

CHARLOTTE TOWN CLERK'S OFFICE

RECEIVED FOR RECORD

This 11th day of September A.D. 20 17

at 11 o'clock 0 minutes A m. CHARLOTTE PLANNING COMMISSION

recorded in vol. 230 on page 206-211 SUBDIVISION REVIEW

Attest Chris Bl Town Clerk FINDINGS OF FACT AND DECISION

In re: John and Lisa Hauenstein request for a Minor Subdivision/PRD for 6300 and 6373 Spear Street Permit Application No. PC-17-85-SD

Introduction and Procedural History

This proceeding involves the review of an application for a 2-Lot Minor Subdivision/PRD submitted by John Hauenstein (a Trustee of the Hauenstein Revocable Living Trust, which owns the property) for approval under the Town of Charlotte Land Use Regulations (hereafter referred to as "the Regulations"). The application was received on June 28, 2017. A notice of public hearing was published in The Citizen on July 20, 2017. A hardcopy of the notice was mailed to all adjoining landowners, and posted at the following three locations: The Town Office Building, The Brick Store, and Spear's Corner Store during the week of July 13, 2017.

A site visit to the property was attempted at 6373 Spear Street on August 3, 2017 at 6:00 PM. Present at the site visit were Planning Commissioners Peter Joslin, Dick Eastman, Charlie Pughe, and David Kenyon. The applicants John and Lisa Hauenstein, and neighbors Jeff Finkelstein and John Koerner also attended the visit.

The application was considered by the Planning Commission at a public hearing on August 3, 2017 at approximately 8:00 PM. Present at the public hearing were the following members of the Planning Commission; Jeff McDonald (Chair), Peter Joslin (Vice-Chair), Richard Eastman, Charlie Pughe, and David Kenyon. Daryl Benoit (Town Planner), the applicants John and Lisa Hauenstein, and neighbors Jeff Finkelstein and John Koerner also participated in the hearing.

Exhibits

1. Application Exhibits for a Minor Subdivision, including; **A.** PC-17-85-SD application form signed by John Hauenstein; **B.** A boundary survey of the proposed of 2-lot subdivision; "2 Lot Subdivision Plat Showing Lands of John Hauenstein – 6373 Spear Street, Charlotte, Vermont" (dated September 19, 2014) by Christopher A. Haggerty (LS #741), Button Professional Land Surveyors, South Burlington and St. Albans, Vermont.
2. Map 56, Volume 7, Page 44; Boundary Survey - "Subdivision of Lewis Creek Farms – Formerly The 'Henry Dike Farm', Spear Street Extension Charlotte, Vermont" (revised January 30, 1987 & March 18, 1987) by Mark V. Ward (LS #741), Palmer Company Ltd., South Burlington, Vermont
3. Planning Commission Decision (PC-14-23 John Hauenstein); Final Plan Application for a Subdivision / Planned Residential Development Application #PC-14-23, signed on December 2, 2014 (which was reviewed by the Planning Commission at the August 3, 2017 public hearing).
4. Sketch Plan Review; Planning Commission Letter (PC-14-05-SK Hauenstein), dated May 19, 2014.
5. Charlotte Land Records – Volume 229, Pages 432-436 (Jul 25, 2017) License agreement to install wastewater lines; Volume 222, Pages 244-45 (February 2, 2016) Deed for 30-acre lot; Volume 220, Pages 136-137 (September 8, 2015) Deed for 5 acre lot; Volume 72, Pages 144-46 (October 15, 1992) Conveyance of 30.8 acre lot to Hauenstein and reference to covenants; Volume 52, Pages 106-07 (May 1, 1987) Conveyance of 5.02 acre lot to Hauenstein and reference to covenants.
6. State of Vermont – Act 250 - Land Use Permit Amendment (#4C0698-5), dated December 1, 2014.

7. Planning Commission Minutes from meetings held on *October 28, 1986* (Re: Lewis Creek Farms Subdivision, Michael Brown Application for revision of Armen Heights from 6 Lots down to 3 Lots); *September 10, 1974* (Re: Armen Heights [sic.] Subdivision, Mary E. Martin Application for >10 acre subdivision approved 16 Sep 1974 subject to conditions, including District Environmental Commission - Act 250 approval).

Regulations in Effect

Charlotte Town Plan, 2016

Charlotte Land Use Regulations, 2016

Recommended Standards for Developments and Homes, 1997

Findings

Background

1. John and Lisa Hauenstein own a 35.82 acre property (M10B01L39-9) comprised of a 5.02 acre parcel located at 6300 Spear Street (on the northern side of the road) within the Rural Zoning district, and a 30.98 acre parcel located at 6393 Spear Street (on the southern side of the road.) within the Rural Zoning district and the Conservation district buffering the Lewis Creek.
2. This application is a resubmission of a previous application to subdivide the 30.98 acre parcel into a 14.02 acre parcel with a single family dwelling (indicated as Lot 10a on the survey in **Exhibit 1B** above) and a 16.96 acre parcel with a barn and a small solar farm (indicated as Lot 10b). The septic system for Lot 10b will be located at 6300 Spear Street (indicated as Lot 13 in **Exhibit 2** above), which hosts a two-family dwelling.
3. The previous application was approved by the Planning Commission on December 2, 2014. However the Planning Commission's decision expired on June 2, 2016 because the applicant did not submit the final mylar as per requirement of the subdivision approval (in accordance with Section 6.7 of the Charlotte Land Use Regulations and *24 V.S.A. Chapter 117, Section 4463 Subdivision review*).
4. The property has been subject to an Act 250 permit since its original subdivision in 1974. The most recent permit amendment (see **Exhibit 6** above) authorizes the landowner to subdivide the property into two lots for the purpose of constructing a solar farm on Lot 10b (i.e. Lot #2 according to the Act 250 permit). Construction of a single family home or commercial use on the lot is not authorized unless an amendment is issued by the District Commission.

7.2 General Standards - Areas of High Public Value

1. Land in active agricultural use: The land on the property is not currently in agricultural use.
2. Primary agricultural soils: About half of the parcel comprises Statewide soils along the south and east, which has been identified within the USDA Natural Resources Conservation Service GIS database.
3. Steep slopes (equal to or greater than 15%): Area of 15-20% slope has been identified along the eastern and western areas of the parcel.
4. Flood Hazard Areas: A large portion of the southern area of the property has been identified by the Vermont Agency of Natural Resources (ANR) as River Corridor and within "*Area of Minimal Flood Hazard*" of the FEMA National Flood Hazard Layer (NFHL) along the Lewis Creek.
5. Surface Waters, Wetlands, and associated buffer areas: The property abuts the Lewis Creek and its 100' setback area.

6. Wildlife Habitat: *Significant Aquatic Habitat* exists on most of the property. *Significant Forest Habitat* and *Significant Linkage Habitat* exists on the western portion, which has been delineated within the GIS layers of the “Charlotte Significant Wildlife Habitat Map and Database”.
7. Water Supply Source Protection Areas (SPAs): There are no *Groundwater Source Protection Areas* nor *Surface Water Protection Areas* on the property.
8. Historic Districts, Sites, and Structures: It is unclear why the barn on Lot 10b was identified as “historic” within the previous decision (PC-14-23), as it is not identified within the Vermont Division of Historic Preservation “*Historic Sites & Structures Survey*”.
9. Scenic Views and Vistas: Spear Street has not been identified as a scenic roadway within the Charlotte Town Plan.
10. Conserved Land on Adjacent Parcels: There is no conserved land on the property or on abutting properties.

7.2(D) General Standards – Density

1. “*Development density shall be based on the allowed densities for the zoning district(s) in which the subdivision is located. . .*”
 - a. The application has been submitted as a Planned Residential Development (PRD) (see Section 7.6 below) comprising 35.82 acres, which allows for seven (7) dwelling units per acre within the Rural Zoning district and the Conservation district.
 - b. As the current Wastewater System and Potable Water Supply Permit has been approved for five (5) dwelling units, there remain two (2) dwelling units that would be possible for a future application, pending an updated permit and approval of the Planning Commission.

7.6 Water Supply & 7.7 Sewage Disposal

1. The current and previous applications have proposed a wastewater disposal system that would be located on Lot 13 (indicated as the “*Wastewater Disposal System Easement Area over Lot 13 to benefit Lot 10b*” on the northern side of Spear Street in the survey listed as **Exhibit 1B** above), across the road from Lots 10a and 10b.
2. According to Section 7.7(A)(3) of the Regulations, this subdivision application is required to be a Planned Residential Development (PRD) because the privately-owned septic system is proposed to cross underneath Spear Street.
3. A Wastewater System and Potable Water Supply Permit (permit # WW-138-1414) for this project was granted to John Hauenstein by the Town on October 28, 2014. The system is designed to accommodate Lot 10A with an existing 3 bedroom single-family dwelling, Lot 10B with a potential future two-family (or 4 bedroom) dwelling, and Lot 13 as the designated wastewater replacement system for the existing two-family (4 bedroom) dwelling.
4. A license agreement between the Town of Charlotte and John and Lisa Hauenstein “*to install, repair, maintain, or replace an underground wastewater force main crossing under Spear Street, to provide service to wastewater disposal field located on ‘Lot 13’ located on the northerly side of Spear Street containing 5.02 acres*” was authorized by the Selectboard Chair on April 8, 2015.

7.10 Roads, Driveways, & Pedestrian Access

1. No development is proposed for Lot 10b. Any future change of use of the lot from agricultural

to residential or commercial will require a Highway Access Permit approved by the Charlotte Selectboard.

8.4 Planned Residential Developments (PRDs)

1. Subsection 8.4(C)(1) of the Regulations stipulate that PRDs within the Rural District designed as a Conservation Project *“shall be designed in a manner that maximizes the reduction of lot sizes and modification of setbacks and other dimensional standards to minimize undue adverse impacts to, and fragmentation of, Areas of High Public Value.”*
 - a. The southern area of Lot 10a and 10b abutting Lewis Creek is the ideal area of the property to protect with an Open Space Agreement (OSA) because it has been identified as having *Significant Aquatic Habitat*, some *Significant Forest Habitat* and *Significant Linkage Habitat* (Areas of High Public Value), and is within the Flood Hazard Area.
2. Subsection 8.4(F) of the Regulations state *“Total density based upon the cumulative acreage of the parcels may be aggregated unto a single parcel to allow for greater concentrations of development and corresponding preservation of open space. . .”*
 - c. As the current application is designated as a PRD, a minimum of 50% of Lots 10a, 10b, and 13 (i.e. 17.91 acres) will be designated as open space as part of the current subdivision approval.
 - d. The survey submitted with this application (see **Exhibit 1B**) identifies a delineation of 18 acres of “Area Conserved as Open Space” along the Lewis Creek between Lots 10a and 10b. However an approximate 150’ length of area within the Conservation District (located about 150’ south of the house on Lot 10a) is not included within delineated open space area. Furthermore, a small structure within this area is also identifiable on various satellite and aerial imagery platforms (e.g. Google Maps, Bing Maps, and NASA Zoom Earth).

8.6 Open Space & Common Land

1. Subsection 8.6(A) of the Regulations stipulate that the Planning Commission shall consider the location of open space with associated site features listed in Table 8.1, which include Areas of High Public Value (e.g. the Lewis Creek, the Flood Hazard Areas, and the *Significant Aquatic Habitat*).
2. Subsection 8.6(B)(1) of the Regulations stipulate that open space shall be delineated *“for the protection of resources on the site including agricultural land, productive woodland, wildlife habitat, natural areas, aquifer protection areas, wetlands, views and vistas, streams, stream banks, the lake shoreline, and historic and archeological sites.”*
3. Subsection 8.6(B)(5) of the Regulations indicate that additional measures *“may be imposed to protect resources identified on the parcel. . .”*

Decision

Based on the foregoing Findings of Fact and Conclusions, the Planning Commission approves the application for a Minor Subdivision/PRD subject to the following conditions:

1. Two paper copies (one full size and one 11”x 17”), an electronic copy, and a mylar (measuring 18” x 24”, with a margin of 2” outside of the border line for binding on the left edge of the sheet with

a 1" border on all remaining edges) of the plat will be submitted to the Planning Commission for review within 160 days. The applicant will record the mylar of the plat in the Charlotte Land Records within 180 days, after being signed by the Chair or Vice-Chair of the Planning Commission. Approved plats not filed and recorded within this 180 day period shall expire.

2. Prior to the submission of the mylar to the Planning Commission, the applicant shall;
 - a. Submit a letter from the surveyor indicating that he or she has set the survey pins in the field as indicated on the survey.
 - b. Update the mylar with a table that accounts for the total density allowable for all of the lots associated with this application (see an example below).

| Lot | Acreage | Current Density (5 acres per dwelling unit) |
|-------------------|---------|--|
| Lot 10a | 14.02 | 1 unit - 1 existing single-family dwelling |
| Lot 10b | 16.96 | 2 units - Proposed 2-family dwelling for future application as per WW permit |
| Lot 13 | 5.02 | 2 units - 1 existing two-family dwelling |
| Allowable Density | 35.82 | 7 units |
| Remaining Density | - | 2 units |

- c. Revise the survey so that the area within the Conservation District (identified in Finding 8.4[2][d] above) is included within the designated open space area.
 - d. Submit an Open Space Agreement (OSA) to be approved by the Selectboard. The OSA shall articulate that the purpose of open space area is to protect the *Significant Aquatic Habitat* and the Flood Hazard Area identified along the Lewis Creek, and include the provision that *"the Open Space Area shall be maintained in its natural state, in which no cutting, clearing, mowing, vehicle operation, grazing of animals, or other disturbance to the land are allowed."*
3. This decision does not approve Lot 10b for a residential use. Any future development of Lot 10b, including a change of use from its current agricultural designation, will require the approval of the Planning Commission in a future application.

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 the 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 the permit and would be subject to enforcement action by the Town. **This approval shall expire if the mylar is not filed and recorded in the Charlotte land records within 180 days.**

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 the Public Hearing on August 3, 2017: Jeff McDonald (Chair), Peter Joslin (Vice-Chair), Richard Eastman, Charlie Pughe, and David Kenyon.

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>CA</u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>9/6/17</u> |
| 2. Signed: | <u>[Signature]</u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>9/6/17</u> |
| 3. Signed: | <u>[Signature]</u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>9/7/17</u> |
| 4. Signed: | <u>[Signature]</u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>9/8/17</u> |
| 5. Signed: | _____ | For / Against | Date Signed: | _____ |