

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**Clark Hinsdale, Jr. Testamentary Trust
Clark Hinsdale III, Trustee**

**Boundary Adjustment
Application # PC-13-23**

Background

The Planning Commission conducted Sketch Plan Review (PC-13-06) on March 7, 2013, and classified the project as a Boundary Adjustment in accordance with Section 6.1(C)(3) of the Town of Charlotte Land Use Regulations approved November 2, 2010.

Application

Materials submitted with the applications are listed in Appendix A.

Public Hearing

A public hearing was held for this application on November 7, 2013. Clark Hinsdale III, Trustee of the Clark Hinsdale, Jr. Testamentary Trust, property owner, represented the Trust during the hearing. Present at the hearing and providing testimony were property owners Thomas Nola, 2101 Hinesburg Road, Peter Ker Walker, 1916 Hinesburg Road, and Thomas Baginski, 460 Sheehan Green. Written testimony was provided by Stephen Colvin, 1955 Hinesburg Road and was entered into the record (see Appendix B).

Regulations in Effect

Town Plan amended March, 2013

Land Use Regulations adopted November, 2010

Recommended Standards for Developments and Homes adopted September, 1997

Findings

The Project

1. The purpose of the application is to create, by adjusting interior property lines of two adjoining parcels held in common, a parcel of 14.66 acres, identified by the applicant as Lot 1, for conveyance to Charlotte Solar, LLC, a Vermont limited liability company, on which Charlotte Solar intends to construct a solar farm which was issued a Certificate of Public Good by the Vermont Public Service Board under Docket No. 7844 dated January 22, 2013.
2. The two parent parcels held in common by the Testamentary Trust of Clark Hinsdale, Jr. are described by the applicant as the "Leclair" parcel of 46.03 acres with frontage on Hinesburg Road and the "Eno" wood lot of 33.63 acres to the north of the "Leclair"

- parcel, accessed by a right-of-way from Hinesburg Road across the “Leclair” lot.
3. The project will reduce the “Leclair” parcel from 46.03 acres to 14.66 acres, a reconfigured lot called Lot 1 by the applicant, and increase the “Eno” wood lot from 33.63 acres to 65.00 acres, a reconfigured lot called Lot 2 by the applicant.
 4. Lot 1 is intended for conveyance to Charlotte Solar, LLC for commercial use as an energy producing utility generating electrical energy by solar conversion via an array of 375 racks containing approximately 8,250 photovoltaic panels in 26 rows within an area comprising 12.6 of the 14.66 acres of Lot 1.
 5. Lot 2 will remain with the Testamentary Trust of Clark Hinsdale, Jr.
 6. Both parcels currently comply with the minimum lot size for the Rural District, and both will comply after the proposed conveyance.
 7. Authority for use of Lot 1 as a commercial public utility within the Rural District is vested in statutory law, 30 V.S.A. Section 248.
 8. Lot 1 will have no road frontage and will be accessed via a deeded right-of-way easement of 50 feet across Lot 2 from Hinesburg Road.
 9. Lot 1 is subject to the terms and conditions of the Certificate of Public Good issued under Docket 7844 by the Public Service Board which exempts local authority over the lot during the effective term of the certificate.
 10. Portions of Lot 2 are also subject to terms and conditions of the Certificate of Public Good issued under Docket 7844 as well as a Stipulated Agreement entered into by the town and Charlotte Solar, LLC dated June 1, 2012. A 210 foot buffer running along the eastern side of the solar array adjacent to the eastern property line of Lot 1 with that of the Sheehan Green development, a 35 foot buffer running along the northern side of the solar array adjacent to the southern extremity of the tree line nearest the array, the location of the access drive from Hinesburg Road to the solar array access, the entire length of road frontage on Hinesburg Road of Lot 2 for an unspecified depth, and the entirety of the southern fence line of the solar array, and the utility right-of-way running across Lot 2 from the solar array to the power pole on Hinesburg Road are specified portions of Lot 2 that are subject to jurisdiction of the Public Service Board as agreed to by the town in the Stipulated Agreement and thus are also exempt from local authority or control.
 11. By the terms and conditions of the Stipulated Agreement, the town confirms that it will not seek to make further changes to the Project as presented to the Public Service Board under Docket 7844 and shall take no action inconsistent with or contrary to the Stipulation as it modifies the Certificate of Public Good Order issued under Docket 7844.

Project Classification

12. Section 6.1(C)(3) of the Town of Charlotte Land Use Regulations approved November 2, 2010 allows for realignment of boundary lines between existing adjacent lots that were not created by an approved subdivision to be treated as a boundary adjustment subject to review under the Standards imposed in Chapter VII of the Regulations, Subdivision Review Standards.
13. The two lots presented in this application were not created by a subdivision approval of the Town.
14. The applicant did not request a waiver from any of the standards under which this

application is to be reviewed.

Subdivision Review Standards

Application of Subdivision Standards Section 7.1

15. Lot 2 of the proposed boundary adjustment will be 65 acres. The applicant did not provide any information within the application or at the hearing with regard to the proposed use of Lot 2. Development of Lot 2 appears to be reasonably likely. **The Planning Commission finds that a master plan for the entire parcel identifying Areas of High Public Value, the general location of potential infrastructure, and an estimate of the type, density and timing of future development is warranted.**

General Standards Section 7.2

16. Development Suitability requires that proposed projects be suitable for the intended use of the land and shall not result in undue adverse impacts, among other things, to the character of the surrounding area. Moreover, proposed projects should not have an undue adverse impact on Areas of High Public Value as described within the Regulations, among which are lands in active agricultural use and with prime and statewide agricultural soils. Furthermore, the soils of the parcels under review contain both prime and statewide agricultural soils, an area of high public value defined in the Regulations. **The Planning Commission finds the configuration of the proposed boundary adjustment resulting in a 14.66 acre parcel bifurcating existing, uninterrupted actively used agricultural land with agriculture soils to be in contradiction to the standard imposed under Section 7.2.**
17. Section 7.2(C) Lot Layout, at subsection (5) Irregularly shaped lots, are expressly prohibited unless warranted by topography, surface waters, or to avoid the fragmentation of significant or cultural features. **The Planning Commission finds that the project will result in the creation of a lot (i.e. Lot 2) with irregular jogs and doglegs which has the result of fragmenting the otherwise uninterrupted farmland.**

District Standards Section 7.3

18. (A) Settlement Patterns. (1) A project shall be designed to maintain and extend traditional or planned settlement patterns, and (2) maintain contiguous tracts of open land with adjoining parcels. **The Planning Commission finds the configuration of the proposed boundary adjustment in contradiction to the standard imposed under Section 7.3 (A). The proposed boundary adjustment results in a 14.66 acre parcel that does not extend traditional settlement patterns and results in the fragmentation rather than the maintenance of contiguous tracts of open land.**
19. (D) Rural Zoning District (2) Lot lines shall be located so as to not create adverse impacts on Areas of High Public Value by the parcelization, fragmentation, isolation, or destruction of such areas. **The Planning Commission finds the configuration of the proposed boundary adjustment in contradiction to the standard imposed under Section 7.3 (D). The proposed boundary adjustment fragments the actively used**

agricultural land and creates an isolated parcel out of character with the surrounding area.

Standards Section 7.4 through 7.12

The Planning Commission will not make findings on the remaining standards found in Chapter VII of the Land Use Regulations at this time.

Decision

Based on these Findings, the Planning Commission **Denies** the Boundary Adjustment as presented by the applicant.

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 Hearings on November 7, 2013: Jeff McDonald, Paul Landler, Linda Radimer, Gerald Bouchard, Marty Illick and Donna Stearns

Vote of Members after Deliberations:

The following is the vote for or against this Findings of Fact and Decision as written:

- 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

The following items were submitted in association with the application:

- 1. An application form and appropriate fee.
- 2. A survey plat entitled “Boundary Adjustment Plat” Properties of Clark W. Hinsdale Jr.

by Stuart J. Morow, Consulting Land Surveyor, Shelburne, Vermont dated May 1999, no revisions.

3. A document entitled "Excerpts From Proposed Solar Energy Site Lease Agreement" prepared by Attorney James Ouimette with no date.
4. A copy of Natural Resources Board Act 250 Jurisdictional Opinion dated 9/12/2013
5. A list of abutting property owners with names, addresses, and parcel identification.

APPENDIX B

The following items were submitted by interested parties other than the applicant:

1. A letter from adjoining property owner Stephen Colvin, 1955 Hinesburg Road, dated November 4, 2013 and entered into the record.