

# CHARLOTTE PLANNING COMMISSION

## FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**Upper Old Town Trail Associates, LLC  
214 Upper Old Town Trail**

**Final Plan Hearing  
For A  
Two-Lot Subdivision  
Application # PC-10-42**

### **Background**

(Note: the subdivision application form indicates the applicant is Upper Old Town Trail Associates, LLC, however, the Town of Charlotte Land Records indicate the owner is Old Town Trail Associates, LLC, which is also the name of the LLC registered with the Vermont Secretary of State). The current configuration of the parcel was created in 1978 by a conveyance recorded in volume 35 page 76 of the Charlotte Land Records. The Planning Commission conducted Sketch Plan Review for the current proposed subdivision on April 15, 2010 (PC-10-10) and classified 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 opened on January 6, 2011 and continued on January 20, February 17, March 3 and April 7. No testimony was taken on January 6, February 17 or March 3. The applicant was represented on January 20 by David Marshall and Thomas Carlson, and on April 7 by David Marshall, Thomas Carlson and Steven LaRosa. The following adjoining and nearby property owners participated in the hearing via oral and/or written questions and testimony: James Keyes, Kim Keyes, Josie Leavitt, Elizabeth Bluemle, Howard Verman, Katherine Verman, Catherine Ferree, Connie Morrill, David Raymond, James Greenway and Sheila Greenway. Gary Pittman, representing the Conservation Commission, also participated in the hearing.

### **Regulations in Effect**

Town Plan amended March, 2008

Land Use Regulations amended November, 2010.

Recommended Standards for Developments and Homes adopted September, 1997

### **Findings**

1. The applicant's property is an approximately 10.32 acre parcel located on the north side of Upper Old Town Trail, a private road, within the Rural zoning district. The parcel

currently hosts a single family dwelling.

2. The application proposes a two-lot subdivision: Lot 1 is proposed to be 5.2 acres with the existing dwelling, and Lot 2 is proposed to be a building lot of 5.0 acres.

*Applicable standards in Chapter VII of the Charlotte Land Use Regulations are reviewed below in Findings 3-44.*

**General Standards & District Standards—Sections 7.2 and 7.3**

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: The eastern 2/3 of the parcel has statewide agricultural soils. (From NRCS data)
  - B. Surface waters, wetlands and associated setback and buffer areas: a small wetland is located adjacent to the eastern property boundary. (From Jeffrey Severson letter included in the application)
  - C. Wildlife habitat: Town Plan map 6 indicates that the northwestern spike-shaped portion of the parcel has forested wildlife habitat (from Town Plan); additionally, with a previous application the applicant submitted a memo from Susan C. Morse dated February 6, 2008 with indicates a “young forest in transition” on the eastern portion of the parcel, which is the interior of proposed Lot 2. (From Town Plan and memo from Susan Morse).
4. Considering the resources on the parcel, the Planning Commission finds that the most important area of high public value associated with the parcel is the forested wildlife habitat on the northwestern and eastern portions of the parcel. This is the resource that most strongly characterizes the property and its vicinity, and is the feature that the Planning Commission feels is most important to protect as it considers the proposed subdivision.
5. The proposed layout, as indicated on the survey and overall site plan, includes a building envelope and tree clearing limit located in the southwest corner of Lot 2. This matches the location suggested by Susan Morse, and will minimize prospective impact from the project on wildlife habitat on and in the vicinity of the parcel. Additionally, no development is proposed in the northwestern portion of the parcel.
6. The memo from Susan Morse recommended certain silvicultural practices to maintain and improve wildlife habitat on Lot 2.

**Compatibility with Agricultural Operations—Section 7.4**

7. There are no agricultural operations on or in close proximity to the subject parcel.

**Facilities, Services & Utilities—Section 7.5**

8. In a letter dated March 16, 2010, the Chief of the Charlotte Volunteer Fire Department commented on access and water distribution for fire protection.
9. With regard to access, the letter indicates the proposed widening, pull-offs and turnaround will be an improvement. The Planning Commission notes, however, that the proposed widening does not match the Recommended Standards for Developments and Homes. Additional findings regarding the proposed road improvements are included below.
10. The letter from the Fire Chief recommended that the new dwelling have a minimum of a 13-D residential sprinkler system, and a central station monitored fire alarm system, due to the sub-standard road width. The Planning Commission notes that if the road were to

be widened to match the Recommended Standards for Developments and Homes, the sprinkler and alarm systems would not be necessary.

11. Due to its small size, the project does not trigger a requirement for a fire pond and dry hydrant or designation of a park, playground, trail or recreation area.
12. Staff of Green Mountain Power Corp. has reviewed the road widening plan as it affects existing utility poles, and recommended one bollard adjacent to each utility pole located at the intersection with Mount Philo Road and to the west of the Morrill driveway.

#### **Water Supply—Section 7.6**

13. The application proposes that an existing community well will serve Lot 1 and a new individual well will serve Lot 2.
14. The existing community well proposed to serve lot 1 currently serves the dwelling on the subject parcel (as provided in the Shared Well Agreement recorded at volume 168 page 437 of the Charlotte Land Records). It is located on the adjoining parcel to the west (n/f Ferree), and, in addition to serving the subject parcel, it also serves the n/f Ferree parcel and the n/f Leavitt parcel (as provided in the Warranty Deed recorded at volume 89 page 455 of the Charlotte Land Records).
15. The well proposed to serve Lot 2 will be located on Lot 2 and the required isolation distance is located entirely on the subject parcel.
16. The attachments to the memo/report dated March 3, 2011 from Craig Heindel, CPG of Heindel & Noyes include information regarding wells in the vicinity of the subject property. Of the 14 wells included in the report, two have yields (estimated by the driller) of less than one gallon per minutes, and 11 have yields (estimated by the driller) of one gallon per minute or over. Of these 11, four wells needed to be either replaced, hydraulically fractured or deepened, two other wells are not used, and one well is used by three lots, including the applicant's.
17. This information raises some concern that there will be sufficient water to serve the proposed dwelling, although clearly some wells in the vicinity are very productive.

#### **Sewage Disposal—Section 7.7**

18. The application proposes that the wastewater disposal system serving the existing dwelling be abandoned, and that a new system, to be located on Lot 1, will serve both Lot 1 (two bedrooms) and Lot 2 (three bedrooms).
19. The proposed wastewater disposal area does not meet the standard 100 foot (upslope) and 200 foot (downslope) isolation distance from the shared well located on the n/f Ferree parcel.
20. The applicant submitted a memo/report with attachments from Craig Heindel of Heindel & Noyes, Inc., dated March 3, 2011, which evaluates the separation distance of the proposed wastewater disposal area from the shared well located on the n/f Ferree parcel. The memo concludes "that it is appropriate to reduce the separation zone from the well at 274 Upper Old Town Trail (i.e. the shared well), and that the proposed wastewater disposal system on Lot 1 at 214 Upper Old Town Trail (the subject parcel) is in compliance with Section 11.4.2.0.2(e) of the Vermont Water Supply Rules."
21. The Town's wastewater consultant, Vermont Contours, Inc., has reviewed the memo from Heindel & Noyes and indicated in a memo dated 4/11/11 that the reduced isolation distance is acceptable. The memo from Vermont Contours, Inc. also recommends that a schedule for pumping and inspecting the septic tanks and pump station should be incorporated into a maintenance agreement for the disposal system, and that appropriate easements should also be addressed.

22. The applicant has submitted a draft document entitled “Declaration of Easements and Covenants” which includes easements and assignments of responsibilities associated with the shared wastewater disposal system, though it does not include a schedule for pumping and inspection of the tanks and pump station.
23. The memo from Vermont Contours, Inc. also recommends, though it indicates this is not a requirement, that existing drilled wells currently not in use on the parcel be properly abandoned to prevent future potential contamination issues.
24. The applicant has submitted an application for a Wastewater Disposal and Potable Water Supply Permit; the Town’s consultant has indicated that the application is approvable.

**Stormwater Management & Erosion Control—Section 7.8**

25. Due to the limited nature of the development on the parcel, and the relatively flat topography, a stormwater management plan and system for the subject parcel are not necessary.
26. The application includes an erosion control plan (Civil Engineering Associates sheets C8 and C9).
27. The application proposes changes to the drainage system on the east end of Upper Old Town Trail and at the intersection with Mount Philo Road.
28. The proposed changes include the installation of a storm drain pipe, the creation of a stone-lined ditch, the installation of a yard drain, and the installation a new culvert at the intersection with Mount Philo Road.
29. The applicant has submitted a draft document entitled “Declaration of Easements and Covenants” which includes a paragraph that assigns cost and responsibility for maintenance, repair, and replacement of the drainage system to the owners of Lot 1 and Lot 2. It is noted that the document does not address the proposed yard drain.

**Landscaping & Screening—Section 7.9**

30. Due to the limited nature and proposed layout of this project, landscaping and screening are not necessary.

**Roads, Driveways & Pedestrian Access—Section 7.10**

31. Upper Old Town Trail is a private gravel road approximately 12 feet wide from Mount Philo Road to the subject parcel. To the west of the subject parcel, the road widens to approximately 15 feet.
32. The property owners currently share the costs of maintaining Upper Old Town Trail without a formal agreement or association.
33. With the proposed subdivision, Upper Old Town Trail will serve 10 parcels, all developed with single family dwellings.
34. The application proposes the following changes to the road:
  - A. Flaring the end of the road at the intersection with Mount Philo Road
  - B. Widen the road to 18 feet for approximately 25 feet west of the flared end (or 40 feet from the travel surface of Mount Philo Road).
  - C. Taper the width to 14 feet over a 30 foot distance.
  - D. Widen the road to 14 feet to the driveways serving Lots 1 and 2.
  - E. Add a passenger vehicle pull-off on the north side of the road across from the driveway serving the n/f Verman parcel.
  - F. Add a fire truck pull-off on the north side of the road near the southeast corner of Lot 2.
  - G. Create a fire truck turn-around in conjunction with the beginning of the driveways to Lots 1 and 2.

- H. Add a fire truck turn-around on the north side of the road just before the driveway to n/f Leavitt.
  - I. Add drainage features on the north side of the road from the Morrill driveway to Mount Philo Road.
35. It is noted that the road will not comply with the Recommended Standards for Developments and Homes, which indicates that roads that serve six or more dwellings should be 18 feet wide with two foot shoulders.
  36. The applicant has obtained a Highway Access Permit (HAP-10-10) from the Selectboard for the work within the Mount Philo Road right-of-way, including widening and the installation of drainage infrastructure.
  37. The adjoining property owners have raised concerns about the prospective impacts of widening of the road on the property of Constance Morrill, including impacts to the septic system, the 16” maple, and the garden along the south side of the property.
  38. Regarding the septic system, the adjoining property owners did not provide sufficient evidence to prove the septic system will be affected, and they also did not provide the applicant an opportunity to investigate the location of the system. Nevertheless, due to the lack of complete certainty regarding the location of the system, there is a possibility that the road widening could impact the system; and the applicant will be responsible for this, as noted in conditions below.
  39. The applicant will also be responsible for damage to the 16” maple, as noted in conditions below.
  40. The Planning Commission notes that the garden is within the road right-of-way, and although the impacts are unfortunate, it is within the applicant’s right to use the area to improve the road.

**Common Facilities, Common Land, & Land to be Conserved—Section 7.11**

41. The project proposes a wastewater system to be shared by Lots 1 and 2, and use of the existing shared well between Lot 1, n/f Ferree and n/f Leavitt.
42. Appropriate easements are either in place or are included in the submitted Declaration of Easements and Covenants.
43. A Sewage Service Agreement, Waiver and Easement was not submitted.
44. No common land or conserved land is proposed or required.

**Decision**

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

1. All site plans will be revised to depict Upper Old Town Trail to have an 18 foot wide travel portion plus two-foot wide shoulders from the intersection of Mount Philo Road to the point where the road serves less than six dwellings; from that point to the westerly end it shall be at least 14 feet wide. Fire truck pull-offs shall be included to the extent they match the Recommended Standards for Developments and Homes. The fire-truck turnaround at the westerly end shall be retained.
2. The Declaration of Easements and Covenants shall be revised as follows:
  - A. Paragraphs will be renumbered to account for no Section 6 and two subsections 5(c) in the submitted document.
  - B. The referenced sheet by Civil Engineering Associate will be changed to Drawing

- C2 instead of Drawing C5, and a last revision date of 1/13/11 will be added.
- C. "Yard drain" will be added after "stone trench" in Section 5(c) (the first paragraph so labeled).
  - D. A section will be added indicating that the owners of Lot 1 and Lot 2 will be responsible for a pro-rated portion of the cost of maintaining Upper Old Town Trail, as is the current practice of property owners that use the road for access.
  - E. Section 8 (as submitted) will be revised to state that paragraph 5.(c) which requires the lot owners to share equally the cost and responsibility for maintenance, repair and replacement of the drainage system, cannot be amended without approval of the Planning Commission.
  - F. Any edits required by the Town Attorney will be incorporated.
3. A mylar (18" x 24") of the Final Plat and the Overall Site Plan (Drawing C1, as revised by Condition #1 above) will be submitted to the Planning Commission for review and signature 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 shall:
    - A. Submit two paper copies of the revised site plans as required in Condition #1 above (one full size and one 11" x 17").
    - 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. Obtain a Wastewater Disposal and Potable Water Supply Permit.
    - D. Provide a \$100,000 bond or letter of credit with a term of three years which may be extended for an additional three years, in a form to be approved by the Town attorney and the Selectboard, to cover the costs of completion and repair (if needed) of the road widening, installation and repair (if needed) of the drainage infrastructure, replacement of the septic system on the n/f Morrill parcel should it be damaged or impaired by the road widening, removal of the 16" maple tree on the n/f Morrill parcel should this be required as a result of the road widening, and the planting of a new tree on the n/f Morrill parcel of a species and size to be approved by that landowner should the 16" maple tree need to be removed.
    - E. Execute and record (with the mylars) the following documents:
      - A. Declaration of Easements and Covenants as revised by Condition #1 above and approved by the Town Attorney.
      - B. Roadway Agreement and Waiver
      - C. Sewage Service Agreement, Easement and Waiver
      - D. Any notice required for the bond or letter of credit, to be approved by the Town Attorney
  5. Prior to the submission of an application for a zoning permit for a dwelling on Lot 2, the applicant shall:
    - A. Complete all improvements to Upper Old Town Trail, including road widening, installation of drainage, installation of the retaining wall planting bed and new tree well on the Morrill property, and installation of two bollards, all as proposed in the application.
    - B. Obtain a Certificate of Compliance as provided in Section 9.5 (B) of the Charlotte

Land Use Regulations, the application of which will include a letter to the Planning and Zoning Office from an appropriately licensed engineer certifying that the improvements meet the approved design.

C. Install a well on Lot 2 that is sufficient for a single family dwelling.

- 6. A 13-D residential sprinkler system and a central station monitored fire alarm are not required.
- 7. No new pole-mounted light fixture will be taller than 8’ off the ground, and no new 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.
- 8. All new utility lines will be underground.
- 9. The new roads and 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 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 January 20, 2011:** Jeff McDonald, Jim Donovan, Linda Radimer, Peter Joslin, Eleanor Russell, Paul Landler and Gerald Bouchard

**Members Present at the Public Hearing on April 7, 2011:** Jeff McDonald, Jim Donovan, Linda Radimer, Peter Joslin, Eleanor Russell, Paul Landler 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 application and additional submissions included the following items:

1. An application form and fee.
2. A survey by Stuart J. Morrow entitled “Final Plat, Minor Subdivision, Property of Old Town Trail (sic) Associates, LLC, Charlotte, Vermont” dated July 2007, revised 3/26/09.
3. A packet of plans and detail sheets by Civil Engineering Associates, Inc. for Owner: Old Town Trail Associates, LLC, 86 Lake Street, Burlington, Vermont, Project: Old Town Trail Associates, LLC, 2 Lot Subdivision, Old Town Trail, Charlotte, Vermont with the following sheets:
  - A. Sheet C1 entitled “Overall Site Plan” dated April, 2009, last revised 11/16/10
  - B. Sheet C2 entitled “Road Widening Plan & Details” dated April, 2009, revised 2/11/11
  - C. Sheet C2.1 entitled “Morrill Wastewater Disposal System” dated March, 2010, no revisions
  - D. Sheet C3 entitled “Road Widening Plan” dated January, 2010, no revision
  - E. Sheet C4 entitled “Road Widening & Fire Truck Turn-Around Plan” dated April 2009, last revised 11/13/11
  - F. Sheet C5 entitled “Wastewater System Site Plan” dated April, 2009, revised 11/16/10
  - G. Sheet C6 entitled “Wastewater System Details” dated April, 2009, revised 11/16/10
  - H. Sheet C7 entitled “Wastewater System Details” dated April, 2009, revised 11/16/10
  - I. Sheet C8 entitled “Erosion Control Plan” dated January, 2011, no revision
  - J. Sheet C9 entitled “Erosion Control Details” dated January, 2011, no revision
4. A letter dated March 16, 2010 from Christopher W. Davis, Chief of Charlotte Volunteer Fire Department to Dave Marshall regarding “Letter of 1-18-10 and Overall Site Plan C1, C5, C6, C7 dated April ‘09”
5. A document entitled “Old Town Trail Associates, LLC Final Plan Application for 2-Lot Subdivision, Statement of Compliance with Town Plan and Applicable Local Regulations” dated November 16, 2010
6. A letter dated November 16, 2010 from David S. Marshall, P.E. of Civil Engineering Associates, Inc. to Tom Mansfield regarding “Old Town Trail Associates, LLC Proposed Two Lot Subdivision, 214 Upper Old Town Trail, Charlotte, Final Plan Application”
7. An e-mail dated December 23, 2010 from David S. Marshall to Dean Bloch regarding “Upper Old Town Trail”
8. A letter dated January 13, 2011 from David S. Marshall, P.E. of Civil Engineering Associates, Inc. to Tom Mansfield regarding “Old Town Trail Associates, LLC Proposed Two Lot Subdivision, 214 Upper Old Town Trail, Charlotte, Final Plan Application – Supplemental Information”
9. An e-mail dated January 19, 2011 from David S. Marshall forwarding an e-mail from Bruce Bushey of Green Mountain Power Corp. dated January 19, 2011 to David Marshall regarding “Upper Old Town Trail Road Widening”
10. A letter dated January 20, 2011 from Jeffrey Severson, Principal Ecologist of Oakledge Environmental Services, Inc. to David Marshall regarding “Wetland evaluation of Old

Town Trail Associates, LLC property”

11. A memo/report, with attachments, dated March 3, 2011 from Craig Heindel, CPG of Heindel & Noyes, Inc. to David Marshall regarding “Evaluation of Separation Distance from Proposed Wastewater Disposal Area on Lot 1 (214 Upper Old Town Trail) to Shared Well at 274 Upper Old Town Trail, Charlotte, VT.” This letter and attachments is the “time of travel study.”
12. A letter dated March 17, 2011 from David S. Marshall, P.E. of Civil Engineering Associates, Inc. to Tom Mansfield regarding “Old Town Trail Associates Community Wastewater System, 214 Upper Old Town Trail, Charlotte, State Wastewater & Potable Water Supply Permit Application”
13. A draft document entitled “Declaration of Easements and Covenants”
14. A draft document entitled “Roadway Agreement and Waiver”
15. A document entitled “Shared Well Agreement” that was executed by Catherine H. Ferree, Licensor, and Chandler S. Murray and Heather M. Bellanca, Trustees of the Murray 2005 Family Trust, Licensees.