

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**Kiley Family East Farm Partnership
250 Garen Road**

**Final Plan Application
For A
Minor Subdivision and Planned Residential Development
Application # PC-12-28**

Background

The Planning Commission held Sketch Plan Review for the proposed subdivision on July 19 and August 16, 2012, conducted a site visit on August 16 prior to the meeting, and at the conclusion of the Sketch Plan Review 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 December 6, 2012. At the hearing the applicant was represented by Caleb Kiley, Chris Kiley, Gus Kiley and Jeffrey Olesky. No other parties were present or submitted written comments with regard to the application.

Regulations in Effect

Town Plan amended March, 2008

Land Use Regulations amended March, 2010.

Recommended Standards for Developments and Homes adopted September, 1997

Findings

Background

1. The applicant owns a 191.9 acres parcel of which 117.7 acres is in Charlotte and 74.2 acres is in Hinesburg. The parcel has frontage on both Garen Road and on Prindle Road.
2. There are several existing structures on the parcel, including an existing six-bedroom farmhouse, a nearby barn (both located on proposed Lot 1), a one-bedroom dwelling, a studio, and three sheds (all located on proposed Lot 2).
3. The application proposes to create three lots using the planned residential development provisions of Chapter VIII in the Charlotte Land Use Regulations (“Regulations”). As stated above, Lots 1 and 2 are proposed with the existing buildings; and Lot 3 is proposed as a “building lot.”

Applicable standards in Chapter VII of the Charlotte Land Use Regulations (“Regulations”)

are reviewed below in Findings 4-37.

Sections 7.2 and 7.3—Areas of High Public Value

4. The parcel includes or is adjacent to the following areas of high public value:
 - A. Primary agricultural soils: there are pockets of prime and statewide agricultural soils throughout the parcel (from NRCS data)
 - B. Steep slopes: there appear to be areas with slopes of 15% or greater on the easterly and southerly portions of the parcel, and an area with slopes of 25% or greater in the southern portion of the parcel (from CCRPC data).
 - C. Surface waters: Town Plan map 7 depicts small pockets of wetland in the north/central portion of the parcel and “fingers” of wetland near the easterly boundary just north of the Baldwin parcel.
 - D. Wildlife habitat: Town Plan map 6 depicts forested wildlife habitat on the southerly and easterly portions of the parcel and part of the northerly portion. Map 13 also depicts wildlife value areas adjacent to Garen Road near the easterly end of the road.
 - E. Town Plan Map 13 depicts Garen Road and Prindle Road as “most scenic roads”.
5. Considering the resources on and adjacent to the parcel, the Planning Commission finds that the wildlife habitat is the most important area of high public value associated with the parcel. This is the resource that most strongly characterizes the property, and which the Planning Commission feels is the most important to protect during the subdivision process. The Planning Commission also notes that the areas that appear to have steep slopes coincide with the wildlife habitat.
6. Proposed Lot 3 has less than 300 feet of road frontage (on Prindle Road). The project has therefore been proposed by the applicant as a planned residential development under the provisions of Chapter VIII of the Regulations, which allows the frontage requirements of Chapter II to be waived.
7. The Planning Commission finds that, in consideration of the planned residential development standards (discussed below), the frontage requirement for Lot 3 is appropriate for waiving.
8. Section 7.3 (D)(1), (2) and (3) of the Regulations indicate that building envelopes, lot lines, infrastructure, roads, driveways and utility corridors should not create any undue adverse impacts on areas of high public value, and that building envelopes shall be designed to minimize undue adverse impacts.
9. The proposed lot lines reflect in part the existing structures on the parcel (which are located on Lots 1 and 2) and allow for the creation of a building lot (Lot 3) that is generally consistent with the development pattern in the area.
10. The application proposes a one-acre building envelope on Lot 3 which is partially in the field and partially in the woods. The building envelope is generally near Prindle Road.
11. The most sensitive and remote areas on the parcel (i.e. those areas most suitable for wildlife habitat and those areas with steep slopes) are to be included in a proposed Open Space Area.
12. The Planning Commission finds that the proposed lot lines do not create any undue adverse impacts, and the building envelope for Lot 3 has minimized undue adverse impacts.

Conclusion 1: The design has sufficiently minimized the project’s impacts on the prioritized areas of high public value (wildlife habitat and steep slopes), and mitigated

adverse impacts with a proposed Open Space Area. Therefore, the project will not have an undue adverse impact on those prioritized areas of high public value.

Section 7.4—Compatibility with Agricultural Operations

13. There are no agricultural operations in the vicinity of Lot 3, the proposed building lot.

Conclusion 2: The project will not have an impact on any agricultural operations.

Section 7.5—Facilities, Services & Utilities

14. The project proposes to create three lots from the 117.7 acre parcel. Two of the lots are already developed with dwellings and associated structures.

Conclusion 3: 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

15. There are two existing drilled wells, one on Lot 1 and one on Lot 2. A third well will be needed on Lot 3, but was not designed as part of this project

16. The applicant obtained a Wastewater System and Potable Water Supply Permit (WW-138-1122-1) for the project, however, this permit does not include a planned water supply for Lot 3.

17. There is no known shortage of suitable groundwater in the vicinity of Lot 3.

Conclusion 4: It is likely that a water supply could be developed to serve Lot 3 without adversely impacting existing water supplies in the vicinity.

Section 7.7—Sewage Disposal

18. There are two existing wastewater systems, one on Lot 1 and one on Lot 2. A third system will be needed for Lot 3, but it was not designed as part of this project.

19. The Town's wastewater consultant has viewed the soils on proposed Lot 3, and indicated in a memo dated 6/25/12 that there are soils that are suitable for wastewater disposal.

20. The applicant obtained a Wastewater System and Potable Water Supply Permit (WW-138-1122-1) for the project, which approves the wastewater disposal system designs for Lots 1 and 2. However, this permit does not include a designed wastewater disposal system for Lot 3.

21. Section 7.7(C)(2) of the Regulations states that in order for the Planning Commission to waive the required submission of a wastewater disposal system design during the subdivision process, the proposed lot must be at least 25 acres.

22. As proposed in the application, Lot 3 is 23.3 acres.

23. It is clear from the designation of a building envelope that Lot 3 is proposed as a building lot.

Conclusion 5: The parcel appears to have sufficient wastewater disposal capacity for the proposed lots.

Conclusion 6: The Planning Commission cannot waive the required submission of a wastewater disposal system design for Lot 3.

Section 7.8—Stormwater Management & Erosion Control

24. The project involves the creation of one additional building lot resulting in three dwellings and five outbuildings on 117.7 acres. This is a low density development.
25. The project will not affect steep or very steep slopes.
26. Development is not proposed near surface water or other sensitive areas.

Conclusion 7: Considering the above findings, erosion and stormwater run-off are not likely to create impacts beyond the immediate development site.

Section 7.9—Landscaping and Screening

27. The application does not propose extensive removal of existing vegetation.
28. The development site is not adjacent to surface waters.

Conclusion 8: The project will not have a significant impact on existing vegetation, and will not have impacts that necessitate vegetative screening.

Section 7.10—Roads, Driveways & Pedestrian Access

29. 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.
30. No new accesses are proposed. The three proposed lots will be served by three existing accesses. The access for Lot 3 currently exists and serves an adjacent parcel via an easement.

Conclusion 9: The project is unlikely to create unreasonable traffic congestion or unsafe traffic conditions.

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

31. No common land is proposed.
32. The application proposes that 58.85 acres are to be put under an Open Space Agreement with the Town.
33. The proposed Open Space Area covers the areas on the parcel that are the prioritized areas of high public value—i.e. wildlife habitat and steep slopes.
34. Section 7.11(C) of the Regulations states that “the land to be dedicated to the preservation and maintenance of Areas with High Public Value may be...located on one or more lots, although isolating such resources on a single lot is preferred by the Town.”
35. The Planning Commission notes that, whereas the proposed Open Space is divided among the three proposed lots, it is primarily on Lots 2 and 3 (which are relatively large lots of 79.4 acres and 23.3 acres, respectively) and it covers contiguous areas on the three lots. The Planning Commission also notes that wildlife habitat generally requires less active management than other “open space uses” such as agriculture, so dividing the Open Space Area between the three lots will not significantly detract from the land’s productivity as wildlife habitat.
36. The application includes a draft Open Space Agreement. The draft includes a provision that Lot 2 may be further subdivided (only once) into two lots subject to regulations then in effect and to the Planning Commission’s future approval. The draft indicates the

currently proposed Open Space Agreement would still be in effect, with the provision that a tent platform and tree house would be allowed on each of the two new lots.

37. The Planning Commission notes that land under the jurisdiction of an Open Space Agreement cannot usually be further subdivided. However, the Planning Commission also notes that this project is proposed at a very low density, and that even with one future subdivision of Lot 2, it will still have a very low density. Furthermore, if a subdivision is proposed in the future, the currently proposed Open Space Agreement would still be in effect, and the future subdivision application will be reviewed by the Planning Commission in accordance with the Regulations that are in effect at that time.

Conclusion 10: The proposed division of the Open Space Area between the three lots is an acceptable design.

Conclusion 11: The application has provided an appropriate document for the proposed open space, subject to the review and approval of the Selectboard and Town Attorney. The potential future subdivision described in the draft document is potentially acceptable, given the low overall density of the project, with the understanding that it will be reviewed in accordance with the Regulations in effect when or if it is submitted.

The applicable standards in Chapter VIII are reviewed below in Findings 38-40.

General Standards and Rural District Standards

38. The proposed layout is appropriate considering the siting of the existing dwellings on two of the three lots, and considering the very low overall density of the project.
39. Fifty percent of the parcel is proposed to be under the jurisdiction of an Open Space Agreement with the Town, which complies with Section 8.4(C)(1).
40. Findings 33-37 are also relevant for consideration of the PRD standards in Chapter VIII of the Regulations.

Conclusion 12: The application has sufficiently minimized impacts to areas of high public value through the careful siting of the propose lots and Open Space Area.

Decision

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

1. The survey plat by Civil Engineering Associates, Inc. will be revised with a note added to Lot 3 stating the approved building envelope is depicted on the Overall Site Plan, Drawing No. C1.1
2. The site plan by Civil Engineering Associates, Inc. will be revised to include the dimensions of the building envelope for Lot 3.
3. One digital copy (pdf), two paper copies (one 11" x 17" and one full size) and a mylar (18" x 24") of the survey plat and the Overall Site Plan as amended by Conditions #1 and #2, respectively, will be submitted to the Planning Commission for review and signature (of the mylars) 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 complete the following steps:

- A. Provide a wastewater disposal system design for Lot 3 that complies with the Vermont Environmental Protection Rules.
 - B. 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.
 - C. Execute and record (with the mylars) the Open Space Agreement after review and approval by the Selectboard and Town Attorney:
5. 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.
 6. All new utility lines will be underground.
 7. All new driveways will be surfaced with non-white crushed stone, and existing driveways will not be re-surfaced with white crushed stone.
 8. All structures located on Lot 3, including those exempt from zoning permits under Section 9.2 of the Charlotte Land Use Regulations, will be located within the approved building envelope.
 9. Prior to submitting a Zoning Permit application for a structure on Lot 3, the owner of Lot 3 will set wooden stakes at the corners of the building envelope on that lot and maintain them until a Certificate of Occupancy has been issued.

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 December 6, 2012: Jeff McDonald, Jim Donovan, Linda Radimer, Ellie Russell, Gerald Bouchard and 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 in association with the application:

- 1. A Final Plan application form and appropriate fee (the fee was submitted with the Sketch Plan Review Application).
- 2. A survey plat by Timothy R. Cowan of Civil Engineering Associates, Inc. entitled “Plat of Subdivision, Kiley Family East Farm Partnership, Garen Road & Prindle Road, Charlotte & Hinesburg Vermont, Drawing Number PL-1” dated September 1, 2011, last revised September 26, 2012.
- 3. A plan by Civil Engineering Associates, Inc. entitled “Kiley Family East Partnership, 2033 Dorset Street, Charlotte, VT 05445, Proposed Minor Subdivision, Prindle & Garen RD., Charlotte, Vermont 05445, Overall Proposed Site Plan, Drawing Number C1.1” dated September 1, 2011, last revised September 26, 2012
- 4. A letter from Jeffrey Olesky of Civil Engineering Associates, Inc. to Tom Mansfield dated October 31, 2012 regarding “Supplemental Material, Application for Subdivision, Minor (3 Lot) Subdivision, Kiley Family East Farm Partnership, c/o Caleb “Deedle” Kiley, 250 Garen Road, Charlotte, VT 05445
- 5. A draft document entitled “Open Space Agreement.”