

CHARLOTTE PLANNING COMMISSION

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

**Testamentary Trust of Clark W. Hinsdale, Jr., Applicant and Property Owner
Mount Philo Road
and
Charles T. and Elisabeth C. Deslauriers, Property Owner
60 Stockbridge Road**

**Final Plan Application
For A
Subdivision Amendment
Application # PC-10-36**

Background

The two subject parcels were created by two phases of a subdivision by Peter Holmberg that the Planning Commission approved on January 13, 1987 and February 9, 1988, respectively. Sketch Plan Review for the current proposal was held on July 1, 2010, at which time the Planning Commission classified the project as a Minor Subdivision Amendment.

Application

Materials submitted with the application are listed in Appendix A.

Public Hearing

A public hearing for this application was held on October 21, 2010 and December 2, 2010. Clark Hinsdale, III, Trustee of the Testamentary Trust of Clark W. Hinsdale, Jr., and Charles Deslauriers were present representing the applicant and owners of the two subject parcels. The following persons were also present and participated in the hearing on one or both dates: John Lawlis and Jane Lawlis (adjoining property owners), Anne Colmenero (nearby property owner), Liam Murphy (representing the Deslauriers), David Miskell (representing Clark Hinsdale, III) and Peter and Meredith Merritt (prospective buyers of the Hinsdale lot). No other interested parties were present or submitted written comments in advance of 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. Charles and Elisabeth Deslauriers own Lot 1 of Phase 1 of the Holmberg subdivision approved on January 13, 1987 and recorded in map slide 54; and the Testamentary Trust of Clark W. Hinsdale, Jr. owns Lot 22 of Phase 2 of the Holmberg subdivision approved on February 9, 1988 and recorded in map slide 67.
2. The application proposes to change the boundaries of these lots so that Lot 1 will be increased by 3.48 acres and Lot 22 will be reduced by the same amount. The application also proposes to identify an agricultural building envelope and new wastewater disposal

- areas on Lot 22.
3. As stated in Section 6.1 (C)(4) of the Charlotte Land Use Regulations (“Regulations”), applications for subdivision amendments are reviewed under the standards within Chapter VII of the Regulations.
 4. Lot 22 includes the following areas of high public value:
 - A. Land in active agricultural use: the parcel has been used for growing hay, and is intended to be use for a community supported agriculture operation. (From observation and applicant’s testimony)
 - B. Primary agricultural soils: the parcel includes prime and statewide agricultural soils. (From NRCS data)
 - C. Scenic views and vistas: Mount Philo Road is classified as a “most scenic road” on Map 13 of the Town Plan.
 - D. Conserved land: The lot is subject to a Conservation Agreement with the Town, as recorded in volume 57 pages 419-424 of the Charlotte Land Records.
 5. The wastewater disposal system that serves the Deslauriers’ dwelling is located within the 3.48 acres that are proposed to be conveyed to the Deslauriers.
 6. The applicant stated at the hearing that the existence of the Deslauriers’ wastewater disposal system makes it difficult to use the area near the system for agricultural purposes.
 7. Although it is possible that a portion of the 3.48 acres could be removed from agricultural use as a result of the conveyance from the Hinsdale Trust to the Deslauriers, this will be a small area that has already effectively been removed from agricultural use, as indicated in the previous finding.
 8. The conveyance of the 3.48 acres will not substantively change the circumstances or conditions of the approvals that created each lot.
 9. The conveyance of the 3.48 acres will result in both parcels being regular in shape.
 10. The Conservation Agreement governing the use of Lot 22 states (in the 2nd paragraph on Page 5): “The Grantor and Municipality agree that the terms, conditions and covenants set forth in this Agreement may be amended and modified from time to time upon application by the Grantor, his successors and assigns, and upon written approval of the Planning Commission.”
 11. The applicant stated at the hearing that one of the purposes of the current application is to obtain written approval from the Planning Commission for the proposed agricultural building envelope, associated parking, and the wastewater disposal areas pursuant to amending the Conservation Agreement, as described above.
 12. With regard to the proposed agricultural building envelope, the applicant has indicated that the building is to be used in association with a “community supported agriculture” operation, to be created and run by Mr. and Mrs. Merritt, the prospective buyers.
 13. The Planning Commission finds that community supported agriculture is a value to the community and to the Town in that it produces fresh food in relatively close proximity to residents, and it provides diversity to the agricultural economy of the Town, which is supported by the Town Plan.
 14. The applicant stated at the hearing that there is an existing agricultural curb-cut just north of the hedgerow along the property line, and this is proposed to be the access used by community supported agriculture operation.
 15. The Planning Commission finds that the continued use of the existing agricultural curb-

- cut is appropriate for the community supported agricultural operation. The Planning Commission notes that this access is not indicated on the plat.
16. The applicant indicated that a portion of the building envelope is to be used as a parking area in support of the agricultural operation.
 17. It is the Planning Commission's understanding, after making inquiries to the Vermont Agency of Agriculture, Food and Markets, that parking areas are not considered an "accepted agricultural practice," which are exempt from municipal land use regulation under Title 24 Section 4413(d) VSA. Therefore, permits may be needed for the parking area.
 18. At the hearing on December 2, the applicant submitted a memo with the following proposed conditions of approval:
 - A. No farm building constructed in the building zone shall exceed 1,600 square feet in size or 20 feet in height without Planning Commission approval;
 - B. All farm buildings constructed in the building zone shall be reasonably screened with evergreen trees from the north and east;
 - C. Parking shall be located in the southwest quadrant of the building envelope and be limited to 10 cars or less.
 - D. There shall be no farm café without Planning Commission approval.
 19. After discussion at the hearing, it was clarified by the interested parties that the evergreen trees in the proposed second condition need not be located within the building envelope, and also, that they are not to be planted in a straight line to create a solid screen.
 20. After discussion at the hearing, the applicant amended the third proposed condition to "...be limited to 8 cars or less."
 21. The Planning Commission finds all four of the proposed conditions, including the clarifications to the 2nd condition (in Finding 19) and the amendment to the 3rd condition (in Finding 20), to be acceptable, with a minor edit to replace "zone" with "envelope" to be consistent with standard terminology used by the Planning Commission.
 22. The Planning Commission finds the proposed agricultural building envelope and access to be acceptable with the four proposed conditions as clarified and amended.
 23. The westerly proposed wastewater disposal easement is located in prime agricultural soils. It is also located in close proximity to, and in a strategically important location relative to, the proposed building associated with the proposed community supported agriculture operation.
 24. The use of the westerly proposed wastewater disposal easement for wastewater disposal would result in much of the easement area being removed from agricultural use, and will likely reduce the ability to use land adjacent to the easement for the community supported agricultural operation, particularly for vegetable and fruit cropping, due to the proximity of the wastewater disposal area.
 25. The Planning Commission finds the proposed westerly wastewater disposal easement area to be an undue adverse impact on the current and proposed agricultural use as well as the agricultural resources of this parcel, and therefore conflicts with Section 7.3(D)(2) of the Regulations.
 26. The easterly proposed wastewater disposal easement is located within statewide agricultural soils. It is not located in immediate proximity to the likely vegetable and fruit cropping area of the proposed community supported agriculture operation; the adjacent land will therefore be less impacted, and would still be available as pasture or

for hay production. It is adjacent to an existing wastewater disposal easement that serves lots that were created in the Holmberg subdivision .

27. The Planning Commission finds that, although the easterly proposed wastewater disposal easement will impact statewide agricultural soils, it is in a location that will have less impact on the proposed community supported agricultural operation, and so will not create an undue adverse impact.
28. The proposed wastewater easement areas are not exempt from municipal land use regulations via the Planning Commission’s review of the proposed survey plat.

Decision on the Amendment to Conservation Agreement

The Planning Commission notes that, to the extent that portions of the proposed amendment to the Conservation Agreement propose “accepted agricultural practices,” those portions are exempt from municipal land use regulation. [Title 24 Section 4413(d) VSA] This decision is made, therefore, in the context of the amendment process described in the original Conservation Agreement, and is subject to the review and approval by the Selectboard. The Planning Commission also notes that the proposed parking area may not be an acceptable agricultural practice, and therefore it may require one or more municipal land use permits.

Based on the above Findings, the Planning Commission determines that the proposed building envelope and access are acceptable with the following conditions that were proposed by the applicant and amended with the applicant’s approval:

1. No farm building constructed in the building envelope shall exceed 1,600 square feet in size or 20 feet in height without Planning Commission approval;
2. All farm buildings constructed in the building envelope shall be reasonably screened with evergreen trees from the north and east. Said trees are not to be planted in a straight line to create a solid screen.
3. Parking shall be located in the southwest quadrant of the building envelope and be limited to 8 cars or less.
4. There shall be no farm café without Planning Commission approval.

Decision on the Final Plan Application

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

1. The survey by Stuart Morrow will be revised as follows:
 - A. The proposed westerly wastewater disposal area easement (labeled with “See Note 8”) and the proposed 20 foot wide sewer line easement between the Tegatz Family Trust parcel and the westerly wastewater disposal area easement will be removed.
 - B. The existing agricultural access will be added.
2. One paper copy (11”x 17”) and one mylar (18” x 24”) of the survey by Morrow as amended in Condition 1 above, will be submitted to the Planning Commission for review and signature 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 shall:

- A. Execute and record in the Charlotte Land Records an amendment to the Conservation Agreement after review and approval by the Selectboard, addressing the agricultural building envelope, the access to the building envelope, the parking area, and the easterly wastewater disposal area easement and associated sewer line easement.
 - B. Submit a letter from the surveyor indicating that he has set the survey markers or pins in the field as indicated on the survey. If the survey markers or pins cannot be set at this time because of frozen ground, the applicant shall submit a letter from the surveyor indicating that he will set the markers or pins when the ground thaws and has been paid to do so.
4. If the Selectboard does not approve amending the Conservation Agreement, the applicant may remove the proposed building envelope and easterly wastewater disposal easement area from the plat and submit a paper copy and a mylar as described in Condition 2 herein depicting the proposed conveyance of the 3.48 acre area from Hinsdale to Deslauriers.
 5. The 3.48 acre area that is the subject of this Subdivision Amendment will be conveyed from the Testamentary Trust of Clark W. Hinsdale, Jr. to Charles T. and Elisabeth C. Deslauriers within 365 days.
 6. Once the 3.48 acre area is conveyed to the Deslauriers, it will merge with the remainder of the Deslauriers' parcel and cannot be conveyed separately unless an application for subdivision is submitted and approved.
 7. The 3.48 acre area will remain subject to the Conservation Agreement, as amended.
 8. All conditions of previous approvals related to the subject parcels will remain in full force and effect.

Note: all deadlines are to be measured from the date of the 4th signature below.

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 October 21: Jim Donovan, Peter Joslin, Eleanor Russell, Paul Landler and Gerald Bouchard

Members Present at the Public Hearing on December 2: Jim Donovan, Eleanor Russell, Linda Radimer 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 for a Subdivision Amendment. A credit was applied to the fee, as approved by the Selectboard.
- 2. A memo (submitted with Sketch Plan Review application) to the Town of Charlotte Planning Commission from Charles Deslauriers dated June 7, 2010, authorizing the application.
- 3. A survey by Stuart J. Morrow entitled “Final Plat, Minor Subdivision Amendment, Between Properties of Charles T. and Elisabeth Deslauriers and Hinsdale et al, Charlotte, Vermont” dated August 2010, no revision.
- 4. A copy of a document entitled “Conservation Agreement” dated September 28, 1988 executed by Peter C. Holmberg and the town of Charlotte Board of Selectmen and recorded in volume 57 at page 419.
- 5. A memo entitled “Final Plat Application of Clark Hinsdale, Jr. Trust, Clark Hinsdale III, Trustee and Charles DesLauriers” dated December 2, 2010 regarding “Amendment to the Conservation Agreement dated September 28th 1988 between Peter C. Holmberg and the Town of Charlotte; Recommended conditions of providing a 100’ x 150’ Building zone.”