

CHARLOTTE PLANNING COMMISSION
FINDINGS OF FACT AND DECISION
REVISED IN ACCORDANCE WITH THE
STIPULATION AND ORDER
OF THE STATE OF VERMONT ENVIRONMENTAL COURT
DATED MARCH 13, 2008
DOCKET NO. 167-8-07 Vtec

IN RE APPLICATION OF

Peter Schneider and Jessica Donovan

Final Plan Application
For A
Major Subdivision Creating Eight Lots
As a Planned Residential Development
Application # PC-07-08

Background

The subject parcel was created (as Lot #2) by a two-lot subdivision approved in January, 2006 (PC-05-50). Sketch Plan Review for the current project (PC-06-05) culminated in a letter to the applicants dated June 2, 2006. The Preliminary Plan Decision (PC-06-29) was issued on December 1, 2006.

Application

Materials submitted with the Final Plan applications are listed in Appendix A.

Public Hearing

A public hearing for this application was opened on May 3, 2007 and was continued to and closed on June 7, 2007. Peter Schneider and Jessica Donovan were present at both meetings, and the following consultants were also present on their behalf: Clark Hinsdale, III, David Miskell, Lance Phelps, Brendan Streicher, Steven Revell, Carolyn Orben, and Harris Roen.

Other persons who were present and participated in the hearing or in writing are listed in Appendix B.

Regulations in Effect

- Land Use Regulations adopted March, 2006.
- Sewage Ordinance as amended December, 2004.
- Recommended Standards for Developments and Homes adopted September, 1997.
- The Town Plan expired in March, 2007. The previous Town Plan (readopted March 2002) and was in effect during the review of the Preliminary Plan Application (PC-06-29).

Appeal

The Planning Commission issued a decision dated July 19, 2007 approving the project. This decision was appealed by certain interested parties, and then the decision was cross appealed by the Applicants. The Applicants and interested parties settled and the appeal by the interested parties was dismissed. The Applicants and the Town then settled as indicated in the Stipulation and Order dated March 13, 2008 (“Order”). One provision of this Order is that the Applicants record this revised decision, which replaces and supersedes the decision dated July 19, 2007 recorded in volume 169 pages 176-187 of the Charlotte Land Records. This decision has been approved by an Order of the Environmental Court and is the decision governing the subdivision, unless amended by the Planning Commission or further Court Order.

Findings

1. In association with the Final Plan Hearing the applicant submitted additional materials listed in Appendix C.
2. The Final Plan application proposes to create eight lots from the subject parcel, all to be used for residential purposes. Lots 2-8 are between 1.14 acres and 1.5 acres. Lot 1 encompasses the remainder of the parcel (42.88 acres) and is to include a building envelope, with the remainder (38.5 acres) to be conserved through a Conservation and Agricultural/Forestry Easement and Restriction held by the Town. Other proposed development includes an on-site shared septic system, a wind turbine, a storm water quality pond, a road and shared driveways, storage areas, a tree house and a tent platform.
3. The subject parcel includes or is adjacent to the following *areas of high public value*:
 - A. Statewide (agricultural) soils are located on the parcel in the wet meadow (from VCGI data);
 - B. Steep slopes (equal to or in excess of 15%) are located on the parcel primarily in two bands between the three plateaus on the hillside (from the applicant’s data and VCGI data);
 - C. Wetlands are located on the parcel; Class 2 wetlands are in the meadow, and Class 3 wetlands are on the hillside (from the applicant’s data, state Conditional Use Determination—2007-63, Army Corps of Engineers Permit NAE-2007-774, and Town Plan);
 - D. Surface water on the parcel includes an unnamed stream that runs in a northeasterly direction from the Pease Mountain Natural Area towards the Charlotte Central School parcel, and seeps on the hillside (from the applicant’s data, VCGI data, and site visits);
 - E. Special Natural Area—The Pease Mountain Natural Area is adjacent to the subject parcel; some of the important features of the Natural Area also extend onto the southwest corner of the subject parcel, including: geological feature (Champlain Overthrust), aquifer recharge area, and location of rare plants and natural communities (from Vermont Natural Heritage Program and Town Plan);
 - F. Critical Wildlife Habitat and Corridors are on the property as well as the adjacent Pease Mountain Natural Area, based on the applicant’s data and testimony and the Conservation Commission’s data and testimony.
 - G. Water supply source projection area for the Charlotte Central School drilled well consists of a 1,000 foot radius from the well on and adjacent to the property

(Vermont water supply rules);

- H. Historic District—the “Charlotte Center Historic District,” which includes adjacent properties at the intersection of Church Hill Road and Hinesburg Road, is listed in the Town Plan (which states the district is in the National Register of Historic Places) and also in the State Historic Register (Town and State data); and
 - I. Conserved Land—the common land for the Homestead at Church Hill development to the west of the parcel is under an Open Space Agreement with the Town and portions of the Foote and Schermerhorn properties on the north side of Hinesburg Road across from the property are under easements held by the Vermont Land Trust (from Charlotte Land Records).
4. When reviewing applications, the Planning Commission prioritizes the specific *areas of high public value* that are present on or in the vicinity of the subject parcel in order to help determine which may be most important for that particular site and to analyze potential impacts resulting from proposed development. Based on the information presented in the application and at the public hearings, for this application, the Planning Commission finds the following *areas of high public value* to be of primary (and equal) importance on this particular site: steep slopes, wetlands, surface water, special natural areas, and critical wildlife habitat and corridors. The reasons for this prioritization are immediately below.
 5. The importance of steep slopes is related to protecting water quality and minimizing erosion. The development of steep slopes can result in extensive erosion, and in order to mitigate such erosion, more extensive infrastructure is needed such as ditches and ponds for stormwater control, wide switchbacks for development roads, and extensive cut and fill. The steep slopes on the subject parcel are fairly extensive, and coincide with other primary *areas of high public value*, such as surface water and critical wildlife habitat.
 6. Wetlands and surface waters serve many important functions; in summary, they help maintain the quality of water and they provide habitat and corridors for wildlife. The subject parcel has an extensive Class 2 wetland (approximately 20 acres) in the meadow, and has several Class 3 wetlands and seeps on the hillside. The unnamed stream on the parcel recharges groundwater, and provides a wildlife corridor from the Pease Mountain Natural Area to other habitat areas to the north.
 7. The Special Natural Area includes several unusual and significant features of ecologic, scientific and educational import. It is located on both the Pease Mountain Natural Area parcel and on the subject parcel.
 8. During the Preliminary Plan hearing and in the resulting decision (PC-06-29) the Planning Commission considered the submissions and extensive testimony from David Capen (the applicant’s wildlife consultant) as well as from the Charlotte Conservation Commission, and also consulted the Town Plan. The Planning Commission determined that both the Schneider/Donavan parcel and the adjacent UVM Pease Mountain parcel have critical wildlife habitat and a large amount of core habitat. The Planning Commission further notes that, together with adjacent parcels these parcels provide one of the largest areas of contiguous forest habitat in Charlotte, and that they also link to strategic corridor to the north and south. Furthermore, the areas containing critical wildlife habitat coincide with other primary *areas of high public value*, including the steep slopes, wetlands and surface waters, and the special natural area.
 9. It is noted that, although the Schneider/Donavan parcel and the Pease Mountain Natural Area host critical wildlife habitat and core habitat, these areas are *not* pristine. They are

currently subject to a relatively high degree of human activity in the form of frequent school visits, research studies, and public recreational use.

10. In order to minimize the project's impacts on *areas of high public value*, the Preliminary Plan Decision (PC-06-29) required all building envelopes to be located between contours 440 and 480 (as the contours are depicted on the plan by Lincoln Applied Geology entitled "Donovan/Schneider, Hinesburg Road, Charlotte, Vermont, Site Plan, Major Subdivision" dated 7/24/2006, no revisions), and also stipulated that no building envelope will be closer than 100 feet to the unnamed stream on the parcel. The Final Plan application complies with these conditions. A review of the Final Plan's impacts to *areas of high public value* follows in Findings 10-23.
11. The project impacts a relatively small portion of the statewide (agricultural) soils, primarily at the proposed road as it crosses the wetland. Furthermore, although the parcel supported a working farm in the past, it is unlikely to support commercial agriculture in the future because of the relatively small amount of good soils.
12. The parcel has two roughly defined terraces or plateaus above the wetland/meadow. As redesigned in accordance with PC-06-29, Lots 2-8 and the building envelope for Lot 1 are located on the middle terrace.
13. In reaching the middle plateau, the proposed roadway crosses a steep slope that has a grade greater than 15%. The redesign of the project for the Final Plan application has reduced the amount of steep slopes impacted by the project in that second band of steep slope will not be impacted. Additionally, the proposed plan is preferable to a single roadway with extensive switchbacks, requiring more extensive cut and fill and creating a much wider "footprint," as was proposed in the Preliminary Plan. Furthermore, there is no other practical route to the middle terrace than through the steep slope.
14. The proposed road serving the project will impact Class 2 wetlands in the meadow and Class 3 wetlands on the hillside. Approximately 500 feet of roadway will impact 18,500 square feet of Class 2 wetland and 2,470 square feet of the buffer zone for the Class 2 wetland. However there is no other practical route to the site of the proposed subdivision than through the Class 2 wetland and buffer. The proposed route of the roadway impacts the least possible amount of Class 2 and Class 3 wetland. The applicant has obtained a Vermont Conditional Use Determination permit and a U.S. Army Corps of Engineers permit for the wetland impacts.
15. The proposed development includes a proposed septic area located 50 feet away from the unnamed stream. As allowed by PC-06-29, one building envelope is located 100 feet away from the unnamed stream. It is noted however that the Final Plan allows vegetation clearing closer to the unnamed stream than the 100 foot setback. As described above, the stream corridor provides important functions in providing groundwater recharge and a wildlife corridor. The study by David Capen and Tina Scharf submitted with the Preliminary Plan application stated (in part) "we argue that the western portion of this property is the most suitable area to be conserved and managed for wildlife. This is the area that provides best for north-south wildlife movement, connecting the core of Pease Mountain to habitat north of the Hinesburg-Charlotte Road.... The stream corridor will be protected by forested buffer of 100 feet or more in all but a small area where the waste disposal system, about an acre in size, will reduce that buffer to 50 feet" (page 9). The protection of these functions necessitates that the Clearing Area associated with Lot 1 maintain a 100 foot setback from the top of the streambank (coinciding with the westerly side of the Building Envelope), and that "Open Space C" be expanded to include the

- stream corridor up to westerly edge of the Building Envelope/Clearing Area for Lot 1.
16. With regard to Special Natural Areas, as a result of the redesign for the Final Plan application, all building envelopes are further from the exposed overthrust and associated natural communities located on the Schneider/Donovan parcel and the UVM parcel than was proposed with the Preliminary Plan. All building envelopes are outside of the 100 meter buffer of the overthrust and associated natural communities, depicted as necessary buffers to maintain the viability of the natural areas on maps submitted by the Conservation Commission during the Preliminary Plan review; the building envelope for Lot 2 (which is the closest to the UVM parcel) is approximately 350 feet from the overthrust and associated natural community on the UVM parcel.
 17. In reviewing the Final Plan application, the Planning Commission finds that impacts to critical wildlife habitat have been reduced by moving most development off the top plateau, which is an important habitat area and also serves as a buffer to the UVM parcel. However, a tree house, tent platform and trail are proposed for this critical wildlife habitat area. The Planning Commission notes that this area is already used by students and hikers, so that the trail would not introduce new impacts to this area; but other development, including the tree house and tent platform, would be a new type of disturbance.
 18. The Planning Commission further notes that the lot sizes for Lots 2-8 have increased considerably. While Lots 2-8 were between .7 to 1 acre in the Preliminary Plan, the Final Plan depicts these lots as between 1.14 acres to 1.5 acres, with four lots being 1.2 to 1.25 acres. The expansion of these lots close to or into the critical wildlife habitat areas is an undue adverse impact. The Capen/Scharf report stated (in part) “large blocks of forest connected to other habitat types are not common in this town and should be protected” (page 8).
 19. Although the location and shape of the overall development footprint has improved from the Preliminary Plan, the Planning Commission finds that because of the increase of the size of Lots 2-8 and the ability on Lot 1 to clear vegetation closer to the stream than the 100 foot setback, undue adverse impacts to critical wildlife habitat has not been minimized. However, a modest adjustment of the Final Plan, along with conditions as noted below, would remedy the above noted problems.
 20. To minimize undue adverse impacts on *areas of high public value*, all building envelopes and development infrastructure can stay where they are currently located on the proposed Final Plan, but the southerly lot boundaries of Lots 2-5 should shift to approximately the 480 foot contour, and the northerly lot boundaries of Lots 6-8 should shift to approximately the 440 foot contour. This adjustment is not a major change to the layout, but allows important critical wildlife areas to be removed from Lots 2-8 and be placed into the open space areas on Lot 1 in order to ensure their long-term protection.
 21. As noted above, the Pease Mountain Natural Area is currently used as an outdoor classroom by the University of Vermont and the Charlotte Central School, to study wildlife, flora and fauna habitats and geology. It is also used as an informal recreation area by numerous hikers and walkers. For this reason, the determination in this Findings of Fact and Decision that the proposed development is acceptable within this critical wildlife habitat should not be interpreted as creating a standard that development should or will *always* be found to be acceptable in other wildlife habitat areas.
 22. The applicant has proposed to conserve all of Lot 1 outside of the building envelope through a Conservation and Agricultural/Forestry Easement and Restriction held by the

Town, and therefore the project will result in the conservation of critical wildlife habitats to the west, north and south of the proposed development. The percentage of conserved land (38.5 acres) to density acreage (48.27 acres) is 80%. Some concerns regarding the proposed Easement and Restriction are noted below. [*Explanation of “density acreage:” the subject parcel was Lot #2 of a two-lot subdivision approved in January, 2006 (PC-05-50). The applicant for that project (Clark Hinsdale, III, Peter Schneider and Jessica Donovan) represented that original parcel size was 60.7 acres. Lot 1 was surveyed as 1.7 acres (i.e. 3.3 acres less than the five-acre-per-dwelling density requirement). The 3.3 acres was to be removed from the density of Lot 2, which was thought to be 59 acres. When preparing the current application, the surveyor found that Lot 2 (which had not been surveyed for PC-05-50) is actually 51.57 acres. So the “density acreage” of the subject parcel for the current application is 48.27 acres (i.e. 51.57 acres minus 3.3 acres)*].

23. The project as proposed will not impact the Historic District, as the development site is not directly adjacent to, nor visible from, the Historic District.
24. The proposed conserved land adjoins a spur of the conserved common land of the Homestead at Church Hill development. The proposed development will have minimal impact on the conserved land because a large portion of the proposed conserved land on the Schneider/Donavan property is located adjacent to the Homestead at Church Hill conserved land.
25. The applicant stated at the hearing that all utility lines are proposed to be underground.
26. It is noted that *any* development on the parcel would have an adverse impact on some area of high public value. However the Planning Commission further notes that the Charlotte Land Use Regulations [see in particular Section 7.3 (D)(1), (2) and (3)] does not *prohibit* impacting areas of high public value, but it indicates that 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.
27. In considering whether the project creates *undue* adverse impacts (as defined in the Land Use Regulations), the Planning Commission finds that the applicant has taken steps with the Final Plan application to improve the harmony between the proposed development and its surroundings, such as siting the development on a lower terrace than originally proposed and reducing the length of the road. With the conditions noted herein, the Planning Commission finds that the undue adverse impacts from the proposed building envelopes have been minimized, and that impacts from the project’s lot lines, infrastructure, roads, driveways and utility corridors will not be unduly adverse.
28. The main pedestrian access to the Pease Mountain Natural Area is currently across the Schneider/Donavan parcel on a trail that starts on the Charlotte Central School property. No formal easement exists granting the public the right to cross the property on the trail—an easement was offered by previous property owners but the University of Vermont failed to record the easement in the Charlotte Land Records.
29. The applicant has offered an easement to the Town for the trail. The Charlotte Trails Committee supports the proposed location of the easement. Although the Charlotte Conservation Commission initially expressed concerns about the potential for erosion and impacts to the exposed overthrust area, the redesign of the trail as depicted in the Morrow plat last revised 6/5/07 allows trail switchbacks to minimize erosion, and it avoids the eastern-most exposed bedrock community.

30. The Offer of Irrevocable Dedication for the Trail Easement includes a provision that before the trail easement is established for use by the public, a stewardship plan must be agreed upon by the Owner, and the Trail Easement Exhibit A must be signed by the Owner. Such a requirement could delay the use of the trail indefinitely. The requirement for a stewardship plan is acceptable but its creation should not be tied to the establishment or use of the easement. The requirement that both the Offer and Trail Easement be signed and recorded is redundant, and could lead to confusion regarding which document controls.
31. The proximity of Lots 5 and 6 to existing residences to the east and to the trail on the school parcel warrants a visual buffer by restricting tree cutting and vegetation removal within the 50 foot easterly setback.
32. During the Preliminary Plan review the Charlotte Fire Department recommended two options: reduce the grades to between 8 and 10%, or require sprinkler systems and central station monitored fire alarms.
33. The Final Plan application features two shared driveways (“driveways” are described as “serving 1-5 house sites or driveways” in the Recommended Standards for Developments and Homes written by Charlotte Volunteer Fire and Rescue Services, Inc.) both of which will have sections with finished grades of 13%; the westerly driveway for approximately 400 feet and the easterly driveway for approximately 300 feet. Accordingly, the applicant has proposed to provide sprinkler systems and central station monitored fire alarms for each dwelling.
34. While the Planning Commission does not favor road or driveway grades that exceed the Recommended Standards, the Planning Commission finds that such standards should be viewed in combination with 1) the ability of Charlotte Fire and Rescue to provide emergency services to all dwellings, and 2) other impacts of the development, including those on *areas of high public value*.
35. The Planning Commission finds that the design submitted with the Final Plan application minimizes the portion of steep driveway, and as stated elsewhere in this Decision, has minimized impacts on *areas of high public value*. Furthermore, Charlotte Fire and Rescue has indicated that (in addition to the provision of sprinkler systems and central station monitored fire alarms) it is able to provide emergency services to the prospective dwellings with good road conditions. The applicant and prospective residents are on notice that Charlotte Fire and Rescue may not be able to provide emergency services in icy road conditions.
36. Parking areas contribute to stormwater run-off by creating impervious surfaces (even when gravel) and by reducing tree canopy. Additionally, driveways and parking areas finished with limestone gravel compact more than other aggregate materials, and are also more visible. For these reasons, parking areas should be limited in size, and white limestone should not be allowed.
37. Construction of infrastructure is proposed to be phased as follows: 1) construction of lower roadway, lower utilities and stormwater pond; 2) construction of road and utilities to driveway split; 3) construction of one driveway, and 4) construction of the other driveway. The purpose of phasing construction is to limit the amount of ground that is disturbed at one time, to minimize erosion. The state enforcement procedure is to “spot-check” logs kept by the contractor—which relies primarily on voluntary compliance.
38. The application has provided information as requested in the Preliminary Plan Decision regarding the proposed wastewater system, including a report from an appropriately

licensed engineer which indicates that the proposed development will not impact the water supply serving the Charlotte Central School obtained from the drilled well, an analysis of the water recharge provided by the fracture area on the site and the potential impacts of the proposed development on existing recharge, and a time of travel analysis demonstrating that the proposed wastewater system will not adversely impact the Charlotte Central School well. The applicant also satisfactorily addressed several other concerns and recommendations regarding the wastewater system design as expressed in the Preliminary Plan Decision.

39. Richard Hamlin, P.E., sent a letter to the Town Planner (and Planning Commission) on behalf of the Charlotte School Board which indicates that the School Board believes their concerns have been addressed with the plans and likely conditions of any approval.
40. The applicant has obtained a state wastewater and water supply permit (WW-4-2548-1).
41. The Planning Commission obtained an independent preliminary review of the stormwater design in an attempt to determine whether the proposed stormwater retention pond could be eliminated by incorporating “low impact design” in the development plan. The preliminary review was performed by Amy Macrellis of Stone Environmental, Inc. The preliminary review indicated that “given the sloping site, limiting soils, and current layout of lots and building footprints, it is probably not possible to reduce the area covered by access roads and driveways enough to eliminate the need for a pond.”
42. As designed, the stormwater retention pond appears unnatural in the landscape, although it meets the technical requirements. The Planning Commission would allow the applicant to redesign the shape of the pond without any further review by the Planning Commission to create a more natural-looking pond (provided it is not enlarged). Such a redesign is not a requirement.
43. The applicant’s landscape architect testified that landscaping will be planted in and around the stormwater retention pond to screen it from Hinesburg Road and from the Charlotte Central School parcel. Notwithstanding the allowed redesign of the shape of the pond, screening of the pond is an important design element that helps the project “fit” into the landscape.
44. The applicant has obtained a stormwater permit from state (Permit Number 5154-9015).
45. Some proposed uses within particular “open space” areas (as indicated in Exhibit B of the Conservation and Agricultural/Forestry Easement and Restriction) conflict with identified values of those areas. A wind turbine is not appropriate in Open Space C, which borders the Pease Mountain Natural Area and has a primary goal of wildlife habitat and natural communities enhancement. The testimony indicated that a wind turbine and anemometer could be located at the edge of the community septic field—the northerly septic field was specifically determined to be the primary field in order to avoid disturbance of the forest near the Pease Mountain Natural Area. The easterly portion of the northerly septic field is outside of Open Space C (as amended herein), and is an appropriate location for the wind turbine and anemometer. Agricultural uses other than maple sugaring are not compatible with the forested characteristics of Open Space D and E. Similarly, no structure or other development other than a maple sugaring house is appropriate in Open Space D; the treehouse is also not appropriate in this location because it introduces a new type of disturbance into the wildlife habitat areas.
46. The applicant indicated that they would like to reserve the right to cultivate crops within the wooded portions of the parcel. While the cultivation of crops is a worthy activity for many reasons, the Planning Commission finds that such uses are appropriate only in the

Proposed Clearing Areas adjacent to the prospective dwellings.

47. The Planning Commission notes that the much of the testimony from the applicant and other parties addressed various issues related to wildlife habitat. Consequently, special attention was given (by the applicant and the Planning Commission) to buffering the Pease Mountain Natural Area and keeping development away from the “western corridor” adjacent to the unnamed stream, which provides wildlife with a traveling corridor from the Natural Area to Hinesburg Road and points north. While the Forest Management Plan includes goals related to wildlife management, the Planning Commission notes that implementation of the plan is largely an unregulated activity. Although the applicant has expressed keen interest, insight and awareness with regard to environmental concerns, the applicant may not always be residing within the development. Therefore, the Planning Commission finds it is appropriate to require some oversight of future management within the Open Space areas, which encompass special and sensitive natural areas.
48. The subject property has enough density acreage to create nine dwellings (at market rate); the project has proposed nearly the full density with eight dwellings. The Planning Commission notes the proximity of this project to the Charlotte Central School argues for allowing this (nearly full) density.

Decision

Based on these Findings, the Planning Commission approves the Final Plan Application (PC-07-08) for the proposed eight-lot planned residential development subdivision with the following conditions:

1. The survey plat by Stuart Morrow entitled “Final Plat Major Subdivision, Property of Jessica Donovan and Peter Schneider, Charlotte, Vermont” dated February, 2006, most recently revised June 5, 2007 will be revised as follows:
 - A. Note 9 shall read:

Lot setbacks will be as follows:

Lot 1: Southerly setback at 75 feet from the Wastewater Disposal Area Easement; westerly setback at 100 feet east of the unnamed stream; northerly setback at approximately the 440 ft. contour; easterly setback at the edge of the 20 ft. wide Sewer Line Easement.

Lots 2-5: Southerly setback of 10 feet from the southerly lot boundaries; northerly setback of 10 feet from northerly lot boundaries; Lots 2-4 will have a 10 foot setback from the easterly and westerly lot boundaries; Lot 5 will have a 10 foot setback from the westerly boundary and a 50 foot setback from the easterly lot boundary.

Lots 6-8: Southerly setback of 10 feet from the southerly lot boundaries; northerly setback at approximately the 440 ft. contour; Lots 7 and 8 will have a 10 foot setback from the easterly and westerly lot boundaries; Lot 6 will have a 50 foot setback from the easterly lot boundary and a 10 foot setback from the westerly lot boundary.

- B. The internal (east to west) boundary between Lot 5 and Lot 6 shall be revised on the Plat to show the southeast corner of Lot 6 shifted approximately one hundred and twenty-five feet (125') to the south.
 - C. The clearing area for Lot 1 shall have a westerly boundary that is a minimum of 50 feet from the unnamed stream.
 - D. The easterly edge of Open Space C will be 50 feet east of the unnamed stream.
2. Two paper copies (one full size and one 11"x 17") and a mylar (18" x 24") of the plat by Morrow as amended in accordance with Conditions #1 above and the site plan by Lincoln Applied Geology entitled "Site Development Plan with Water Sources and Proposed Filtrate Community Disposal System" (sheet 1 of 7) dated April 11, 2007, no revisions, will be submitted to the Planning Commission for review and approval within 160 days; the applicant will record the approved mylars of the plat and the site plan in the Charlotte Land Records within 180 days.
 3. The Conservation and Agricultural/Forestry Easement and Restriction will be edited as follows:
 - A. 1st Whereas—warranty deed date, volume and page will be inserted in blanks.
 - B. 3rd Whereas—most recent revised date will be inserted in blank.
 - C. Exhibit B, Open Space B—add the following at the end: "Management Plan is to receive review and approval by the Charlotte Conservation Commission."
 - D. Exhibit B, Open Space C:
 1. Replace the last sentence of paragraph 1 with: "There will be no structures, allowed in Open Space C."
 2. Add the following at the end of paragraph 2: "Management Plan is to receive review and approval by the Charlotte Conservation Commission."
 - E. Exhibit B, Open Space D:
 1. In paragraph 2, delete "and other agricultural uses are permitted."
 2. Add the following at the end of paragraph 2: "Management Plan is to receive review and approval by the Charlotte Conservation Commission."
 3. Replace last paragraph with: "The replacement septic mound is allowable within Open Space D. A maple sugaring house is also allowed. No other structures, tent platform, or tree houses are permitted in Open Space D."
 - F. Exhibit B, Open Space E:
 1. Add the following at the end of paragraph 2: "Management Plan is to receive review and approval by the Charlotte Conservation Commission."
 2. In paragraph 3, delete "and other agricultural uses are permitted."
 3. Add the following at the end of paragraph 4: "The treehouse will not have plumbing or electricity."
 - G. The body of the document will be edited to be consistent with above conditions.
 4. The Trail Easement Deed will be revised as follows:
 - A. Header will be corrected.
 - B. Section II.2.—the most recent revision date of the plat will be inserted in blank.
 - C. Section III.1.—add a sentence: "A temporary construction easement and right-of-way of ten feet (10') will be negotiated if trail reconstruction becomes necessary."
 - D. Section III.5.—add a sentence: "The Owners consent to public use shall not be unreasonably withheld."

- E. Schedule A -the provision for a switchback trail will be incorporated, as written in the Conservation and Agricultural/Forestry Easement and Restriction Exhibit C.
5. Prior to the submission of the mylars in accordance with Condition #2 above, the applicant will complete the following steps:
 - A. Obtain all state and federal permits needed for the project.
 - B. Submit a letter from the surveyor indicating he has set the survey pins in the field as indicated on the survey.
 - C. Execute the following documents, then submit the documents to the Selectboard for approval and execution:
 1. Roadway Agreement and Waiver
 2. Stormwater Drainage System Agreement, Waiver, and Easement
 3. Sewage Service Waiver, Agreement and Easement
 4. Conservation and Agricultural/Forestry Easement and Restriction as amended by Condition 3 herein.
 5. Grant of Trail Easement—as amended by Condition 4 herein.
 - D. A certificate of title for the property to be encumbered by the Conservation and Agricultural/Forestry Easement and Restriction and the Trail Easement will be submitted to the Selectboard with the Easement and Restriction.
 - E. Execute the following documents essentially as submitted, except as described below:
 1. Griffin Hill Drive Shared Roadway Maintenance Agreement
 2. Stormwater Drainage System Easement, Maintenance and Operation Agreement
 3. Shared Septic System Easement, Maintenance and Operation Agreement
 4. Bylaws of Griffin Hill Homeowners Association, LTD.
 5. Griffin Hill Subdivision Declaration of Covenants, which will be amended as follows: Sections 3.7 (Proposed Clearing Area) and 3.8 (Outside of Clearing Area) will indicate that a 50' strip along the easterly border of Lots 1, 5 and 6 will be a *no cut area*, and that no trees or other vegetation will be removed except for the location of the trail in the southeast corner of Lot 1.
 - F. A draft contract for a monitoring plan for the drilled well serving the Charlotte Central School will be submitted to the Planning and Zoning Office for administrative review and approval.
6. The applicant will simultaneously record in the Charlotte Land Records the mylars identified in Condition 2 above and the documents identified in Condition 5.C. and 5.E. above after adding the appropriate Map Slide number into the documents.
7. Section 3.7 and 3.8 of the Griffin Hill Subdivision Declaration of Covenants will not be amended without prior approval by the Planning Commission in the form of a Subdivision Amendment.
8. During the installation of infrastructure including the road, two shared driveways, wastewater disposal mound, and stormwater control system, the applicant will notify the Zoning Administrator when construction phases 1, 2 and 3 (as identified in Findings herein) are complete. Only one phase of the road and infrastructure will be under construction at a time. The Zoning Administrator will be allowed to inspect the premises to confirm that work each phase has been completed prior to work beginning on the subsequent phase. If the Zoning Administrator determines that more than one phase is under construction simultaneously, he will report such information to the Vermont

Department of Environment Conservation.

9. All dwellings will have a residential fire sprinkler system designed to the 13-R standard, as well as a central station monitored fire alarm system. Sprinkler systems shall be able to maintain an acceptable flow rate for residential fire loads for the occupied spaces of each residence for a minimum of 20 minutes, or for the time specified under the 13-R standard, whichever is greater. It is the responsibility of each homeowner to ensure their sprinkler system and central station monitored alarm system are maintained and operational at all times.
10. Warranty deeds used for the conveyance of all lots will reference this Findings of Fact and Decision, as well as all documents listed in Conditions 5.C. and 5.E. above. Additionally, warranty deeds will indicate that residential sprinklers and central station monitored fire alarms are required for all dwellings.
11. Before the applications for either a zoning permit for the fourth dwelling unit or the Certificate of Occupancy for the first dwelling unit are submitted to the Town, the following shall be submitted to the Town:
 - A. A letter from an appropriately certified engineer stating that the wastewater disposal system, stormwater control system, and the sub-base of the roadway and appropriate shared driveway have been constructed in conformance with the designs by Lincoln Applied Geology, Inc. and Phelps Engineering, Inc. submitted with the application.
 - B. A letter from H. Keith Wagner Partnership stating that plantings in the vicinity of the stormwater detention pond have been installed in accordance with the design.
12. Prior to the submission of a Zoning Permit application for all lots within the subdivision, the following steps will be completed:
 - A. The applicant will set wooden stakes at the corners of the building envelope on that lot.
 - B. The applicant will submit a design of a residential sprinkler system by a licensed installer to the Charlotte Fire Department for review and approval.
13. The application for the first Certificate of Occupancy will include the following:
 - A. A letter from Charlotte Volunteer Fire and Rescue, Inc. stating that the hammerhead turnarounds at the southerly end of the two main shared driveways are constructed appropriately.
 - B. A copy of an executed contract for monitoring the drilled well serving the Charlotte Central School.
14. Prior to the submission of an application for a Certificate of Occupancy for each dwelling, the following steps will be completed:
 - A. The sprinkler system for that dwelling shall be completely operational and date tagged by the licensed installer, and the central station alarm shall be deemed operational by Charlotte Fire and Rescue.
 - B. 911 address numbering will be installed on the parcel, and the I directional sign(s) will be installed at the fork of the driveways.
15. The application for the last Certificate of Occupancy will include a letter from an appropriately certified engineer stating that the roadway and shared driveways have been constructed in accordance with the plans by Phelps Engineering, Inc. as submitted with the application.
16. The applicant will annually provide the Zoning Administrator with a copy of the wastewater system annual inspection report, as described in the Shared Septic System

Easement, Maintenance and Operation Agreement.

17. No further subdivision is permitted. All lots will only be used for single-family dwellings and allowed accessory uses and structures. No density remains on any of the land other than that retained on each lot for one single-family dwelling.
18. All structures, including those exempt from zoning permits under Section 9.2 of the Charlotte Land Use Regulations, will be located within building envelopes. The only exception is a maple sugaring house allowed in Open Space D by the Conservation and Agricultural/Forestry Easement and Restriction as amended herein.
19. No pole-mounted light fixture will be taller than 8' off the ground, and no building-mounted light fixture will be taller than 20' 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.
20. All new utility lines will be underground.
21. The road and all driveways shall be surfaced with non-white crushed stone, except that a paved apron is allowed at Hinesburg Road. Exterior parking will be sized for a maximum of four (4) automobiles on each lot.
22. Brush and trees will be kept trimmed adjacent to the road and driveways and overhanging tree limbs will be removed to ensure the entire road surface is clear.
23. There shall be no cutting of trees outside of the ½ acre "Clearing Area" on each lot as allowed by Griffin Hill Subdivision Declaration of Covenants, except as described in the Forest Management Plan and in order to keep brush and trees clear from the road and driveways. Harvesting of trees will only occur under the direction of a professional forester, in accordance with the Forest Management Plan, and using techniques described as *Forest Management Guidelines* on page 7 in the Forest Management Plan. Skidding of logs will only take place when the ground is frozen.
24. The applicants will update the Forest Management Plan every five (5) years, and shall obtain administrative approval from the Planning Commission and Conservation Commission prior to making substantive changes to the management goals.
25. In constructing the subdivision, blasting shall be minimized. Blasting shall be used only in cases where roads or driveways can not be constructed at a grade of less than ten percent using cuts and fills, or where home floor levels can not be constructed at reasonable grades.
26. In conjunction with the applications for zoning permits for Lots 2 and 3, the applicant shall:
 - A. Stake the building footprint and driveway locations on each lot; and
 - B. Provide a written report from an appropriately certified geologist or hydrogeologist identifying the location of any significant exposed fractured bedrock conditions within the proposed driveway locations and building envelopes.
 - C. If blasting is proposed for driveways on such lots, provide a written report from an independent, appropriately qualified engineer stating that there is no reasonable alternative to blasting on such lots to achieve construction of a driveway grade at less than ten percent.
27. The sewer force mains will be constructed to meet standards for well head protection areas, as determined by the Vermont Department of Environmental Conservation.
28. Secondary containment measures, such as double-walled tanks or above ground tanks within catchment structures equal to the volume of the tank, are required for all liquid

- fuel storage tanks (excluding propane) larger than ten gallons on lots 1-8.
29. Floor drains are prohibited in any of the structures constructed on the property. All curtain drains shall drain to a point above ground (“daylighted”).
30. The Griffin Hill Subdivision Declaration of Covenants shall be revised to include the following covenants and restrictions:
- A. At the time of each sale of a Lot, the purchaser shall be provided, and annually each lot owner shall be provided, information regarding the location of the subdivision in or near the well head protection zone of the school water supply, which information shall inform the lot owner about specific limitations on the use of the Lots which are designed to protect the groundwater, including but not limited to:
 - I. All lot owners are required to store fuel for home and garden or lawn equipment and to fuel such equipment over impermeable surfaces so that any spilled fuel may be removed.
 - II. All lot owners must limit use of fertilizers to those that are organic.
31. Before Applicants record the plat, Applicants shall, after review and approval by the Town, record in the Charlotte Land Records the *Findings of Fact and Decision, In Re Application of Peter Schneider and Jessica Donovan, Final Plat Application For A Major Subdivision Creating Eight Lots As A Planned Residential Development Application #PC-07-08*” with the above revisions.

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. Except as revised by the Final Plan Application or this Findings of Fact and Decision, items submitted with the Preliminary Plan Application are also binding. 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 May 3: Jeff McDonald, Linda Radimer, Robin Pierce, John Owen, Peter Joslin and Andrew Thurber

Members Present at the Public Hearing on June 7: Jeff McDonald, Jim Donovan, Robin Pierce, John Owen, Peter Joslin and Andrew Thurber

This decision has been approved by an Order of the Environmental Court and is the decision governing the subdivision, unless amended by the Planning Commission or further Court Order.

APPENDIX A

The following items were submitted with the Final Plan Application:

1. An application form; the fee was paid with the Preliminary Plan application.
2. A survey by Stuart J. Morrow entitled “Final Plat, Major Subdivision, Property of Jessica Donovan and Peter Schneider, Charlotte, Vermont” dated February, 2006, revised 4/3/07.
3. A memo entitled “Subdivision Application Requirements and Waiver Requests, Final Application” dated April 6, 2007.
4. A roadway and driveway plan consisting of four sheets by Phelps Engineering, Inc. entitled “Donavan/Schneider, Major Subdivision, Hinesburg Road, Charlotte, Vermont” all dated 4/5/07, no revisions. The sheets have the following labels:
 - A. Sheet 1: “Road Layout Site Plan”
 - B. Sheet 2: “Road/Storm Water Site Plan”
 - C. Sheet 3: “Center Line Road & Drive Profiles”
 - D. Sheet 4 “Details and Notes”
5. A draft document entitled “Griffin Hill Drive Shared Roadway Maintenance Agreement.”
6. A draft document entitled “Roadway Agreement and Waiver.”
7. A letter dated May 2, 2007 to the Charlotte Planning Commission from Brandon Streicher of Phelps Engineering, Inc. re: “Donavan/Schneider Proposed Planned Unit Development (PC-06-29) Stormwater Clarifications.”
8. Copies of an application and revised application to the State of Vermont for a stormwater permit (5154-9015)—application dated March 15, 2007; revision dated April 5, 2007.
9. A letter dated March 12, 2007 to the Charlotte Planning Commission from Brandon Streicher of Phelps Engineering, Inc. re: “Donavan/Schneider Proposed Planned Unit Development (PC-06-29) Stormwater Treatment Feasibility.”
10. A draft document entitled “Storm Water Drainage System Easement, Maintenance and Operation Agreement.”
11. A draft document entitled “Stormwater Drainage System Agreement, Waiver and Easement.”
12. A copy of an application to the State of Vermont for an erosion control permit (3-9020).
13. A sheet entitled “Donavan/Schneider Sewage Collection System Elevation Information.”
14. A sheet entitled “Pressure Distribution & Mound Dimension Details,” Schneider/Donavan-Community Mound, dated 3/27/07, performed by S. Revell.
15. A wastewater disposal plan consisting of six sheets by Lincoln Applied Geology, Inc. entitled “Donavan/Schneider, Hinesburg Road, Charlotte, Vermont” all dated April 11, 2007, no revisions. The sheets have the following labels:
 - A. Sheet 1: “Site Development Plan with Water Sources and Proposed Filtrate Community Disposal System”
 - B. Sheet 2: “Lot 1, Development Plan with Water Sources and Proposed Filtrate Community Disposal System”
 - C. Sheet 3: “Lots 2, 3 and 8, Development Plan with Water Sources and Proposed Filtrate Community Disposal System”
 - D. Sheet 4: “Lots 4, 5, 6 and 7, Development Plan with Water Sources and Proposed Filtrate Community Disposal System”
 - E. Sheet 5 “Typical Water System Details and Forcemain Profile”
 - F. Sheet 6 “Wastewater System Details and Specifications”
 - G. Sheet 7 “Wastewater System Details (From Wastewater Technologies, Inc.)”
16. A draft document entitled “Shared Septic System Easement, Maintenance and Operation Agreement.”

17. A draft document entitled “Sewage Service Agreement, Waiver, and Easement”
18. Conditional Use Determination #2007-063.
19. Letters from Cathy O’Brien of Cathy O’Brien Wetland Consulting to Peter Schneider dated August 14, 2006 and January 30, 2007.
20. Letters from Cathy O’Brien of Cathy O’Brien Wetland Consulting to Clark Hinsdale III dated August 4, 2005, October 12, 2005, December 8, 2005 and January 31, 2006.
21. A draft document entitled “Conservation and Agricultural/Forestry Easement and Restriction.”
22. An application to the Army Corps of Engineers for a wetland permit.
23. A letter dated February 19, 2007 to “Peter and Jessie” from Clark Hinsdale, III.
24. A document entitled “Forest Management Plan for the Property of Peter Schneider & Jessica Donovan, Charlotte, Vermont, August, 2006” prepared by Harris Roen of Long Meadow Resource Management.
25. A letter dated April 14, 2006 from David E. Capen to the Planning Commission re: “Peter Schneider/Jessica Donovan Sketch Plan Hearing.”
26. A document entitled “An Assessment of Wildlife Habitat on the Williams Property, Charlotte, Vermont” by David E. Capen and Tina M. Scharf dated June 26, 2006.
27. A memo to the Charlotte Planning Commission from David E. Capen dated October 14, 2006 re: “Schneider/Donavan—Core Habitat.”
28. An e-mail from Peter Schneider to Dean Bloch dated April 30, 2007 re: “Trail Site Visit-Pease.”
29. A draft document entitled “Grant of Trail Easement.”
30. A draft document entitled “Offer of Irrevocable Dedication.”
31. A draft document entitled “Schneider-Donavan Subdivision, Declaration of Covenants.”
32. A draft document entitled “Bylaws of Griffin Hill Homeowner’s Association, LTD.”
33. A draft document entitled “Draft Deed Description-Lot 7 Donovan/Schneider Subdivision.”
34. A copy of the application to the State of Vermont for a Wastewater System & Potable Water Supply Permit, including the following attachments, all labeled “Donavan/Schneider Project 8-Lot Subdivision”:
 - A. Attachment A—Soil Profile Descriptions Associated with the Proposed Community Mound Disposal Area.
 - B. Attachment B—Percolation Test Results
 - C. Attachment C—Hydrogeologic Analysis
 - D. Attachment D—Pressure Distribution & Mound, Dimension Details, Community Mound
 - E. Attachment E—Sewage Collection System, Elevation Information
 - F. Attachment F—AdvanTex® Treatment System, System Design Brief & Specifications
 - G. Attachment G—Orenco Systems, Inc. AdvanTex® Treatment System, Innovative/Alternative System Approval
 - H. Attachment H—Charlotte Central School Water Supply Review, Analysis and Monitoring Plan
 - I. Attachment I—Shared Septic System Easement and Operation Agreement, Shared Roadway Maintenance Agreement, Stormwater Drainage System Agreement, Waiver and Easement.

APPENDIX B

The following adjoining property owners and other parties participated either verbally or in writing:

May 3—verbally participated:

Bill Dorris
 Brian Therrien
 Jerry Schwarz
 Charles Russell (Charlotte Selectboard)
 Ted Montgomery
 Janet Schwarz
 Richard Hessler
 Patricia Rodar
 Chris Davis (Chief, Charlotte Fire Dept.)
 Bill Dorris
 Norm Pellett
 Larry Hamilton

May 3—verbally participated (cont'd.):

Clyde Baldwin (Charlotte School Board)
 Norm Bolman
 Jim Squires

June 7—verbally participated:

Susan Therrien
 Carrie Spear
 Janet Schwarz
 Brian Therrien
 Jim Squires
 Jerry Schwarz
 Patricia Rodar

In writing:

Charlotte Conservation Commission (Linda Hamilton/Bob Hyams)—memos sent via e-mail dated April 9, April 10, and May 2, 2007
 Charlotte Volunteer Fire Department (Christopher Davis)—letter by e-mail dated April 14, 2007
 Brian Therrien—e-mail dated April 30, 2007
 Wily and Cathy Rahill—e-mail dated May 1, 2007
 Michael S. Spear—e-mail dated May 1, 2007
 Marianne C. Baggs—e-mail dated May 2, 2007
 Nadya Bech-Conger and Alberto Citarello—e-mail dated May 2, 2007
 Jerry L. Schwartz—letter dated May 2, 2007
 Norman Pellett—letter dated May 2, 2007
 Rick Paradis, UVM Natural Areas Center Director—letter sent via fax dated May 2, 2007
 Barry Finette and Sharon Mount—e-mail dated May 3, 2007
 An e-mail from Lawrence Hamilton dated May 24, 2007
 A letter from Richard Hamlin, P.E. dated May 25, 2007 on behalf of the Charlotte Central School Board.
 Charlotte Conservation Commission—letter (e-mailed) dated May 29, 2007
 Bethany Myrick and Tom O'Brien—e-mail dated May 30, 2007
 Norm Pellett—e-mail dated June 5, 2007
 Michael Spear—letter (e-mailed) dated June 6, 2007
 Charlotte Conservation Commission—letter (e-mailed) dated June 6, 2007
 Janet Schwarz—letter dated June 6, 2007
 James and Deborah Squires—letter dated June 6, 2007

APPENDIX C

The applicant submitted the following additional materials after the original application was

submitted:

1. A letter dated May 3, 2007 to Dean Bloch from Lancelot Phelps of Phelps Engineering, Inc. re: “Peter Schneider and Jessica Donovan (PC-07-08)-Response to Comments.”
2. A memo entitled “Response to Staff Notes for Meeting on May 3, 2007.”
3. A portion of the driveway plan prepared by Phelps Engineering (title block not included) depicted a widened shoulder on the easterly shared driveway.
4. A depiction of a “Dry Laid Boulder Retaining Wall” by Phelps Engineering, Inc.
5. A letter dated May 15, 2007 to Mr. Stephen Revell from Dennis Nealon of the State of Vermont Water Supply Division re: “Donovan/Schneider 8 Lot Subdivision and the Charlotte Central School Water Supply Well.”
6. A memo (undated, no author) describing a proposed well monitoring agreement.
7. A survey by Stuart J. Morrow entitled “Final Plat, Major Subdivision, Property of Jessica Donovan and Peter Schneider, Charlotte, Vermont” dated February, 2006, revised June 5, 2007.
8. Sheets 1, 2 and 4 of the roadway and driveway plan by Phelps Engineering, Inc. entitled “Donovan/Schneider Major Subdivision, Hinesburg Road, Charlotte, Vermont” dated April 6, 2007, last revised May 1, 2007.
9. A letter dated May 3, 2007 to Dean Bloch from Lancelotte Phelps
10. A plan by H. Keith Wagner Partnership entitled “Donovan/Schneider Property, Charlotte, Vermont” with drawing title “Overall Illustrative Site Plan” dated June 7, 2007, no revisions.
11. A plan by H. Keith Wagner Partnership entitled “Donovan/Schneider Property, Charlotte, Vermont” with drawing title “Illustrative Site Plan” dated June 7, 2007, no revisions.
12. A plan by H. Keith Wagner Partnership entitled “Donovan/Schneider Property, Charlotte, Vermont” with drawing title “Detailed Illustrative Plan, Lots 5 & 6” dated June 4, 2007, no revisions.
13. A sheet by H. Keith Wagner Partnership entitled “Donovan/Schneider Property, Charlotte, Vermont” and labeled “Plant Images” with photos of trees, shrubs and ferns and a list of native & drought tolerant plants, dated June 7, 2007, no revisions.
14. A sheet by H. Keith Wagner Partnership entitled “Donovan/Schneider Property, Charlotte, Vermont” and labeled “Tree Protection Detail” dated June 7, 2007.
15. A letter dated June 7, 2007 to the Charlotte Planning Commission from H. Keith Wagner.
16. Revised draft documents submitted on June 5, 2007, including:
 - A. Griffin Hill Subdivision Declaration of Covenants
 - B. Bylaws of Griffin Hill Homeowner’s Association, LTD.
 - C. Conservation and Agricultural/Forestry Easement and Restrictions
 - D. Offer of Irrevocable Dedication
 - E. Grant of Trail Easement
 - F. Shared Septic System Easement, Maintenance and Operation Agreement
 - G. Draft Warranty Deed Description—Lot 5 Griffin Hill Subdivision
17. A letter dated June 7, 2007 to the Planning Commission from Liam L. Murphy, Esq. of Murphy Sullivan Kronk re: “Donovan(sic)/Schneider Subdivision Application: Response to the June 6, 2007 Letter from Michael Spear Claiming a Prescriptive Easement over Applicants’ Property.”
18. A letter dated June 6, 2007 to Mr. Peter Schneider from Michael Curran of Wastewater Technologies, Inc.

19. A letter dated June 5, 2007 to the Charlotte Planning Commission from Brandon Streicher of Phelps Engineering, Inc. re: “Donavan/Schneider Proposed Planned Unit Development (PC-06-29) Feasibility of Rooftop Disconnection for Stormwater.”