

# **CHARLOTTE PLANNING COMMISSION**

## **FINDINGS OF FACT AND DECISION IN RE APPLICATION OF**

**Steven A. Davis and Elizabeth Leonard  
2556 Hinesburg Road**

**Final Plan Application  
For A  
Planned Residential Development Subdivision  
Creating Three Units of Affordable Housing  
Application # PC-10-39**

### **Background**

The Planning Commission held a Sketch Plan Review for the proposed subdivision on November 19, 2009 and January 7, 2010, and conducted a site visit on December 5, 2009. At the conclusion of Sketch Plan Review the Planning Commission classified the project as a Major Subdivision and Planned Residential Development. The applicant then submitted a Preliminary Plan Application (PC-10-31), for which the Planning Commission held a hearing on August 19, 2010 and issued a decision on September 16, 2010.

### **Application**

Materials submitted with the applications are listed in Appendix A.

### **Public Hearing**

The Planning Commission held a public hearing for this application on November 4, 2010. Steven Davis and Chris Holzwarth represented the applicant. Timothy Tenney, Elizabeth Sorrell, and Richard Tenney, who are adjoining property owners, were also present and participated in the hearing.

### **Regulations in Effect**

Town Plan, amended March, 2008

Land Use Regulations adopted March, 2009.

Recommended Standards for Developments and Homes adopted September, 1997

### **Findings**

1. The applicant owns a parcel at 2556 Hinesburg Road that is approximately three acres in size. The parcel is located entirely within the Village Commercial District.
2. A four-family dwelling was previously approved on the parcel, but was not constructed.
3. Two single-family dwellings are currently located on the parcel, and a third single family dwelling is under construction.
4. The application proposes to create three additional single family dwellings and a common storage building on the parcel.
5. A condominium association, Hagan Hill Condominium Association, has been established

on the parcel as recorded in volume 174 pages 324 of the Charlotte land records. The covenants of the association allow the existing and proposed dwellings to be conveyed separately from each other, while the land is owned by the association.

*Applicable standards of Section 4.4 (Affordable Housing) of the Charlotte Land Use Regulations (“Regulations”) are reviewed in Findings 6-16.*

6. One of the existing single family dwellings, Unit 2, is subject to affordability covenants recorded in volume 174 page 358 of the Charlotte land records, to be administered and enforced by Champlain Housing Trust. The dwelling under construction is also proposed to be subject to affordability covenants, which will be executed and recorded along with the closing documents for the conveyance of the dwelling.
7. All of the proposed dwellings are to be subject to affordability covenants administered by Champlain Housing Trust. Therefore, five of the six dwellings to be located on the parcel will be subject to affordability covenants administered by Champlain Housing Trust.
8. Champlain Housing Trust is a well established not-for-profit organization that develops and administers affordable housing projects within northwestern Vermont.
9. Section 4.4(D)(1) of the Regulations indicates that within the Village Commercial District, dwellings in an affordable housing project of ten units or less can have a density and minimum lot size of 1/4 acre (for new construction).
10. Section 4.4(D)(1)(d) states that up to 25% of dwelling units in a subdivision, development or project which uses densities allowed in this section may be market rate housing.
11. Accordingly, each dwelling unit requires density of 1/4 acre; and all six dwellings require a total of 1 1/2 acres of density.
12. Timothy Tenney, an adjoining property owner, stated at the preliminary hearing and at the final hearing that the location of the common property boundary between his parcel and the applicant’s parcel is in dispute.
13. The application includes a survey by Rockwood Land Services, LLC which depicts the area that is in dispute. The survey states in Note 3 “the Davis/Leonard and Tenny (sic) deeds overlap in this area. It is this surveyor’s opinion that the land is part of the Davis/Leonard parcel.”
14. The survey indicates the area in dispute is .356 acres. The survey also indicates the acreage of the parcel, including the area in dispute, is 2.986 acres.
15. The Planning Commission finds that, even if the disputed acreage is found to be not owned by the applicant, the applicant’s parcel still has sufficient acreage for the required 1 1/2 acres of density proposed by the application, and the proposed structures meet the 15 foot minimum setback requirement for the Village Commercial District.
16. The size of proposed lots may be reduced below the minimum lot size as provided in Chapter VIII of the Regulations (Planned Residential and Planned Unit Development).

*Applicable standards in Chapter VII of the Regulations are reviewed in Findings 17-55.*

**Areas of High Public Value—Sections 7.2**

17. The parcel includes or is adjacent to the following areas of high public value:
  - A. Land in active agricultural use: The adjacent parcel on the north side of Hinesburg Road is in active agricultural use. (From observation)
  - B. Primary agricultural soils: there are prime soils located near Hinesburg Road, and

statewide soils on the east side of the parcel. (from NRCS data)

- C. Water supply source protection area—Map 10 in the Town Plan depicts a “surface water source protection area” for the Champlain Water District on much of the parcel.
  - D. Conserved land on adjacent parcels—The adjoining parcel on the north side of Hinesburg Road has been conserved via a Grant of Development Rights to the Vermont Land Trust, the Vermont Department of Agriculture, Food and Markets, and the Vermont Housing and Conservation Board. (From town land records).
18. Considering the resources on and adjacent to the parcel, the Planning Commission finds that the most important area(s) of high public value is the adjacent land on the north side of Hinesburg Road that is in active agricultural use and is conserved. These are the resources that most strongly characterize the property and its vicinity, and are the features that the Planning Commission feels are most important to protect.
  19. The only impact the project will have on the adjacent parcel on the north side of Hinesburg Road is the isolation distance that is required for the existing drilled well, which includes land on the north side of Hinesburg Road. However, this will not impact the agricultural use or the conserved features of that parcel.

**District Standards—Section 7.3**

20. The proposed layout will create a four-dwelling cluster on 1.34 acres, which is the Limited Common Area designated with the proposed dwellings. This layout results in an average of .335 acres per dwelling, although some of this land will be used for the wastewater system and roadway.
21. The proposed dwellings are located relatively close to Hinesburg Road, which is a traditional land use pattern in villages generally; and this land use pattern is common in the east Charlotte village.
22. In the vicinity of the project, there are currently two other “cluster” developments, the Sheehan and Tenney developments, and one “traditional” development on Valley View Drive. Sheehan Green is a private circle road with a single access on Spear Street, with 15 single family dwellings on lots that are between 1.38 and 3.1 acres. The first phase of the Sheehan development also created four lots between one and two acres in size with access directly onto Spear Street. The Tenney mobile home development consists of 14 mobile homes on a 6.75 acre parcel that are accessed by two short “dead end” private roads. Valley View Drive is a private dead end road with a single access on Hinesburg Road, and serves a four-lot development with lots that are between 2.85 acres to 12.1 acres in size, which are all within the Rural District.
23. The proposed development is a more dense configuration than existing development within the vicinity. However, the Planning Commission notes that the Town Plan encourages higher density development within the villages, and it also encourages affordable housing, which is facilitated by a dense configuration. It is further noted that Section 7.3 (B) of the Regulations requires that all subdivisions within village districts shall be designed and reviewed as either planned residential developments or planned unit developments, which is how this development has been proposed and reviewed.
24. The general road pattern of existing developments within the vicinity and of the proposed development are similarly private dead-end roads with one access onto a town highway. This pattern is not consistent with Village and Hamlet Policies #7 and #10 of Section 5.1.2 of the Town Plan which state:
  - # 7. The Town supports a street network and connections between parcels in villages and

- hamlets to improve efficiency and connectivity; and
- # 10. It is important that new development located in the villages provide for strong visual, vehicular and pedestrian connections to the existing settlement and infrastructure.
25. The project's potential road configuration is restricted by the parcel size and shape, and also by the location of the wastewater disposal area. It is noted that the road can be extended to the south to link to future development if that parcel were to ever be subdivided.
26. The survey plat depicts a 20 foot wide "public pedestrian easement" along the frontage of the parcel, and the application includes a draft Offer of Irrevocable Dedication and a draft Pedestrian Easement Deed. This pedestrian easement will facilitate pedestrian access to Jackson Hill Road, which has commercial establishments and is a likely destination of future residents. Such a pedestrian network is envisioned in the Town Plan.
27. Building envelopes for the three house-sites are "square" to Hinesburg Road, which allows the prospective dwellings to be either perpendicular or parallel to the road in conformance with the Preliminary Plan Decision. The applicant has indicated that he is exploring the use of roof-mounted solar panels for heating water, which could warrant the dwellings being parallel to Hinesburg Road.
28. The Planning Commission finds that the proposed configuration is consistent with the planned settlement pattern of the village.

#### **Compatibility with Agricultural Operations—Section 7.4**

29. The proposed dwelling units are to be served by a drilled well which has an isolation area that includes land on the adjoining parcel on the north side of Hinesburg Road that is actively farmed. However, the well already exists, and therefore the project is not creating this impact.

#### **Facilities, Services & Utilities—Section 7.5**

30. The development will be served by a private road, which is defined in the Regulations as a right-of-way serving three or more lots.
31. The application includes a road cross section which complies with the Fire and Rescue Standards.
32. The proposed road includes a "Y" turn-around at its southern end, in conjunction with driveways on the road.
33. All dwellings are proposed to have sprinkler facilities for fire suppression.

#### **Water Supply—Section 7.6**

34. A shared water system is proposed, using an existing drilled well.
35. The applicant has obtained a Wastewater Disposal and Potable Water Supply Permit (WW-138-0809-1).
36. A draft water service agreement, waiver and easement was submitted with the application.
37. Provisions allowing residents' use of, and assigning maintenance responsibility for, the water system are included in the document entitled "Declaration of Condominium, Hagan Hill Condominium" and the proposed amendment.

#### **Sewage Disposal—Section 7.7**

38. A community wastewater disposal system is proposed, using a system that has been constructed in association with the dwelling labeled "Unit 6".
39. The applicant has obtained a Wastewater Disposal and Potable Water Supply Permit (WW-138-0809-1).

40. A draft sewage service agreement, waiver and easement was submitted with the application.
41. Provisions allowing residents' use of, and assigning maintenance responsibility for, the wastewater system are included in the document entitled "Declaration of Condominium, Hagan Hill Condominium" and the proposed amendment.
42. A maintenance and inspection plan for the proposed wastewater system was not submitted.

#### **Stormwater Management & Erosion Control—Section 7.8**

43. Sheet flow drainage is the primary proposed stormwater management technique. A curtain drain/underdrain is also proposed to be installed between the dwellings and the wastewater disposal areas. The underdrain is proposed to discharge into a stone-lined spreader, then to vegetated filter strip.
44. Due to the proposed berming and wastewater disposal system, it appears that ponding is likely to occur to the southwest of Unit 5.
45. The stone lined spreader is located near the middle of the proposed 20-foot wide public pedestrian easement.
46. The site is relatively flat. However, the site appears to have a lot of clay soils; and erosion was observed during the construction of adjacent dwellings.
47. The Planning Commission notes that, with three building sites in close proximity, there is a possibility that the development area may be prone to erosion during construction.

#### **Landscaping and Screening—Section 7.9**

48. The Planning Commission finds that the proposed landscaping is adequate to establish a tree canopy within the project.

#### **Roads, Driveways & Pedestrian Access—Section 7.10**

49. The proposed roadway is located at an existing access on the parcel.
50. The road is proposed to be privately maintained.
51. A draft roadway waiver agreement was submitted with the application.
52. Provisions allowing residents' use of, and assigning maintenance responsibility for, the roadway are included in the document entitled "Declaration of Condominium, Hagan Hill Condominium" and the proposed amendment.
53. A draft pedestrian easement has been submitted with the application.
54. The site plan provides sufficient space for "overflow" parking.

#### **Common Facilities, Common Land, & Land to be Conserved—Section 7.11**

55. A portion of the parcel is proposed to be limited common area for all four of the dwellings, and other portions are proposed to be limited common area for each dwelling individually; these areas are depicted on the survey and described in the draft covenants.

*Applicable standards in Section 8.4 of the Regulations are reviewed in Findings 56-61.*

#### **General Standards**

56. The project is an effective and unified treatment of the development possibilities of the site, and is consistent with the goals and policies of the Town Plan.

#### **Village Standards**

57. Findings related to the configuration of the lots and buildings, the scale of development, functional and visual integration with neighboring properties, and pedestrian circulation are included above.
58. The site plan appears to depict approximately 50% of the limited common area associated with this project will be open, although much of this area will be used for wastewater

disposal.

59. Section 8.4(D)(2) of the Regulations indicates that open space and common areas should serve as a central organizing feature of the subdivision. As noted, the wastewater disposal areas occupy much of the open area in this project. However, it is also noted that on-site wastewater disposal necessarily uses a relatively large percentage of small lots.
60. A portion of the common area is to be occupied by a common storage building, since the proposed dwellings are relatively small. The common storage building is to be converted from an existing structure, which is an efficient use of the site's existing structures.
61. Considering the existing features and structures on the subject parcel and neighboring parcels, the Planning Commission finds the configuration to be appropriate and compatible with the neighborhood.

## Decision

Based on these Findings, the Planning Commission approves the Final Plan Application for the proposed Planned Residential Development Subdivision with the following conditions:

1. The survey will be revised so that the legend uses different symbols for "Found Iron Pipe" and "Set Capped Rebar."
2. The site plan (Sheet C1) will be revised as follows:
  - A. the stone-lined spreader will be moved to the edge of the public pedestrian easement; and
  - B. potential ponding to the southwest of Unit 5 will be addressed, possibly by adding surface drains or by removing the proposed berm.
3. Mylars (18" x 24") of the survey by Rockwood (as amended in Condition 1) and the site plan (Sheet C1) by MCM Engineering Consultants (as amended in Condition 2) will be submitted to the Planning Commission for review and signature within 160 days. The applicant will record the signed mylars in the Charlotte Land Records within 180 days.
4. Prior to the submission of the mylars in accordance with Condition 3 above, the applicant will:
  - A. Submit an erosion control plan to be approved administratively by the Planning Commission.
  - B. Submit a recommended maintenance and inspection plan for the proposed wastewater system on letterhead of the wastewater system designer.
  - C. Execute and record the following documents after review and approval by the Selectboard and Town Attorney:
    - i. Roadway Agreement and Waiver
    - ii. Sewage Service Agreement, Waiver and Easement
    - iii. Water Service Agreement, Waiver, and Easement
    - iv. Offer of Irrevocable Dedication for a Public Pedestrian Easement
    - v. Pedestrian Easement Deed, which is to be amended to allow the portion of existing common use building (and the proposed drainage improvements) to remain.
  - D. Execute and record the document entitled "Hagan Hill Condominium, Second Amendment to Declaration of Condominium."

5. Prior to or concurrent with the issuance of a Certificate of Occupancy for each of the dwelling units:
  - A. The proposed landscaping will be installed as depicted on the approved site plan.
  - B. A Housing Subsidy Covenant will be executed by Champlain Housing Trust and each of the buyers/residents and recorded in the Charlotte land records.
6. With the application for a Certificate of Occupancy for the first dwelling, the applicant shall submit a letter from an appropriately licensed engineer indicating that the sub-base of the roadway, drainage, water system and wastewater disposal system have been installed in accordance with the approved plans.
7. Prior to obtaining a Certificate of Occupancy for the second dwelling the applicant will obtain approval from the Selectboard for a road name to comply with the E-911 Ordinance.
8. Prior to obtaining a Certificate of Occupancy for the third dwelling the applicant shall submit a letter from an appropriately licensed engineer indicating that the roadway has been completed in accordance with the approved plans.
9. Conveyance deeds to buyers/residents of individual dwelling units will include references to the following documents:
  - E. This Findings of Fact and Decision (PC-10-39).
  - F. The Housing Subsidy Covenant
  - G. Offer of Irrevocable Dedication
  - H. Pedestrian Easement Deed
  - I. Hagan Hill Condominium Covenants and all amendments.
  - J. Roadway Agreement and Waiver
  - K. Sewage Service Agreement, Waiver and Easement,
  - L. Water Service Agreement, Waiver and Easement
  - M. Wastewater maintenance plan
10. No new pole-mounted light fixture will be taller than 8' off the ground, and no new building-mounted light fixture will be taller than 15' off the ground. Fixtures will be shielded to direct light downward, and will not direct light onto adjacent properties or roads, and will not result in excessive lighting levels that are uncharacteristic of the neighborhood. There will be no street lighting without prior approval of the Planning Commission as a Subdivision Amendment.
11. All new utility lines will be installed underground.
12. The new roadway and driveways shall be surfaced with non-white crushed stone.
13. All proposed landscaping will be replaced by the applicant or its successor in title if the landscaping becomes diseased or dies within two years.

**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 4<sup>th</sup> 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 November 4, 2010:** Jim Donovan, Linda Radimer, Ellie Russell and Gerald Bouchard

**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**

The following items were submitted in association with the application:

- 1. An application form.
- 2. A survey by Rockwood Land Services, LLC entitled “Subdivision/Condominium Plat for Hagan Hill Condominium Association, 2556 Hinesburg Road, Charlotte, Vermont” dated September 30, 2010, no revisions.
- 3. A plan by MCM Engineering Consultants entitled “Site Plan Modifications for Hagan Hill Condominium Association, 2556 Hinesburg Road, Charlotte, Vermont,” Sheet Number C1” dated April 1, 2010, revised 9/29/10.
- 4. A sheet by MCM Engineering Consultants entitled “Site Plan Modifications for Steven Davis, Hinesburg Road, Charlotte, Vermont” Sheet Number D1 dated April 1, 2010.
- 5. A copy of the Warrant Deed for Unit 2 of Hagan Hill Condominium.
- 6. A copy of the Homeland Condominium Housing Subsidy Covenant for Unit 2.
- 7. A copy of a document entitled Stipulation of the Parties between Champlain Housing Trust and the buyers of Unit 2.
- 8. A copy of the Declaration of Condominium, Hagan Hill Condominium, which was executed by the applicant on October 12, 2006 and recorded in book 165 page 211 of the Charlotte Land Records.

9. A copy of the Hagan Hill Condominium First Amendment To Declaration of Condominium, which was executed by the applicant on June 16, 2008 and recorded in book 174 page 324 of the Charlotte Land Records.
10. A draft document entitled Hagan Hill Condominium, Second Amendment to Declaration of Condominium.
11. A draft document entitled Offer of Irrevocable Dedication
12. A draft document entitled Pedestrian Easement Deed
13. A draft document entitled Sewage Service Agreement, Waiver, and Easement
14. A draft document entitled Water Service Agreement, Waiver, and Easement
15. A draft document entitled Roadway Agreement and Waiver