways, access roads and utility corridors within this district, to the extent feasible, shall share existing or proposed corridors, and conform with Section 3.2." The standards go on to say in F(7) that "In no case, however, shall a new residential use be permitted on

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<sup>1</sup> It is perhaps worth noting that the building permit was issued while the wastewater permit was under review.

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land within the Conservation District.” This standard supports the designation of a building envelope on proposed Lot 4.

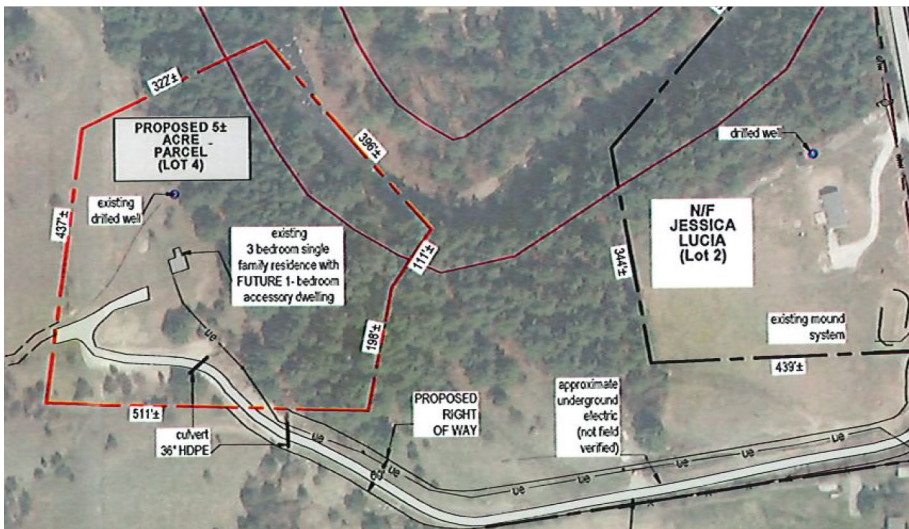
**Section 3.2 Road, Driveway, and Pedestrian Access Requirements** – no new highway access is required for this subdivision. The existing driveway at 1814 Dorset Street was permitted in 2022 and has two culverts.

**Section 3.6(B)(1) – Lot, Yard, and Setback Requirements – Dimensional Standards** states that “No lot shall be modified such that it cannot meet area, setback, frontage, lot and building coverage and other dimensional projects...except as approved by the Development Review Board for a planned residential or planned unit development under Chapter VIII.” Subsection (d) states that “Only continuous, uninterrupted frontage along a right-of-way shall be used to meet district frontage standards.” The definition of Lot Frontage in Chapter X reads “the distance that a lot fronts a road or right-of-way, measured along the road or right-of-way from the intersection of one property boundary to the intersection of the other property boundary.”

State statute infers that public waters establish lot frontage, as do rights-of-way. [24 VSA 4412\(3\)](#) reads:

*Required frontage on, or access to, public roads, class 4 town highways, or **public waters** {emphasis added}. Land development may be permitted on lots that do not have frontage either on a public road, class 4 town highway, or public waters, provided that access through a permanent easement or right-of-way has been approved in accordance with standards and process specified in the bylaws.*

The required lot frontage in the rural district is 300 feet. The applicants contend this requirement is met by the proposed lot’s 396 feet of frontage on the LaPlatte River. While nuances exist, Vermont case law has repeatedly found that public waterbodies establish natural boundaries of real property.<sup>2</sup> In fact, the parent parcel might be a legal, naturally subdivided tract of land because the LaPlatte is considered a navigable waterbody under [10 VSA 1422](#). The Board may wish to seek a legal opinion on the use of public bodies of water to satisfy frontage requirements.



<sup>2</sup> See Liam Murphy, “Water Boundaries: Littoral and Riparian Rights – The Public Trust Doctrine” (2015), particularly pp. 12-13, 18, and 22; available online at [https://www.vsls.org/wp-content/uploads/2020/07/Water\\_Law\\_Water-Boundary\\_Seminar\\_Materials.pdf](https://www.vsls.org/wp-content/uploads/2020/07/Water_Law_Water-Boundary_Seminar_Materials.pdf).

### Section 6.1 (C) – Classification of Subdivision

The Land Use Regulations differentiate minor and major subdivisions as follows:

**Minor Subdivision:** a subdivision, or resubdivision of land, that results in the creation of three (3) lots or fewer within any ten (10) year period, regardless of any change in ownership.

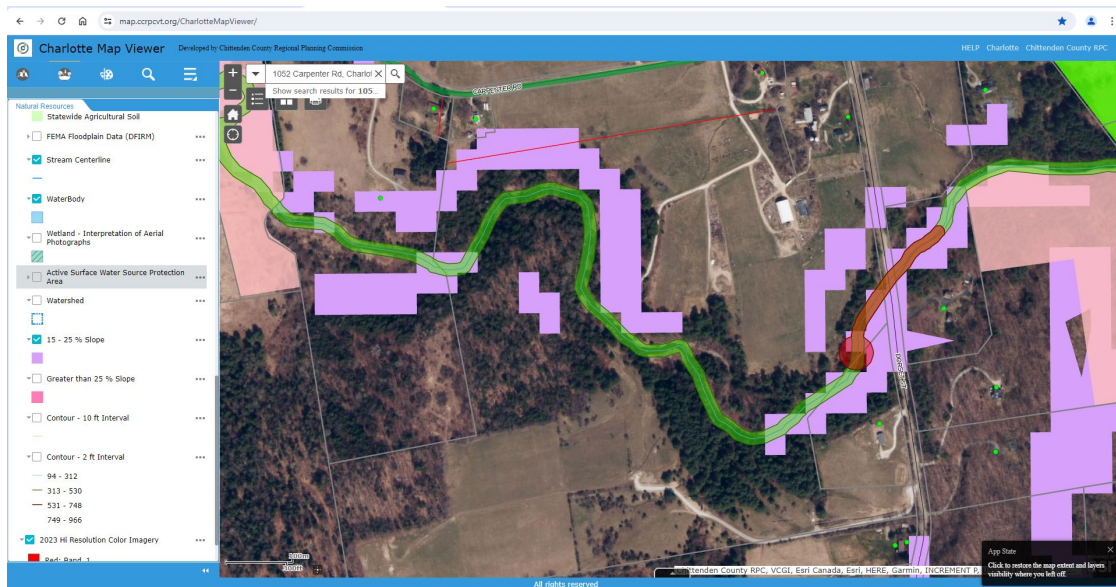
**Major Subdivision:** (A) a residential subdivision, or resubdivision, of land that results in the creation of four (4) or more lots within a ten (10) year period, regardless of any change of ownership.

One lot has been created from Lot 1 in the past ten years. If frontage is satisfied through the proposed right-of-way or the area along the LaPlatte River, the Board should review the application as a minor subdivision. If the proposal does not meet the frontage standard, the Board should review the proposal as a major subdivision under Planned Residential Development standards.

### Section 7.2 General Standards - Areas of High Public Value (Table 7.1):

Consultant Jason Barnard has provided ANR Atlas maps of areas of natural value in the application.

- a. Land in active agricultural use – the parent parcel is enrolled in Current Use for agriculture and forestry.
- b. Primary Agricultural Soils (Prime and Statewide) – pockets of prime ag soil exist, but much of the farm is statewide agricultural soil.
- c. Steep slopes (>=15%) – areas along the LaPlatte River and the forested area on the western side of the property contain slopes in excess of 15% grade.



*Purple highlights show areas of steep slopes.*

- e. Surface waters, wetlands and associated setback and buffer areas – the LaPlatte River traverses the property, and a small tributary runs north-south in the southeastern section of the property. A driveway crosses the tributary. No further development is proposed within the river corridor buffer.



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The buffer extends into proposed Lot 4. The green highlights in the following map indicate areas of the parcel zoned within the Conservation District:



*Areas of the Aube property in the Conservation District appear in green.*

**h. Wildlife habitat** – forest and aquatic habitat are associated with the LaPlatte River. The Charlotte Map Viewer suggests that state-protected animal species may exist in or around the LaPlatte River.

**k. Scenic views and vistas:** - Carpenter Road is considered a “most scenic road.”

**l. Conserved land on adjacent parcels** – none

**Section 7.2(C) Lot Layout:** Proposed Lot 4 is six-sided and land-locked.

**Section 7.2 (D) Density:** both lots have enough density to meet the five-acre standard for residential development in the Rural District.

**Section 7.2 (E): Building Envelope:** The proposed plat does not show a building envelope for either lot.

**Section 7.3: District Standards for Rural, Shoreland & Conservation Districts:** Both lots appear to meet district standards.

**Section 7.4: Compatibility with Agricultural Operations:** The proposal appears compatible with existing agricultural operations.

**Section 7.5: Facilities, Services and Utilities:** The Charlotte Volunteer Fire and Rescue Service is located 5.1 miles from 1814 Dorset Street.

**Sections 7.6, Water Supply / 7.7 Sewage Disposal:** Proposed Lot 4 is improved with water and wastewater systems capable of serving a three-bedroom single-family residence and an accessory dwelling unit. The applicants note that a wastewater and force main easement will be required for Lot 4, because the septic treatment area and parts of the conveyance system will be located on Lot 1.

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**Sec. 7.8, Stormwater Management & Erosion Control:** Two culverts exist under the driveway serving the proposed new lot. No additional stormwater management or erosion control are proposed.

**Sec. 7.9, Landscaping & Screening:** No additional landscaping or screening is proposed.

**Sec. 7.10, Roads, Driveways & Pedestrian Access:** existing driveways serve both proposed lots.

**Sec. 7.11, Common Land to be Conserved:** none proposed.

**Sec. 8.4, Planned Residential Development:** If the DRB decides to review this project as a Major Subdivision under PRD rules, the proposed site plan will need to delineate at least 50 acres of the subject parcel as conserved Open Space for preliminary plan review. That application should also provide additional details supporting compliance with other requirements of Sec 8.4.

**Public Notice:** None required for sketch.

**Staff Observations:** The purpose of this subdivision is to create an independent lot around a residence that is currently under construction. The only additional development planned for proposed Lot 4 is a one-bedroom accessory dwelling, which is a permitted use.

The Board needs to decide:

- (1) If the area along the LaPlatte River or the proposed right-of-way satisfies the lot frontage requirement.
- (2) To classify the project as minor or as a major subdivision/planned residential development
- (3) Whether it will require in a master plan for the subject parcel(s) and what the master plan would entail
- (4) Whether to require a building envelope for proposed Lot 4 and existing Lot 1

If the Board classifies this project as a Planned Residential Development, with the requisite Open Space Agreement, areas along the LaPlatte River should be the focus of any conservation requirement.

As of this writing, Jason Barnard plans to update the application to indicate that some plans have already been completed. The applicant repurposed the application from 2022 and neglected to update some sections.

**Prepared by:** Aaron Brown, Zoning Administrator, May 1, 2024