CHARLOTTE PLANNING COMMISSION
SUBDIVISION REVIEW
FINDINGS OF FACT AND DECISION

In re: Scott Hardy, Final Plan Application for a Minor Subdivision
Permit Application No. PC-15-12

Introduction and Procedural History
This proceeding involves review of an application for a Minor Subdivision at 197 Mutton Hill Drive submitted by Scott Hardy for approval under the Town of Charlotte Land Use Regulations.

The application was received on April 30, 2015. A notice of public hearing was published in The Citizen on May 14, 2015 and was posted at the following three locations: town offices, The Brick Store and Spear's Corner Store. A copy of the notice was also mailed to all adjoining landowners on May 13, 2015.

The application was considered by the Planning Commission at public hearings on June 4th and August 6th, 2015. Scott Hardy, the applicant, represented himself at the June 4th hearing. Mr. Hardy and his attorney James Foley, Jr. were present at the August 6th hearing. Several adjoining landowners participated in the hearing(s): Denise & Robert Danyow (367 Mutton Hill Dr), Emile & Diane Cote (425 Mutton Hill Dr), Gary Small (160 Mutton Hill Dr), Lester & Carol Small (420 Mutton Hill Dr), Mike Dee (16 Sutton Pl) and Tom & Jean Henry (286 Mutton Hill Dr).

Exhibits
1. Application form; envelopes for adjoining landowners; plat prepared by K. Larose, dated February 13, 2015; proposed deed restriction language; wastewater site plan prepared by K. Larose and dated April 15, 2015 and required fee
2. Staff reports dated June 2 and July 30, 2015
3. PC-15-04 Sketch letter dated April 2, 2015
4. Email comments from Chris Davis re: Charlotte FD comments dated April 16, 2015
5. Letter from neighbors dated May 26, 2015
6. Letter from James Foley re: common Right of Way over lands of Henry dated June 2, 2015
7. Letter from James Foley, Jr. of Deppman & Foley PC dated July 15, 2015
8. Letter from Catherine Dingle of Murphy, Sullivan, and Kronk dated July 21, 2015
9. Verbal opinion from Town Attorney received on July 28, 2015 re: right-of-way rights

Regulations in Effect
Town Plan, amended March, 2013
Land Use Regulations adopted November, 2010
Recommended Standards for Developments and Homes adopted September, 1997

Findings

Background

1. Scott Hardy owns a 10.1 acre parcel (M05B03L08.1) which is improved with a single-family dwelling and is located on the east side of Mutton Hill Drive in the Rural zoning district.
2. This parcel (Lot A) was created via a subdivision that occurred in 1987. The right-of-way proposed to serve the newly created 3 lots was not approved at that time.
3. The subdivision was amended in 1988. The plat for the amendment depicted the originally proposed right-of-way plus a widened portion that encompassed an existing access to lots B and C of the original subdivision.
4. Lot A is served by a driveway that has a curb cut onto a private right-of-way (Mutton Hill Drive) and a second cut onto said private right-of-way (the widened portion deeded only to Lots B and C).
5. The purpose of the current application is to subdivide the 10.1 acre Lot A into two lots. The new Lot 1 will be 5.06 acres and the new Lot 2 will be 5.03 acres.
6. Sketch Plan Review for this application occurred on March 5, 2015 and a site visit occurred on February 21, 2015. The project was classified as a Minor Subdivision in accordance with Section 6.1(C)(1) of the Charlotte Land Use Regulations ("Regulations").

Relevant standards in Chapter VI of the Charlotte Land Use Regulations are reviewed below in Findings 7-17.

Section 6.5 Final Plan Application

7. Table 6.2(B)(6) states that roads and drainage infrastructure, facilities and improvements in the immediate vicinity of the project and which may be affected or used by the project shall be required on plans / plats.
8. Table 6.2(B)(15) states that existing and proposed roads, parking areas, associated rights-of-way or easements, dimensions and distances shall be required on plans / plats.
9. Table 6.2(D)(1) and (2) state that a stormwater and erosion control plan and a grading plan may be required by the Planning Commission.
10. In their sketch letter dated April 16, 2015, the Commission noted the need to upgrade that portion of Mutton Hill Drive serving 6 or more houses to meet the Recommended Standards for Developments and Homes, 1997. An onsite meeting with Chris Davis of Charlotte Fire and Rescue and a second meeting with Junior Lewis, Town Road Commissioner revealed necessary upgrades and proposed variances acceptable to the Town (width and depth of surface materials).
11. The applicant submitted a site plan depicting proposed changes to the shared portion of the roadway and to the intersection of Lot 1's access with Mutton Hill Drive.
12. The proposed access for Lot 2 was depicted on the plan as using the southernmost access onto the widened portion of the private right-of-way.
13. At the first hearing that occurred on June 4, 2015, neighbors questioned the legality of the use of the access for Lot 2.
14. The Town Planner received an opinion from the Town Attorney who indicated that because access onto this portion of the right-of-way was a prescribed versus deeded right,

continued use was restricted to the current level of use (i.e. the existing single-family dwelling).

15. In a letter dated July 20, 2015, Attorney Foley indicated it was now Mr. Hardy's intention to access Lot 2 via the development of a driveway within the 60' wide portion of the right-of-way to which he has deeded rights.
16. Drainage issues along the existing driveway / roadway were noted as a concern by neighbors, the Town Planner and the Road Commissioner.
17. Plans depicting the location of the newly proposed access for Lot 2 were not submitted to the Commission nor were stormwater, erosion control or grading plans.

Relevant standards in Chapter VII of the Charlotte Land Use Regulations are reviewed below in Findings 18-40.

<u>7.2 General Standards</u>

18. The following Areas of High Public Value (AHPV) were identified on the parcel:
    a. Steep slopes (equal to or in excess of 15%)
    b. Wildlife habitat (Map 6 of Charlotte Town Plan)
    c. Water supply source protection area (ANR Atlas)
    d. Conserved land on adjacent parcels (Town Conserved Lands Map)
19. During sketch plan review, the Commission determined the steep slopes and the wildlife habitat to be the prioritized AHPVs on the property.
20. With the exception of the area (~1 acre in size) surrounding the existing house, the entire 10 acre parcel is mapped as forest habitat.
21. The applicant is proposing two standard 5.0+/- acre lots. The lots meet, or are able to meet, the minimum size, frontage and density requirements for the zoning district.

<u>7.3 District Standards</u>

22. The proposed subdivision maintains the traditional settlement pattern in this area including lot area, configuration and building placement.
23. The building envelope on Lot 2 is located within mapped forest habitat.
24. With the exception of the area immediately surrounding the existing dwelling, the entire 10 acre parcel is mapped as forest habitat.
25. The property is currently served by a u-shaped driveway that has one deeded access onto a private right-of-way and a second prescriptive access onto a private right-of-way.
26. The second access point (southernmost) was established approximately 14 years ago due to safety concerns associated with the northern access point.
27. Initially, the applicant proposed using the southern access for the new Lot 2; however, upon a determination that this is not a deeded access to which the applicant has extended rights, the applicant through his attorney indicated his intent to build a new access for Lot 2.
28. Shared driveways are required where feasible. A shared driveway for Lots 1 and 2 is feasible in this location.
29. Driveway accesses are reviewed under standards in Section 3.2 of the Land Use Regulations.

30. The Commission is unable to review the newly proposed access as no plans have been provided with the application.

7.5 Facilities, Services & Utilities

31. Because no plans have been provided for the revised access onto Lot 2, the applicant has not provided enough information to determine if there is adequate access for fire protection.

7.6 and 7.7 Water Supply and Sewage Disposal

32. A Wastewater and Potable Water Supply permit application is currently under review. Technical deficiencies of concern relate to a lack of design information provided for a replacement wastewater system for Lot 1.

7.8 Stormwater Management & Erosion Control

33. Drainage concerns along Mutton Hill Drive coupled with steep slopes and challenging soil conditions warrant a road and driveway site design completed by an engineer or similar professional that includes stormwater management information.
34. The applicant has not provided plans for the alternative driveway.

7.9 Landscaping & Screening

35. The applicant has provided deed language regarding the cutting of trees on Lots 1 and 2.
36. The Town Planner, in her staff report, raised concerns regarding the allowance of tree cutting outside of the building envelope. She recommended prohibiting the cutting of trees outside of the envelope, excepting diseased or damaged trees, and suggested an allowance for thinning after consultation with a forester or similar professional.

7.10 Roads, Driveways & Pedestrian Access

37. Section 7.10(B) states that all subdivisions must meet the road, driveway and pedestrian access standards in Section 3.2.
38. The Commission is unable to review the newly proposed access as no plans have been provided with the application.

7.12 Legal Requirements

39. Section 7.12(A) states that common facilities (e.g. roads, driveways) shall be adequately maintained. A portion of a shared roadway (serving 6 or more houses) is proposed for the subdivision and no maintenance agreement was provided with the application.
40. Section 7.12(B) states that the Commission may require assurances that improvements will be properly constructed. The plans provided by the applicant are incomplete and thus, the Commission is unable to determine whether assurances are warranted for the project.

Conclusions
Based on the foregoing Findings of Fact, it is the conclusion of the Commission that the project described in the application and supporting materials will not meet the development standards of the Charlotte Land Use Regulations.

The original application proposed access to Lot 2 via an existing curb cut that intersected a portion of a private right-of-way upon which deeded rights are not afforded to the applicant. This application cannot be approved because the applicant does not have legal access to a permanent easement or right-of-way as is required under Section 3.2 of the Regulations.

An alternative access was proposed at the second hearing; however, site plans depicting this access were not provided. Thus, this application could not be considered complete by the Commission. The Commission suggested alternative layouts for a new driveway to Lot 2 and offered to continue the hearing to allow the applicant to submit revised plans for review and consideration. The applicant requested the hearing be closed and the Commission acted on this request.

Decision
Based on the foregoing Findings of Fact and Conclusions, the Planning Commission denies the application for a Minor Subdivision.

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 latest date of 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 one or both of the Public Hearings on June 4th and August 6th, 2015: Jeff McDonald, Marty Illick, Charlie Pughe, Peter Joslin, Donna Stearns, and Gerald Bouchard.

Vote of Members after Deliberations: The following is the vote for or against the decision as stated above.

1. Signed: Martha Illick — For / Against — Date Signed: 9.17.15
2. Signed: Gerald A. Bouchard — For / Against — Date Signed: 9/17/15
3. Signed: [illegible] — For / Against — Date Signed: 9/17/15
4. Signed: [illegible] — For / Against — Date Signed: 9/17/15
5. Signed: [illegible] — For / Against — Date Signed: 9/17/15
6. Signed: [illegible] — For / Against — Date Signed: 9/17/2015
7. Signed: _____ — For / Against — Date Signed: _____