

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**James and Theresa Hudziak
4368 Lake Road**

**Final Plan Review
For A
Two-Lot Subdivision
Application # PC-13-18**

Background

The Planning Commission conducted Sketch Plan Review for the proposed two-lot subdivision on November 15, 2012 and January 3, 2013, and conducted a site visit on December 1, 2012. At the conclusion of the Sketch Plan Review, the Planning Commission classified the project as a Minor Subdivision.

Application

Materials submitted with the applications are listed in Appendix A.

Public Hearing

The Planning Commission held a public hearing for this application on August 15, 2013. The applicant was represented by Theresa Hudziak, Liam Murphy and Jack Milbank. No other parties were present or submitted written comments at or in advance of the hearing.

Due to an inaccurate address on the mailed hearing notice to an adjoining property owner, the hearing was reopened on September 5, 2013. The applicant was represented by Theresa Hudziak, Liam Murphy and Jack Milbank. Robert Mesaros and Kate Mesaros were present. Robert Mesaros participated in the hearing, and Mr. and Mrs. Mesaros submitted written comments.

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 27.8 acres is located at 4368 Lake Road in the Rural zoning district. It was created in 1992 via a four-lot subdivision by Edward and Birgit Deeds; the parcel was Lot 4 of that subdivision. The parcel hosts a single family dwelling.
2. The application proposes the creation of one building lot, labeled 4B on the plat.

Applicable standards in Chapter VII of the Charlotte Land Use Regulations (“Regulations”) are reviewed below in Findings 3-27.

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. Primary agricultural soils: portions of the parcel have statewide agricultural soils—Livingston, Covington and Vergennes Clays (from NRCS data).
 - b. Surface waters: There are Class II and Class III wetlands (from Town Plan Map 7 and from the application). State wetland rules require a 50 foot setback from the edge of Class II wetland.
 - c. Wildlife habitat: Map 6 in the Town Plan depicts forested wildlife habitat on much of the parcel.
 - d. Scenic views: Lake Road, in the vicinity of the parcel, is depicted as a “most scenic road” in Town Plan Map 13.
4. Considering the resources on and adjacent to the parcel, the Planning Commission finds that the wetland and forested wildlife habitat are the most important areas of high public value associated with the parcel. These are the resources that strongly characterize the property, and which the Planning Commission feels are important to protect during the subdivision process.
5. The application indicates the proposed building lot would share the existing driveway for the first approximately 430 feet, then a new driveway would branch off to the north/northwest to the proposed building envelope within proposed Lot 4B, with the new driveway running adjacent to an existing path.
6. The proposed driveway avoids delineated Class II wetland, though it passes through the 50 foot buffer of the wetland.
7. The proposed building envelope is located within an area depicted as forested wildlife habitat on Map 6 of the Town Plan, however, the proposed building envelope is fairly small at .6 acres, and the stand of eastern hop hornbeam trees is excluded from the building envelope.
8. The application includes proposed conditions for the subdivision permit related to the protection of the eastern hop hornbeam stand and the future management of the forest for the purpose of protecting wildlife habitat, sensitive plant communities and surface water.

Conclusion 1: The proposed forest management plan, while welcome, should be created prior to any development. This would better enable impacts from the proposed development to be minimized and mitigated.

Conclusion 2: Although the project will impact areas of high public value, the application and the conditions as noted below will result in the impacts being minimized and mitigated, so the project will not create an undue adverse impact.

Section 7.4—Compatibility with Agricultural Operations

9. The proposed development is not directly adjacent to an existing agricultural operation.

Conclusion 3: The application does not conflict with an agricultural operation.

Section 7.5—Facilities, Services & Utilities

10. The project proposes to create one lot to be developed with a single family dwelling.

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. Plans submitted with the application depict the proposed well for Lot 4B in a location where the well shield impacts the adjoining parcel to the north.
13. At the hearing on September 5th, the applicant submitted revised plans with the proposed well relocated to the southwesterly corner of Lot 4B. In this new location, the proposed well shield does not impact the adjoining parcel.
14. The Planning Commission notes that the new plans include a “stranded” label for the well shield in the previous location.
15. The Planning Commission notes an easement is not needed over Lot 4A as proposed in the draft Easement Deed submitted by the applicant.
16. The project will need a Wastewater System and Potable Water Supply Permit.

Conclusion 5: It appears likely that a water supply can be developed without adversely impacting existing water supplies in the vicinity.

Conclusion 6: The applicant should obtain a Wastewater System and Potable Water Supply Permit prior to the submission of the mylar of the plat.

Section 7.7—Sewage Disposal

17. The Town’s wastewater consultant has viewed the soils and wastewater disposal plans, and has indicated in a memo dated August 5, 2013 that there is sufficient capacity for the proposed project.
18. The project will need a Wastewater System and Potable Water Supply Permit.
19. A portion of the proposed wastewater disposal system serving Lot 4B is located on Lot 4A. The easement is depicted on the proposed plat, and the applicant submitted a draft Easement Deed that includes a wastewater disposal easement.

Conclusion 7: The parcel appears to have sufficient wastewater disposal capacity for the proposed lots.

Conclusion 8: The applicant should obtain a Wastewater System and Potable Water Supply Permit prior to the submission of the mylar of the plat.

Section 7.8—Stormwater Management & Erosion Control

20. The project will result in two single family dwellings and associated accessory structures, driveways and parking on 27.8 acres. This is a relatively low density development.
21. The project will not affect steep or very steep slopes.
22. The proposed driveway and building envelope are relatively close to Class II wetland, which could be impacted by runoff and erosion during construction.

Conclusion 9: The size and density of the project does not warrant permanent stormwater

or erosion control infrastructure.

Conclusion 10: Due to the proximity of the proposed driveway and building envelope to wetland, a stormwater and erosion control plan for the construction process should be submitted prior to the submission of the mylar of the plat.

Section 7.9—Landscaping and Screening

23. The proposed development site is in close proximity to a grove of specimen eastern hop hornbeam trees, and it is also in close proximity to Class II and Class III wetland.
24. The application includes proposed conditions for the subdivision permit designed to protect the eastern hop hornbeam trees and surface waters.
25. The adjoining property owner to the north, Robert Mesaros, expressed concern about the potential loss of privacy resulting from the proposed development, and proposed two options for a “no-cut” zone.
26. The applicant did not express concern at the hearing with regard to the conditions requested by the adjoining property owner.
27. The Planning Commission recognizes the concerns expressed by the adjoining property owner, due to the relative closeness of the proposed building envelope to northerly parcel boundary.

Conclusion 11: Protection of the eastern hop hornbeam trees and surface waters is important and should be implemented through appropriate measures throughout the construction process, and after construction through ongoing practices.

Conclusion 12: A no-cut zone along the northerly parcel border of Lot 4B is appropriate (with exemptions as noted by the adjoining property owner).

Section 7.10—Roads, Driveways & Pedestrian Access

28. 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.
29. As stated in Finding 5 above, access to Lot 4B will use a portion of the existing driveway serving the existing dwelling, and the new portion of the driveway to Lot 4B will be located in the vicinity of an existing path.
30. The driveway to Lot 4B will require an easement over Lot 4A—a 50 foot wide easement is depicted on the plat, and the applicant submitted a draft Easement Deed that includes access and utility easements.
31. The Planning Commission notes that the draft easement includes a reference to “Lot 2” in error.
32. As indicated on the Site and Grading Plan submitted with the application, the existing driveway, including the portion to be shared by Lot 4A and Lot 4B, is currently 12 feet wide, and the proposed driveway is also 12 feet wide.
33. The Recommended Standards for Developments and Homes adopted September, 1997 indicate that driveways to 1-5 house sites should be 14 feet wide.

Conclusion 13: The project is unlikely to create unreasonable traffic congestion or unsafe traffic conditions.

Conclusion 14: The proposed driveway will minimize site disturbance by using a portion of the existing driveway, and being sited in proximity to an existing trail.

Conclusion 15: The portion of the existing driveway that is to be shared and the new driveway should be widened to 14 feet to be in compliance with the adopted standards.

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

34. No common or public land or facility or designated open space is proposed.

Conclusion 16: Given the proposed number of lots and standard configuration, the designation of open space is not required by the Regulations.

Decision

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

1. The Overall Site Plan will be revised as follows:
 - A. The new driveway and the portion of the existing driveway to be shared with Lot 4B shall be depicted as 14 feet wide.
 - B. A note will be added describing a “no-cut” zone consisting of the area within the 50 foot setback along the northerly boundary of Lot 4B, north and west of the eastern hop hornbeams.
2. The Site and Grading plan will be revised as follows:
 - A. The new driveway and the portion of the existing driveway to be shared with Lot 4B shall be depicted as 14 feet wide.
 - B. The “stranded” label for the well shield shall be removed.
3. One paper copy (11” x 17”) and a digital copy (pdf) of the Overall Site Plan, Site and Grading Plan and Plat of Survey and a mylar (18” x 24”) of the Plat of Survey as amended by Conditions 1 and 2 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.
4. Prior to the submission of the mylar in accordance with Condition #3above, the applicant will complete the following steps:
 - A. Submit a letter from the surveyor indicating he has set the survey markers in the field as indicated on the plat
 - B. Obtain a Wastewater Disposal and Potable Water Supply Permit for the project with the well location as depicted in the revised plans.
5. Prior to the submission of a zoning permit for the first structure to be constructed on Lot 4B and prior to any cutting of trees, a Forest Management Plan will be submitted to the Planning Commission for administrative review and approval. The Forest Management Plan will have, as its primary objectives, the continuation of the forest for wildlife habitat with a mix of native tree and understory species of various ages, and protection of surface waters. Any tree cutting will maintain a minimum of 90% of the tree canopy with a mix of native species of various ages.
6. The zoning permit application for the first structure to be constructed on Lot 4B will

include a stormwater and erosion control plan prepared by a licensed professional for the proposed structure(s) and the driveway.

7. Prior to any construction being undertaken in the vicinity of the hop hornbeam stand, the property owner will install a silt fence or similar barrier outside the drip line of the trees, which shall remain in place until all construction in the vicinity of the trees is completed.
8. The application for a Certificate of Occupancy will include a letter from an appropriately licensed engineer certifying that the shared and new portions of the driveway are 14 feet wide.
9. A “no-cut” area will be maintained along the northerly boundary of Lot 4B as depicted on the Overall Site Plan (as revised by Condition 1.A. above) with the following exemptions:
 - A. Any routine maintenance required to maintain a 10 foot clearance around the existing septic mound within the area depicted on the Plat of Survey as “Existing Wastewater Easement for Lots 2 and 4A.”
 - B. If needed in the future by the owners of Lot 2 or Lot 4A for the development of a reserve wastewater disposal system.
10. 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.
11. All new utility lines will be underground.
12. 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 August 15, 2013: Jeff McDonald, Peter Joslin, Gerald Bouchard, Donna Stearns, Linda Radimer and Jim Donovan

Members Present at the Public Hearing on September 9, 2013: Jeff McDonald, Peter Joslin, Gerald Bouchard, Donna Stearns and Linda Radimer

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 letter dated July 16, 2013 To Whom It May Concern from James J. Hudziak, Trustee and Theresa D. Hudziak, Trustee regarding “Hudziak Subdivision Application” authorizing Liam L. Murphy Esq. to sign any applications in connection with the subdivision application.
- 1. A survey plat by Civil Engineering Associates, Inc. entitled “Plat of Survey, Minor Subdivision, Property of Theresa Dianne Hudziak Living Trust, James and Theresa Hudziak, Trustees, Charlotte, Vermont” date July 5, 2015, no revisions
- 2. A plan by Civil Engineering Associates, Inc. entitled “Theresa Dianne Hudziak Living Trust, Proposed Wastewater System, 4368 Lake Road, Charlotte, Vermont, Overall Site Plan” drawing number C1.0, dated July 15, 2013, no revisions
- 3. A plan by Civil Engineering Associates, Inc. entitled “Theresa Dianne Hudziak Living Trust, Proposed Wastewater System, 4368 Lake Road, Charlotte, Vermont, Site and Grading Plan” drawing number C1.1, dated July 15, 2013, no revisions
- 4. A sheet by Civil Engineering Associates, Inc. entitled “Theresa Dianne Hudziak Living Trust, Proposed Wastewater System, 4368 Lake Road, Charlotte, Vermont, Wastewater Details Plan” drawing number C2.1, dated July 15, 2013, no revisions
- 5. A sheet entitled “Proposed Conditions for the Hudziak Subdivision Application.”
- 6. A draft document entitled “Easement Deed.”