

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**Thomas Hergenrother-Hergenrother Construction, LLC
487 Guinea Road**

**Final Plan Review
For A
Three-Lot Subdivision
Application # PC-13-24**

Background

The Planning Commission conducted a Sketch Plan Review for a proposed three-lot subdivision on August 15, 2013 and it conducted a site visit prior to the meeting. At the conclusion of the Sketch Plan Review the Planning Commission classified the project as a Minor Subdivision.

Application

Materials submitted with the application are listed in Appendix A. Materials submitted at the Final Plan hearing are listed in Appendix B.

Public Hearing

The Planning Commission held a public hearing for this application on November 7, 2013. The applicant was represented by Nathan Howells of Trudell Consulting Engineers. No other parties participated in the hearing or submitted written comments at or in advance of the hearing.

Regulations in Effect

Town Plan amended March, 2013

Land Use Regulations amended November, 2010.

Recommended Standards for Developments and Homes adopted September, 1997

Findings

Background

1. The existing parcel of 26.72 acres is located on Guinea Road in the Rural zoning district. The parcel is developed with a single family dwelling.
2. The application proposes the creation of three lots as follows: Lot 1 is 5.01 acres and has the existing dwelling, Lots 2 and 3 are building lots of 10.96 acres and 10.75 acres, respectively.

Applicable standards in Chapter VII of the Charlotte Land Use Regulations (“Regulations”) are reviewed below in Findings 3-28.

Sections 7.2 and 7.3—Areas of High Public Value

3. The parcel includes, or is adjacent to, the following areas of high public value:
 - a. Land in active agricultural use: the westerly portion of the parcel has been tilled for crops, and the central and easterly portions have been hayed (from the

- applicant's testimony, site visit and ortho-photo).
- b. Primary agricultural soils: the entire parcel has statewide agricultural soils (from NRCS data).
 - c. Surface waters: Bingham Brook runs just easterly of the parcel (VT Hydrography Set, 2003). There are Class II wetlands on the easterly and central portions of the parcel (from the application) and an associated 50 foot setback and buffer (as per VT Wetland Rules).
 - d. Wildlife habitat: Map 6 in the Town Plan depicts a wildlife corridor along the easterly portion of the parcel. (Town Plan)
 - e. Conserved land: the parcel to the east, owned by David and Dianne Nichols, is conserved via an easement held by the Vermont Land Trust and other organizations. (Town land records)
4. Considering the areas of high public value on and adjacent to the parcel, the Planning Commission finds that the surface waters (i.e. Bingham Brook and wetland) and the associated wildlife corridor to be the most important. These are the resources that most strongly characterize the property, and are features which the Planning Commission feels are important to protect as it considers the proposed subdivision.
 5. At the hearing the applicant stated that, in recognition of the project's impact on the agricultural land and soils and the parcel's extensive wetlands, he would accept a condition restricting any further subdivision.

Conclusion 1: The application has avoided impacting the prioritized areas of high public value.

Conclusion 2: Restricting further subdivision is appropriate, considering the extensive resources on the parcel.

Section 7.4—Compatibility with Agricultural Operations

6. Parcels on the west side of Guinea Road are used for agriculture.
7. The proposed building envelopes on Lots 2 and 3 are 100 feet (i.e. less than the required 200 feet) from the parcels on the west side of Guinea Road, but they are separated from the adjacent parcels by the road and roadside vegetation (on the west side of Guinea Road).
8. The proposed wells on Lots 2 and 3 are at least 200 feet from the parcels on the west side of Guinea Road.
9. The protective distance of the proposed wells on Lots 2 and 3 do not overlay on adjacent parcels.

Conclusion 3: The applicant has sufficiently minimized potential conflicts between the proposed subdivision and the adjacent agricultural uses.

Section 7.5—Facilities, Services & Utilities

10. The project proposes to create two new single family dwellings.

Conclusion 4: The project will not create an unreasonable burden on existing or planned municipal or educational facilities or services and does not trigger the requirement for providing a fire pond and dry hydrant.

Section 7.6—Water Supply

11. There is no known shortage of suitable groundwater in the vicinity of the project.
12. The applicant has obtained a Wastewater System and Potable Water Supply Permit for the project (WW-138-1307-1).

Conclusion 5: It appears likely that water supplies for Lots 2 and 3 can be developed without adversely impacting existing water supplies in the vicinity.

Section 7.7—Sewage Disposal

13. The applicant has obtained a Wastewater System and Potable Water Supply Permit for the project (WW-138-1307-1).

Conclusion 6: The parcel appears to have sufficient wastewater disposal capacity for the proposed lots, and the wastewater system designs are appropriate.

Section 7.8—Stormwater Management & Erosion Control

14. The project will create two new single family dwellings and associated accessory structures, driveways and parking on 21.71 acres.
15. The project will not impact steep or very steep slopes, is not proposing development directly adjacent to surface water.

Conclusion 7: The project is unlikely to increase erosion or stormwater run-off.

Section 7.9—Landscaping and Screening

16. The application does not propose removing important specimen trees, tree lines or wooded areas of particularly natural or aesthetic value.
17. The development sites are not adjacent to surface waters.
18. The probable discontinuation of agricultural use of the parcel will increase the vegetative buffering of Bingham Brook.
19. The Sanitary Plan and Site Plan submitted with the application depicts proposed plantings near the southerly boundary of Lot 3. At the hearing, the applicant stated that the purposes of the plantings are to 1) provide some privacy between Lot 3 and the adjacent property to the south, and 2) to enhance an existing wildlife corridor which runs in an east/west orientation.
20. The applicant did not provide information as to the basis for the plant selection and planting design.

Conclusion 8: The project will not have a significant impact on existing vegetation.

Conclusion 9: The proposed vegetative buffering near the southerly boundary of Lot 3 is desirable, though the appropriateness of the plant selection and design is not clear.

Section 7.10—Roads, Driveways & Pedestrian Access

21. Due to its low density, the proposed subdivision will not create a significant increase in traffic on public roads in the vicinity of the project over what currently exists.
22. One new shared access is proposed and was approved by the Selectboard (HAP-13-10).

23. Lot 2 and Lot 3 will have a common driveway easement as indicated on the plat and in the submitted draft Warranty Deeds.
24. The parcel is relatively flat, and all driveways will have slopes of less than 8%.

Conclusion 10: The project is unlikely to create unreasonable traffic congestion or unsafe traffic conditions.

Conclusion 11: The proposed driveways are in conformance with the Town standards.

**Section 7.11—Common Facilities, Common Land, & Land to be Conserved; and
Section 7.12—Legal Requirements**

25. No public land or public facility is proposed.
26. The application proposes:
 - a. a common access easement at the southerly end of Lot 3 for use by the three lots to access the proposed open space;
 - b. a common driveway for Lots 2 and 3; and
 - c. a reciprocal easement on Lots 2 and 3 for the wastewater system management areas associated with each lot.
 - d. The application proposes an open space easement area that is to be subject to a covenant between the owners of the three lots;
27. The proposed open space easement area is subject to restrictions listed in the Warranty Deeds, including the requirement that any areas within wetlands shall remain and no disturbances of said wetland shall occur other than that permitted under State and Federal Wetland Regulations.
28. The draft Warranty Deeds submitted with the application include many of the restrictions that are typical of the Town's standard Open Space Agreement.
29. As proposed, the town or a third party conservation organization will not be parties to, and so cannot enforce, the open space restrictions.

Conclusion 12: Given the proposed number of lots, the designation of open space via an agreement with the Town or a third party conservation organization is not required by the Regulations.

Conclusion 13: The draft Warranty Deeds submitted with the application include the appropriate easements.

Decision

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

1. The survey plat will be revised to include the following:
 - A. The acreage on each lot that will be subject to the Open Space Land Easement;
 - B. The linear dimensions of the boundaries of the Open Space Land Easement on each lot;
 - C. The linear dimensions of the lot boundaries outside of the Open Space Land Easement; and

- D. A statement that Lots 1, 2 and 3 cannot be further subdivided.
2. One digital copy (pdf formatted for printing 11"x 17") and a mylar (18" x 24") of the survey plat, as revised by Condition #1 above, will be submitted to the Planning Commission for review and signature (of the mylar) within 160 days. The applicant will record the signed mylar in the Charlotte Land Records within 180 days.
 3. Prior to the submission of the mylar in accordance with Condition #2 above, the applicant will submit a letter from the surveyor indicating he has set the survey markers in the field as indicated on the plat
 4. The applicant shall obtain a recommendation from the Charlotte Conservation Commission for plantings near the southerly boundary of Lot 3 (outside of the common access easement).
 5. Prior to the issuance of a Certificate of Occupancy for the dwelling on Lot 3, the applicant shall plant vegetation near the southerly boundary of Lot 3 (outside of the common access easement) in accordance with the recommendation of the Charlotte Conservation Commission. The plantings will be replaced by the applicant or its successors if they become diseased or die within two years.
 6. The Warranty Deeds used to convey Lots 1, 2 and 3 will include the easement provisions within the draft deeds submitted with the application.
 7. Lots 1, 2 and 3 shall not be further subdivided.
 8. No new pole-mounted light fixture will be taller than 8' off the ground, and no new building-mounted light fixture will be higher 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.
 9. All new utility lines will be underground.
 10. All new driveways will be surfaced with non-white crushed stone.

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

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. A Final Plan application form and appropriate fee.
- 2. A survey plat by Scott D. Taylor of Trudell Consulting Engineers entitled “Subdivision Plat, Hergenrother Construction, LLC, 487 Guinea Road, Charlotte, VT” dated 4/16/13, last revised on 9/12/13.
- 3. A plan by John P. Pitrowiski of Trudell Consulting Engineers entitled “Hergenrother Construction, Inc., Guinea Road Subdivision, Guinea Road, Charlotte, VT, Sanitary Plan & Site Plan” dated 4/24/13, last revised on 9/24/13.
- 4. A letter dated September 18, 2013 to Dean Bloch from Karina Dailey of Trudell Consulting Engineers regarding “Hergenrother-Final Subdivision Application, TCE Project #2013032; PC-13-17.”

APPENDIX B

The following items were submitted at the Final Plan hearing:

- 1. A memo from Trudell Consulting Engineers to the Charlotte Planning Commission regarding “Thomas Hergenrother Final Plat Hearing 11/7/13”
- 2. Draft Warrant Deeds for Lot No. 1, Lot No. 2 and Lot No. 3.