

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

John H. Carpenter

**Final Plat Hearing
For A
Two-Lot Subdivision
Application # PC-06-04**

Background

Sketch Plan Review for this project was conducted on March 3 and April 7. An extension for the submission of the Final Plat Application was granted on September 15, 2005.

Application

Materials submitted with the application are listed in Appendix A.

Public Hearing

A public hearing for this application was held on April 6, 2006. Stuart Morrow, Clark Hinsdale, III and David Miskell represented the applicant at the hearing. Mr. Carpenter was also present.

Albert Moraska and Scott Bowen (both adjoining property owners) and Annemie Curlin (representing the Charlotte Conservation Commission) were present and participated in hearing. Robert Gibson (an adjoining property owner) submitted written comments by e-mail to Town staff on April 3rd.

Regulations in Effect

Town Plan as amended March 2002

Land Use Regulations adopted March, 2006.

Sewage Ordinance as amended December, 2004.

Recommended Standards for Developments and Homes adopted September, 1997

Findings

1. The application proposes the subdivision of a 116 acre parcel into two lots. The southern lot (Lot 1) includes the existing house and most of the meadow; the northern lot (Lot 2) consists of the remainder of the parcel which includes high quality wildlife resources. The proposed division follows approximately the distinction between the southern meadow and the northern habitat area.
2. The Planning Commission acknowledges that the application is a "simple" two-lot subdivision, however the Commission strongly feels that the configuration of the subdivision will establish the framework for future land use in a strategic location for both development and conservation; the subject parcel is adjacent to both the East

Charlotte Village District and the Conservation District.

3. The Planning Commission notes that consideration and prioritization of *areas of high public value* (Table 7.1 of the Land Use Regulations) is important in order to create an appropriate parcel configuration for future development and conservation. Findings 4-10 provide a summary of the areas of high public value, and Findings 11-15 provide a prioritization of those areas in terms of concern about impacts resulting from development and desirability of protection.
4. The meadow is currently rented to a farmer. Most of the parcel has “statewide” agricultural soils. There is a band of “prime” agricultural soils running in a north/south orientation through the middle of the parcel, and another smaller band running along Spear Street.
5. The Town’s slope data indicates 15%-25% slopes on the northeast portion of the parcel along Spear Street.
6. The northwest corner of the parcel is adjacent to a major wildlife corridor (and the Conservation District) associated with Mud Hollow Brook. A small unnamed stream runs through the eastern portion of the parcel in a north/south orientation, which appears to have wetland associated with at least a portion of it.
7. The northern portion of the parcel has four sections of forest habitat which, although contiguous with larger stands of habitat on adjoining parcels, is less diverse and has experienced more disturbance and exposure to humans and domesticated animals than the northwest corner near Mud Hollow Brook.
8. The existing house would appear to be eligible for listing on the State Historic Register, although it is not on the list of historic properties in the current Town Plan.
9. Spear Street adjacent to the subject parcel is depicted as a Most Scenic Road on Map 13 of the Town Plan. There are also distant views to the west through the trees to the mountains beyond.
10. There are no conserved parcels directly adjacent to the subject parcel; the “interior” of Sheehan Green is conserved.
11. The Planning Commission finds that the highest priority resource is the wildlife habitat adjacent to Mud Hollow Brook—this is a large, unfragmented area located on the subject parcel and many adjoining parcels that hosts high quality and diverse habitat. Because of the importance of this area, a significant buffer should be looked for in any future development proposals.
12. The agricultural resource (i.e. the meadow) would be desirable to maintain in its current use, however it is relatively small for commercial agriculture and is also isolated from other agricultural fields, and therefore is a moderate priority for conservation.
13. The steep slope area should be avoided if possible.
14. The land slopes down to the west from Spear Street, so most new development would not be visible from Spear Street. The scenic quality of Spear Street would be most negatively impacted by consecutive curb-cuts. The scenic view, as well as the historic qualities of the existing dwelling, would not be jeopardized by new development were it to occur in a “village pattern.” It may even be appropriate to consider a connection to Hinesburg Road in the future, thereby reinforcing a village pattern of interconnected neighborhoods rather than the creation of individual developments.
15. Considering the above prioritization of areas of high public value, future development may be considered more acceptable closer to Spear Street on the northern portion of the

- parcel, and along the northern or southern edge of the meadow on Lot 1.
16. Notwithstanding the above prioritization of areas of high public value and the identification of a potential development area, the Planning Commission finds that the undeveloped condition of the parcel is a significant resource to the Town. Although the application does not propose to create conserved open space, the Planning Commission hopes that the parcel will eventually be conserved, perhaps as part of a “non-contiguous PRD” as allowed in Section 8.4(F) of the Charlotte Land Use Regulations.
 17. There are two existing curb-cuts associated with the house. Additionally, there is a right-of-way (to Hinsdale) along the southern boundary line.
 18. The plat indicates a proposed access for Lot 2 (in a location that would impact 15% slopes), however the applicant stated in the undated memo submitted with the application that “we are not requesting an approved curb cut as part of this application.” Furthermore no road plan, grading plan, intersection plan, or road profile was submitted with the application, and the applicant has not obtained a Highway Access Permit for Lot 2.
 19. A considerable concern of the Planning Commission about the proposal is the lack of provision for a shared access for the two proposed lots. The project provides an opportunity to create a basis for future development that complements the East Charlotte Village while protecting resources; or conversely, the application will create consecutive road cuts and unrelated developments that unnecessarily encroach on areas of high public value.
 20. Since neither Lot 1 nor Lot 2 is proposed to be conserved at this time, the Planning Commission must plan for the possibility that either lot could be further developed. Therefore the Planning Commission will require a reciprocal access easement that would allow Lot 2 to be accessed over Lot 1, and Lot 1 to be accessed over Lot 2. The location of the curb-cut will be determined when a development is proposed, and sufficient information is provided to allow an informed decision. Sections 7.3(D)(2) and (3) of the Charlotte Land Use Regulations and the Town’s highway access policy support such a requirement.
 21. The proposed subdivision includes a designated replacement area for the existing house—no new wastewater disposal area has been proposed, as allowed under Section 7.7(3)(C) of the Land Use Regulations. Note #8 on the plat appropriately states “Lot 2 has not been approved for a wastewater disposal area.” However test pit information was not provided with the application for the replacement area or for Lot 2 as required, and the Town’s wastewater consultant was not contacted by the applicant to inspect test pits or to confirm that the existing wastewater system is functioning. [See Section 7.7 (B)(3) and (C)(1) of the Land Use Regulations].
 22. Sections 7.1(2) indicates the Planning Commission may require a master plan in the event the Commission determines that development of additional portions of the parcel is reasonably likely in the foreseeable future. Section 7.7(C)(5) has similar language for parcels that are seeking exemption from wastewater disposal requirements. Although a master plan would certainly be desirable, there is no indication that proposed development has progressed to the point where a master plan is possible. Nevertheless, Section 8.6(B)(8) of the Land Use Regulations states “in approving a minor subdivision, the designation of open space may be deferred by the Planning Commission until a further subdivision is proposed; at that time the Planning Commission may require that the designated open space include sufficient acreage to account for the original minor

subdivision under the open-space requirements of these regulations.”

Decision

Based on these Findings, the Planning Commission approves the Final Plat Application for the proposed two-lot subdivision with the following conditions:

1. The subdivision plat will be amended as follows:
 - A. The proposed access to Lot 2 will be eliminated.
 - B. Reciprocal floating 50' wide right-of-way and utility easements between Lot 1 and Lot 2 will be indicated. (This may be indicated as a note).
2. Two paper copies (one full size and one 11" x 17") and a mylar (18" x 24") of the plat, as amended in accordance with Condition #1 above, will be submitted to the Planning Commission for review within 160 days; the applicant will record the mylar of the plat in the Charlotte Land Records within 180 days.
3. Prior to the submission of the mylar in accordance with Condition #2 above, the applicant submit a plan showing the location of the test pits in relation to the proposed replacement wastewater disposal system for Lot 1, and reopen test pits for inspection by the Town's wastewater disposal consultant or allow the Town's consultant to take auger samples, as judged appropriate by the Town's consultant. The applicant will also allow inspection of the existing wastewater disposal system by the Town's wastewater consultant. The existing system will need to be deemed to be functioning and the test pits will need to comply with the Charlotte Sewage Ordinance prior to submission of the mylar.
4. Prior to the submission of the mylar in accordance with Condition #2 above, the applicant will obtain the appropriate wastewater disposal permit from the State.
5. Prior to the submission of the mylar in accordance with Condition #2 above, the applicant shall submit a letter from the surveyor indicating that he has set the survey pins in the field as indicated on the survey. If the survey pins cannot be set at this time because of frozen ground, the applicant shall submit a letter from the surveyor indicating that s/he will set the pins when the ground thaws and has been paid to do so.
6. Prior to any development of Lot 2, a Subdivision Amendment will be required for which, at a minimum, access, wastewater disposal, a building envelope and designated open space will be required. A resource management plan may also be required.
7. Conveyance deeds for Lot 1 and Lot 2 will include floating right-of-way and utility easements over each other.
8. Future development on and/or subdivision of Lot 1 may be required to be accessed via Lot 2; future development on and/or subdivision of Lot 2 may be required to be accessed via Lot 1.
9. All new utility lines will be underground.
10. The Planning Commission will not require open space to be designated at this time, however any future subdivision or development of either lot will require the designation of open space. The total current acreage (116 acres) will be considered when calculating the open space as provided for in Section 8.4 (C) of the Charlotte Land Use Regulations (or succeeding town regulations in effect).

Additional Conditions: All plats, plans, drawings, documents, testimony, evidence and conditions listed above or submitted at the hearing and used as the basis for the Decision to grant permit shall be binding on the applicant, and his/her/its successors, heirs and assigns. Projects shall be completed in accordance with such approved plans and conditions. Any deviation from the approved plans shall constitute a violation of permit and be subject to enforcement action by the Town.

This decision may be appealed to the Vermont Environmental Court by the applicant or an interested person who participated in the proceeding. Such appeal must be taken within 30 days of the date of the 4th signature below, pursuant to 24 V.S.A. Section 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

Members Present at the Public Hearing on April 6: Jeff McDonald, Jim Donovan, Linda Radimer, Robin Pierce, John Owen, Peter Joslin and Robert Mack

Vote of Members after Deliberations:

The following is the vote for or against the application, with conditions as stated in this Decision:

- 1. Signed:_____ For / Against Date Signed:_____
- 2. Signed:_____ For / Against Date Signed:_____
- 3. Signed:_____ For / Against Date Signed:_____
- 4. Signed:_____ For / Against Date Signed:_____
- 5. Signed:_____ For / Against Date Signed:_____
- 6. Signed:_____ For / Against Date Signed:_____
- 7. Signed:_____ For / Against Date Signed:_____

APPENDIX A

- 1. An application form and appropriate fee.
- 2. A letter dated March 8, 2006 from John Carpenter to Dean Bloch authorizing David Miskell, Clark W. Hinsdale, III and Stuart Morrow to represent him at hearings and meetings related to his subdivision.
- 3. An undated memo including a Project Narrative, a list of Application Materials, a Waiver Request, a description of the proposed subdivision, and Additional Information Under the New Town Land use Regulations.
- 4. A letter dated November 10, 2005 from Stephen Revell of Lincoln Applied Geology, Inc. to Mr. John Carpenter.
- 5. A survey by Stuart J. Morrow entitled "Final Plat, Minor Subdivision, Property of John H. Carpenter, 2196 Spear Street, Charlotte, Vermont" dated April, 2005, no revisions.
- 6. A letter dated March 28, 2006 from Stephen Revell of Lincoln Applied Geology, Inc. to

John Carpenter, Dave Miskell and Clark Hinsdale III which includes test pit data for test pits 18, 19, 25 and 26.