

**CHARLOTTE PLANNING COMMISSION
FINDINGS OF FACT AND DECISION IN RE APPLICATION OF**

**Peter Trono
for a property located at Mandi's Way**

**Final Plan Application for a
Major Subdivision to create Lot 4 and for a
Boundary Adjustment between Lots 1 and 3
Application #PC-14-09**

Background

A sketch plan review for this project was held on September 5, 2013. The project was classified as a Major Subdivision / Planned Residential Development (PRD) and a Preliminary Subdivision hearing was held on January 16, 2014.

Application

Materials submitted with the application are listed in Appendix A.

Public Hearing

A public hearing for this application was held on May 1, 2014. Peter Trono and David Miskell represented the applicant. No other interested parties participated in the hearing or provided written submissions.

Regulations in Effect

Town Plan, amended March, 2013

Land Use Regulations adopted November, 2010

Recommended Standards for Developments and Homes adopted September, 1997

Findings

1. The applicant owns a 77.2 acre parcel (Lot 1) located at the northwest corner of the intersection of Bingham Brook Road and Spear Street in the Rural zoning district. The parcel currently has a barn and bunker silos situated on it, and it also has several farm roads.
2. Lot 1 as well as Lot 2 currently owned by the applicant and Lot 3 currently owned by Derek and Amanda Trono, were created by amending a previously approved 4-lot subdivision to create a 3-lot subdivision in 2011. Another 3.3 acres was added to Lot 1 following a second amendment that was approved in 2012.
3. While amending the subdivision plat to include building envelopes, the applicant discovered that the garage on Lot 3 was built just outside of the approved building envelope.
4. This application proposes to create a new 1.3 acre Lot 4 from Lot 1 and to allow a boundary adjustment between Lots 1 and 3 to cure the discrepancy regarding the location of the garage.

Applicable standards in Chapter VII of the Charlotte Land Use Regulations are reviewed below in Findings 5-29.

Sections 7.2 and 7.3—Areas of High Public Value

5. The parcel includes or is adjacent to the following areas of high public value:
 - A. Land in active agricultural use: The parcel is itself in active agricultural use with about 50% of the land in crop, hay and pasture land. The neighboring Burleigh Farm (4471 Spear Street) and Hausmann Farm (874 Bingham Brook Road) are also in active agricultural use.

- B. Primary agricultural soils: Prime agricultural soils as classified by the Natural Resources Conservation Service (NRCS) can be found in and around the existing farm complex and on the southern portion of the field that abuts Spear Street. Statewide soils cover much of the remainder of the parcel with the exception of the forested area on the western edge of the property and the area in and around the Clayplain Forest on the southern border of the property.
 - C. Surface waters, wetlands and associated setbacks and buffer areas: Town Plan Map 7 depicts a Class 2 wetland complex running in a north-south direction and nearly splitting the large field east of the farm complex in half. The applicant has worked with the NRCS and has installed fencing to prevent livestock access to the wetland and buffer area. A wetland is also depicted in the Clay plain Forested area and this area has been identified as a “special treatment area” by the Vermont Land Trust (VLT). The applicant has indicated he has no intention of disturbing this area now or in the future.
 - D. Wildlife habitat: Town Plan map 6 depicts most of the forested area on this parcel as forest habitat. The area east of Mandi’s Way and within which Lots 1-4 will be located is currently used as a sugar wood.
 - E. Scenic view: Bingham Brook Road is depicted as a most scenic road on Map 13 of the Town Plan.
 - F. Conserved Land on Adjacent Parcels: There is a VLT easement on a portion of the Burleigh Farm and the Hausmann Farm.
6. Considering the resources on the parcel, the Planning Commission finds that the following are the most important Areas of High Public Value associated with the parcel: land in active agricultural use, the agricultural soils, the forested wildlife habitat and the conserved status of a portion of the parcel. These are the resources that most strongly characterize the property and its vicinity, and are the features that the Planning Commission feels are most important to protect as it considers the proposed re-subdivision.
7. Section 7.2(D) of the Regulations states “Development density shall be based on the allowed density for the zoning district(s) in which the subdivision is located. Areas of High Public Value can be used for development density unless the property has been conserved through a legal mechanism such as Grant of Development Rights, Conservation Easement, or Open Space Agreement.
8. The allowed density for the Rural zoning district is 5 acres / dwelling unit.
9. VLT has a conservation easement on 57 acres of the original 81 acre parcel involved in this subdivision leaving 24 acres to accommodate 4 dwelling units which meets the district density requirements. There is no residential density remaining on the property.
10. The proposed layout uses the Planned Residential Development (PRD) provisions of Chapter VIII of the Charlotte Land Use Regulations (“Regulations”). In using these provisions, Lot 4 has been reduced to 1.3 acres with an associated building envelope of 0.21 acres ±. This reduction in lot and envelope size along with the siting of the lot on the edge of the forested area reduces the project’s impact on Areas of High Public Value.

Compatibility with Agricultural Operations—Section 7.4

- 11. The proposed building envelope on Lot 4 is closer than 200 feet to the agricultural fields on the parcel.
- 12. The building envelope is situated on the edge of a wooded area at a slightly higher elevation than the agricultural field, so will be somewhat buffered from impacts from the agricultural operation.
- 13. Although the lot is currently proposed to be owned by a family member of the applicant, notice of the agricultural operation should be included in the conveyance deed for Lot 4.
- 14. The applicant has provided ‘right to farm’ language that is to be included in the warranty deed for Lot 4.

Facilities, Services and Utilities—Section 7.5

15. The project does not meet the threshold of requiring a fire pond and dry hydrant because it creates less than six lots.
16. The Chief of Charlotte Volunteer Fire Department, Christopher Davis, indicated in a letter dated January 14, 2014 “As long as the driveway and lot configurations as shown on the plats are executed as designed there should not be any issues for emergency vehicle access to the new Lot 4 being proposed.”

Water Supply—Section 7.6

17. The applicant has obtained a Wastewater System and Potable Water Supply Permit (WW-138-1104-1).
18. A draft Well, Septic and Roads Agreement was submitted with the application.

Sewage Disposal—Section 7.7

19. The applicant has obtained a Wastewater System and Potable Water Supply Permit (WW-138-1104-1).
20. A draft Well, Septic and Roads Agreement was submitted with the application.
21. A draft Sewage Service Agreement, Waiver and Easement was submitted with the application.

Stormwater Management and Erosion Control—Section 7.8

22. The project’s relatively low density, dispersed layout and low lot coverage will allow for sheet flow and infiltration of stormwater run-off. No stormwater facilities are proposed and none will be required.
23. Maintaining the roads and driveways in an unpaved condition will also help to facilitate on-site absorption of storm-water runoff.

Landscaping and Screening—Section 7.9

24. This criterion does not require consideration due to the low density of the project and the siting of the dwellings in the interior of the parcel.

Roads, Driveways & Pedestrian Access—Section 7.10

25. The proposed private road and the driveway to Lot 1 will use existing farm roads. The building envelope for Lot 4 is located at the edge of the 50’ right-of-way for Mandi’s Way.
26. A Highway Access Permit (HAP-11-02) was issued on May 9, 2011 changing the use of the farm road from agricultural to residential.
27. There are no proposed changes to the previously submitted road and driveway plans approved by the Planning Commission on April 28, 2011 under application PC-11-05.
28. A draft Roadway Agreement and Waiver was submitted with the application.

Common Facilities and Legal Requirements—Sections 7.11 & 7.12

29. The draft document entitled “Trono Subdivision, 800 Bingham Brook Road, Charlotte, Vermont, Shared Well, Septic and Roads Agreement” assigns responsibilities for maintaining the shared water supply, wastewater disposal system and roadway system.

Applicable standards in Chapter VIII of the Charlotte Land Use Regulations are reviewed below in Findings 30-35.

General Standards

30. The Planning Commission recognizes that there are multiple Areas of High Public Value on the parcel, and that by avoiding impacting one resource, another resource may be impacted.

31. The Planning Commission found under the previous 3-lot subdivision that “The application has avoided impacting agricultural resources on the parcel, resulting in some impact to the forested wildlife habitat from the siting of the three dwellings. Nevertheless, of the 53 acres comprising the parcel, only five acres will be subject to new development, and of the 24.7 acres conserved through the Vermont Land Trust, 4.5 acres of clay-plain forest is further restricted as a Special Treatment Area.”
32. The Commission also found “Considering the extensive open space retained on the parcel, and the strong protection of the agricultural resources and some of the forested wildlife habitat, the Planning Commission finds that the project has minimized adverse effects on the prioritized areas of high public value.”
33. The approval of Lot 4 will add 1.3 acres to the previously permitted 5 acres of new development.
34. Lot 4 is sited on the edge of the woods, immediately south of the previously approved Lot 3.

Rural District Standards

35. The combined effect of the Grant of Development Rights and the building envelope designation on the remaining lands (Lot 1) has resulted in approximately 70% of the parcel designated as open space.

Decision

Based on these Findings, the Planning Commission approves the application for a Major Subdivision and Boundary Adjustment subject to the following conditions:

1. The survey will be revised to denote those portions of the property under a Vermont Land Trust Easement and to include a density table indicating there is no residential density remaining on the property.
2. One digital copy (pdf), two paper copies (one 11”x 17” and one full size) and a mylar (18” x 24”) of the survey as amended by Condition #1 will be submitted to the Planning Commission for review and signature (of the mylar) within 160 days. The applicant will record the signed mylar in the Charlotte Land Records within 180 days.
3. “Right to Farm” language will be included in the deed for Lot 4.
4. Prior to the issuance of a building permit for Lots 1 and / or 4, the applicant will execute and record the “Trono Subdivision, 800 Bingham Brook Road, Charlotte, Vermont, Shared Well, Septic and Roads Agreement”, “Sewage Service Agreement, Waiver and Easement”, and “Roadway Agreement and Waiver”.
5. Prior to the issuance of a Certificate of Occupancy on Lots 1 and / or 4, the applicant will submit a letter from a certified professional indicating that the road has been constructed in accordance with the approved plans.

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.

31. The Planning Commission found under the previous 3-lot subdivision that “The application has avoided impacting agricultural resources on the parcel, resulting in some impact to the forested wildlife habitat from the siting of the three dwellings. Nevertheless, of the 53 acres comprising the parcel, only five acres will be subject to new development, and of the 24.7 acres conserved through the Vermont Land Trust, 4.5 acres of clay-plain forest is further restricted as a Special Treatment Area.”
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Members Present at the Public Hearing on May 1, 2014: Marty Illick, Jeff McDonald, Linda Radimer, Peter Joslin, Donna Stearns, 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:	<u>Linda Radimer</u>	<input checked="" type="radio"/> For / <input type="radio"/> Against	Date Signed:	<u>6/5/14</u>
2. Signed:	<u>Jeff McDonald</u>	<input checked="" type="radio"/> For / <input type="radio"/> Against	Date Signed:	<u>6/5/14</u>
3. Signed:	<u>Peter Joslin</u>	<input checked="" type="radio"/> For / <input type="radio"/> Against	Date Signed:	<u>6/5/14</u>
4. Signed:	<u>Marty Illick</u>	<input checked="" type="radio"/> For / <input type="radio"/> Against	Date Signed:	<u>6.5.14</u>
5. Signed:	<u>Gerald A Bouchard</u>	<input checked="" type="radio"/> For / <input type="radio"/> Against	Date Signed:	<u>6/5/14</u>
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. An application form and the appropriate fee.
2. A PRD Subdivision and Boundary Adjustment Final Plat prepared by Summit Engineering, Inc. dated 12/05/13 and last revised on 03/24/14.
3. A narrative entitled "Subdivision Application Requirements and Waiver Requests", prepared by the applicant and dated 3/28/14.
4. An email from Cara Montgomery indicating VLT's intent to approve the use of Mandi's Way for the new Lot 4.
5. A copy of the Wastewater System and Potable Water Supply Permit WW-138-1104-1.
6. A document entitled "Trono Subdivision, 800 Bingham Brook Road, Charlotte, Vermont, Shared Well, Septic and Roads Agreement"
7. A document entitled "Sewage Service Agreement, Waiver and Easement"
8. A document entitled "Roadway Agreement and Waiver"