

# **CHARLOTTE PLANNING COMMISSION**

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

**Joseph and Martha Keenan  
631 North Pasture Lane**

**Remanded Final Plan Hearing  
For A  
Two-Lot Subdivision and  
Planned Residential Development  
Application # PC-09-20**

### **Background**

The Planning Commission reviewed an application for a sketch plan amendment (PC-08-23) on March 5, 2009 and conducted a site visit on April 2, 2009, after which the Planning Commission reclassified the project as a Minor Subdivision.

### **Application**

Materials submitted with the application are listed in Appendix A.

### **Public Hearing**

A public hearing for this application was held on September 3, 2009. Joseph Keenan, Martha Keenan and Kevin Brennan represented the applicant at the hearing. Steven Palmer, who owns an adjoining parcel, participated in the hearing. No other interested parties were present or made written submissions.

On its own motion approved on September 24, 2009, the Planning Commission re-warned and re-opened the hearing for this application on November 5, 2009 to reconsider access issues. Joseph Keenan and Martha Keenan were present. Materials submitted by the applicant at the hearing on November 5 are listed in Appendix B. Joseph Blanchette, Carol Clay and Ebeth Scatchard, all nearby residents and property owners, and Gary Pittman of the Conservation Commission participated in the hearing. Joseph Blanchette also submitted a written statement entitled "Neighborhood Testimony on the Keenan Variance Before the Charlotte Planning Commission, November 5, 2009" that was signed by sixteen residents and property owners on North Pasture Lane. The names and addresses of these parties are listed in Appendix C.

The Planning Commission issued a Findings of Fact and Decision for application PC-09-20 on December 5, 2009. This Decision was appealed to the Vermont Environmental Court (Docket No. 1-1-10 Vtec). In an Order dated March 9, 2010, the Court remanded the final plan application to the Planning Commission. The Planning Commission conducted a public hearing for the remanded final plan application on April 1, 2010. Joseph Keenan and Martha Keenan represented the applicant at the hearing. Joseph Blanchette submitted comments by an e-mail dated April 1, 2010, and also submitted a written statement entitled "Neighborhood Testimony on the Keenan Variance Before the Charlotte Planning Commission, Resubmitted to Planning

Commission April 1, 2010, First Submitted November 5, 2009” that was signed by sixteen residents and property owners on North Pasture Lane (listed in Appendix C) and submitted at the previous hearing on November 5, 2009.

### **Regulations in Effect**

Town Plan amended March, 2008

Land Use Regulations amended March, 2009.

Recommended Standards for Developments and Homes adopted September, 1997

### **Findings**

1. The applicant’s property is a 50.3 acre parcel located within the Rural District. It was Lot #14 of a subdivision by Claude and Jeanette Thibault which was approved by the Planning Commission on 9/23/80, and reaffirmed by the Planning Commission on 10/18/01.
2. A single family dwelling is currently located on the parcel. Lot 2 is proposed as a building lot which the applicants indicated they intend to retain.

#### Areas of High Public Value

3. The following areas of high public value (as listed in Table 7.1 of the Charlotte Land Use Regulation) are located on or in close proximity to the parcel:
  - A. Agricultural soils: Statewide agricultural soils are on much of the parcel (from NRCS data).
  - B. Agricultural use: Adjoining property to the southeast appears to be in agricultural use.
  - C. Steep slopes: It appears (from CCRPC slope data) there are steep slopes (15%-25%) located in the northeast portion of the parcel.
  - D. Surface water: Two streams run through the parcel (from State surface water data). The applicant has had wetland on the parcel delineated by a qualified consultant (Arrowwood Environmental) and this delineation (apparently as a Class 2 wetland) and the associated buffer is depicted on the plat. There is also a pond in the north-central portion of the parcel.
  - E. Wildlife habitat: There is a patch of forested wildlife habitat in the center-west portion of the parcel (from Map 6 in the Town Plan). Map 6 also indicates that the western portion of the parcel provides associated support habitat.
4. The Planning Commission notes that the resources (areas of high public value) on the parcel are extensive. In terms of coverage, the wetland is the dominant area of high public value on the parcel. The wetness of the parcel (as well as the parcel’s size and configuration) limits its suitability for agricultural use, but the wetland is co-located with and likely contributes to the associated support wildlife habitat.

#### Lot Layout and Impacts to Areas of High Public Value

5. The proposed layout was created under the provisions of Chapter VIII Planned Residential and Planned Unit Development, in the Charlotte Land Use Regulations. As such, Lot 1 is proposed to be two acres, and a three acre area on Lot 2 is indicated on the proposed plat as “set aside for non-development.” As such, Lot 2 will be 48.3 acres and

- have a density of 45.3 acres.
6. The proposed plat includes a building envelope on Lot 2. The building envelope is approximately 1.2 acres in size.
  7. The proposed building envelope on Lot 2 is not located near the agricultural use on the adjacent parcel (to the southeast).
  8. The proposed building envelope is located in the vicinity of the area with steep slopes. The proposed dwelling is not located on the steep slope, but it appears approximately 100 feet of the driveway will be on a 15% slope; other portions of the driveway will have a lesser slope, but approximately 300 feet will have a slope greater than 8%. This issue as it relates to access will be discussed in more detail below.
  9. The proposed building envelope does not include any wetland or wetland buffer, however, the proposed driveway crosses a small amount of wetland and wetland buffer.
  10. The applicant has obtained a Conditional Use Determination (#2008-471) from the Vermont Department of Environmental Conservation on May 22, 2009 for the impact of the proposed driveway on the wetland and wetland buffer.
  11. Considering the extensiveness of the areas of high public value, it would be impossible for a subdivision to avoid some impact to an area of high public value. The proposed layout has minimized the encroachments into these areas.

#### Access

12. The proposed subdivision is located at the north end of North Pasture Lane, which is a private road within a 60 foot wide right of way.
13. The deed to the applicant includes an unrestricted right of way, which allows the applicant to further convey rights to the use of this right of way.
14. The proposed deed for Lot 1 includes an easement and right of way for ingress and egress, although the deed does not specify that this right of way is to Carpenter Road, and it does not clearly indicate that the grantee will be responsible, with other users, for maintenance and snow plowing of the entire right of way.

#### Access for Emergency Services

15. The 1980 subdivision approved 10 lots accessed by a 14 foot wide road (now named North Pasture Lane).
16. In 1985, Lot 12 was subdivided into two lots, creating one additional building lot served by the subdivision access road.
17. On March 27, 2001, Gary and Mary Thibault granted a Grant of Development Rights, Conservation Restriction and Right of First Refusal (“conservation easement”) to the Vermont Land Trust as recorded in volume 115 pages 12-23 in the Charlotte Land Records. The conservation easement includes Lots 4 and 5 of the 1980 subdivision (in addition to other lands). As a result of this conservation easement, these lots cannot be developed.
18. The access road (North Pasture Lane) currently provides access to nine parcels that are developed with single family dwellings.
19. The proposed subdivision will create the tenth residential lot on the road, which is the number of that was approved for the 1980 subdivision.
20. Because the proposed subdivision will not increase the number of lots accessed by North Pasture Lane beyond what was approved in 1980, the previously approved 14 foot wide road specification for North Pasture Lane is acceptable; and the applicants will not be

required to use the specification for an access road serving six or more house sites as indicated in the Recommended Standards for Developments and Homes adopted by the Planning Commission on September 2, 1997.

21. The submitted plat (as revised on 10/29/2009) and plan (as revised on 10/26/2009) indicate the following improvements are to be made to North Pasture Lane:
  - A. The intersection of North Pasture Lane and Carpenter Road shall be improved so that it complies with the Town of Charlotte 1997 Fire Department Recommended Standards for Development, Access Road Section.
  - B. A new 12' x 35' pull-off is to be constructed on North Pasture Lane approximately 1,100 feet north of the intersection with Carpenter Road.
  - C. An existing pull-off approximately 2,100 feet north of the intersection with Carpenter Road is to be enlarged to 12' x 35'.
  - D. The intersection of the driveways serving Lot 1 and Lot 2 shall comply with the Town of Charlotte 1997 Fire Department Recommended Standards for Development, Access Road Section.
22. The Charlotte Volunteer Fire Department performed a site visit with a fire truck on April 2; the road was found to be passable.
23. Fire Chief Christopher S. Davis sent a letter to the applicant dated September 27, 2009. The letter provides comments and suggested requirements associated with the application.
24. Comment # 4 in the letter from Chief Davis states "the driveway surface grade to the new residence shall not exceed 13 percent at any point. The Department's vehicles have difficulty operating safely at grades in excess of 8%, and grades in excess of 10% are not likely to be navigated if snow or ice conditions are present."
25. The revised plans submitted on November 5 indicate that the driveway serving Lot 2 will have an approximately 350 foot section with a slope in excess of 10%. This 350 foot section is a straight run for the first 250 feet, and has a pull-off at the midpoint.
26. In order to meet a 10% grade, significant cut and fill would be required, which would also require the removal of many trees in the vicinity of the driveway.
27. The Planning Commission finds that, considering the section of the driveway in excess of 10% is relatively short and straight, and that a pull-off will be provided, and that meeting the 10% grade would require significant earth moving and tree-clearing, the revised driveway design is acceptable.

#### Wastewater Disposal

28. The Town's wastewater consultant reviewed test pits on June 15, 2009 and indicated in a memo that there is sufficient area to accommodate a system for one residence.
29. The applicant has provided a wastewater disposal design for Lot 2 with the application. The applicant will need a wastewater disposal permit for the project.
30. It is not clear that the existing wastewater disposal system serving the dwelling on proposed Lot 1 has been inspected to confirm the condition of the septic tank and leach field.

#### Stormwater Management and Erosion Control

31. The applicant applied for a Stormwater Construction General Permit as a "Low Risk project" in August, 2009 for erosion impacts from the construction of the driveway and house site.

Trails

32. The applicant indicated that they will provide an alternative route for the existing VAST Trail on their property.

**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 survey plat will be revised as follows:
  - A. The dimensional acreage of Lot 2 (48.3 acres) and the remaining density associated with Lot 2 (45.3 acres) will be indicated.
  - B. The dimensions of the building envelope on Lot 2 and distances from the building envelope to the northerly and easterly lot lines will be indicated
2. One paper copy (11"x 17") and one mylar (18" x 24") of the revised plat 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 will do the following:
  - A. Execute and record in the Charlotte land records a Roadway Agreement and Waiver. (The Town can provide a boilerplate).
  - B. Obtain a Wastewater Disposal and Potable Water Supply Permit for the proposed subdivision. The existing wastewater disposal system will also be inspected by a state licensed designer, and a letter will be submitted indicated that the system is functioning appropriately and that the infiltration area shows no indication of surfacing. Additionally, the septic tank will be pumped and inspected for adequate sizing and appropriate construction as required by Section 7.7(B)(3) of the Charlotte Land Use Regulations.
  - C. Obtain a Stormwater Construction General Permit for the proposed subdivision if one is required by the State.
  - D. Obtain an amendment to the Act 250 Permit if one is required by the State.
  - E. Submit a letter from the surveyor indicating he has set the survey markers in the field as indicated on the plat. If the survey 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 pins when the ground thaws and has been paid to do so.
4. The Planning Commission will not require open space to be designated at this time, however, any future subdivision of Lot 2 may require the designation of open space. The total current acreage (50.3 acres) will be considered when calculating the percentage of open space as provided for in the Charlotte Land Use Regulations in effect at that time.
5. The deed conveying Lot 1 will include easement language as submitted at the hearing on November 5.
6. No pole-mounted light fixture will be taller than 8' off the ground, and no 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.
7. All new utility lines will be underground.

- 8. All new driveway and roadway sections shall be surfaced with non-white crushed stone.
- 9. Prior to the submission of a Zoning Permit application for Lot 2, wooden stakes will be set at the corners of the building envelope on that lot.
- 10. The dwelling on Lot 2 will have a 13-D sprinkler system, a central station monitored fire alarm, smoke detectors and carbon monoxide detectors. Prior to the submission of a Zoning Permit for Lot 2, the applicant will submit a sprinkler system design to the Fire Department for review and approval; the design will be able to maintain an acceptable flow rate for residential fire loads for all occupied spaces, including the basement, for a minimum of 20 minutes.
- 11. Prior to the submission of a Certificate of Occupancy application for Lot 2, the following improvements will be made to North Pasture Lane and the applicant shall submit a letter from an appropriately licensed engineer certifying that the improvements have been constructed according to the submitted plans:
  - A. The proposed pull-offs on North Pasture Lane will be constructed as indicated on the revised plat and plan submitted on November 5, 2009.
  - B. Improvements described in numbered paragraphs 2, 3, and 5 in the letter from Chief Davis will be installed.
- 12. The suggested requirements described in numbered paragraphs 6—11 in the letter from Chief Davis shall be adhered to.
- 13. Any additional subdivision of lots served by North Pasture Lane may be required to widen North Pasture Lane to meet the Recommended Standards for Developments and Homes adopted on September 2, 1997, or any amendment thereof.

**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 April 1, 2010:** Jeff McDonald, Jim Donovan, Eleanor Russell, John Owen, Linda Radimer, Paul Landler

**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 with the application:

1. An application form and appropriate fee.
2. A memo dated July 21, 2009 from Kevin Brennan to Tom Mansfield regarding “Joe & Martha Keenan, North Pasture Lane, Sketch Plan Application”
3. A one page document entitled “Joseph A. Keenan & Martha Q. Keenan, North Pasture Lane, Statement of Compliance with Town Plan and Regulations”
4. A plan by LaRose Surveys, PC entitled “A plan showing a portion of North Pasture Lane for Joseph A. & Martha Q. Keenan, North Pasture Lane, Charlotte, Chittenden County, Vermont” dated January 5, 2009, revised 7/2/09.
5. A plan by Green Mountain Engineering entitled “Keenan Driveway Design, Revised Driveway Location” dated June, 2009, no revisions. The plan includes the slope of sections of the proposed driveway.
6. A survey by Ronald LaRose of LaRose Surveys, PC entitled “Plat showing a proposed subdivision of lands of Joseph A. & Martha Q. Keenan, North Pasture Lane, Charlotte, Chittenden County, Vermont” dated January 5, 2009, revised 7/2/09.
7. A wastewater plan by Kevin LaRose of LaRose Surveys, PC entitled “Plan showing a proposed subdivision of lands of Joseph A. & Martha Q. Keenan, North Pasture Lane, Charlotte, Chittenden County, Vermont” dated January 5, 2009, revised 7/13/09.
8. A cross section of the proposed driveway.
9. A copy of the Warranty Deed by which the applicants acquired the parcel, which is recorded in volume 41 page 490-491 of the Charlotte Land Records. The deed includes a non-exclusive, unrestricted right-of-way to use the private road known as North Pasture Lane.
10. Language for proposed easement and right of way for Lot 1 for access and a replacement septic area.
11. A copy of an application for a Notice of Intent for Stormwater Discharges Associated with Construction Activity on Low Risk Sites.
12. A letter dated September 27, 2009 to Joseph A. and Martha Q. Keenan from Christopher W. Davis, Chief, Charlotte Volunteer Fire Department regarding “Subdivision and new driveway design review.”

**APPENDIX B**

1. A survey by Ronald LaRose of LaRose Surveys, PC entitled “Plat showing a proposed subdivision of lands of Joseph A. & Martha Q. Keenan, North Pasture Lane, Charlotte, Chittenden County, Vermont” dated January 5, 2009, revised 10/29/09.
2. A plan by LaRose Surveys, PC entitled “A plan showing a portion of North Pasture Lane for Joseph A. & Martha Q. Keenan, North Pasture Lane, Charlotte, Chittenden County,

Vermont” dated January 5, 2009, revised 10/26/09.

3. A plan by Green Mountain Engineering entitled “Keenan Driveway Design, Revised Driveway Location” dated October, 2009, no revisions. The plan includes the slope of sections of the proposed driveway.

**APPENDIX C**

1. Mariam Blanchard	138 North Pasture Lane
2. Ronan Belisle	138 North Pasture Lane
3. Carol Lowe-Clay	433 North Pasture Lane
4. Terri Thibault	192 North Pasture Lane
5. Dave Clay	433 North Pasture Lane
6. Kenneth Deforge	470 North Pasture Lane
7. Claudette Deforge	470 North Pasture Lane
8. William Pence	542 North Pasture Lane
9. Cindy Hayman	542 North Pasture Lane
10. Krista Hong	341 North Pasture Lane
11. Michael Hong	341 North Pasture Lane
12. J. Hayrock	310 North Pasture Lane
13. Ben Hayrock	310 North Pasture Lane
14. Joseph Blanchette	350 North Pasture Lane
15. Peggy Blanchette	350 North Pasture Lane
16. Paulette Thibault	498 North Pasture Lane