

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**John D. Patnaude and Sue Anne Patnaude, Trustees,
Patnaude Living Trust
146 Eastry Court and 923 Greenbush Road**

**Final Plan Application
For A
Two-Lot Subdivision and
Planned Residential Development
Application # PC-10-34**

Background

Sketch Plan Review (PC-10-15) was held on May 20, 2010, at which the Planning Commission classified the project as a Minor Subdivision and noted that the project will be reviewed as a planned residential development involving two non-contiguous parcels.

Application

Materials submitted with the application are listed in Appendix A.

Public Hearing

A public hearing for this application was held on October 7, 2010. John Patnaude was present representing the applicant. Jeffrey Turnbaum was also present assisting the applicant. No other parties participated in the hearing.

Regulations in Effect

Town Plan, amended March, 2008

Land Use Regulations adopted March, 2009.

Recommended Standards for Developments and Homes adopted September, 1997

Findings

1. The property involved with this application consists of two parcels: 923 Greenbush Road (øLot 10ö), which is a 10.03 acre parcel that is depicted on a plat dated June 19, 1984 recorded in map slide 35; and 146 Eastry Court (øLot 12ö), which was approved by the Planning Commission on March 13, 1990 as a five acre parcel, as depicted on a plat recorded in map slide 75. Both lots are owned by Patnaude Living Trust, and both lots have been developed with single family dwellings.
2. The application proposes to create two lots from Lot 12 (i.e. øRevised Lot 12ö and øLot 13ö) using (and simultaneously conserving) five acres of density from Lot 10. The application also proposes to designate an additional 2.5 acres on Lot 10 as øopen space,ö as discussed in more detail below.

Areas of High Public Value—Sections 7.2 and 7.3

3. Lot 12 includes or is adjacent to the following areas of high public value:
 - A. Primary agricultural soils: prime and statewide soils are located on the parcel (from NRCS).
4. Lot 10 includes or is adjacent to the following areas of high public value:
 - A. Agricultural use: This parcel and the adjacent large parcel owned by the applicant have been used for pasture over recent years (from observation).
 - B. Primary agricultural soils: Prime and statewide soils are located on the parcel (from NRCS).
 - C. Surface waters, wetlands and associated setbacks and buffer areas: An intermittent stream is located on the parcel (from State surface water data) and wetland also appears to be located on the parcel (from Map 7 of the Town Plan).
5. The Planning Commission notes that, as a five acre parcel that is already developed with a single family dwelling, Lot 12 is relatively small for commercial agricultural use, and therefore it finds the agriculture soils on the parcel are not a priority for protection.
6. The application will not create any undue adverse impacts on prioritized areas of high public value on Lot 12, since the Planning Commission has found that there are no prioritized areas of high public value on this lot.
7. The areas of high public value on Lot 10 are proposed to be included in the conserved area and open space.

Compatibility with Agricultural Operations—Section 7.4

8. The proposed building site on Lot 13 is approximately 170 feet from the parcel to the east, which is used for agriculture; it is also separated from this parcel by the railroad tracks. These features create a separation between the prospective residential development on Lot 13 and the agricultural use on the adjoining lot.
9. Lot 13 is proposed to be served by an existing well located on the adjacent lot to the south. The well is approximately 200 feet from the adjoining parcel to the east which is used for agriculture.
10. The Planning Commission finds that the proposed building envelope on Lot 13 will not impact the agricultural use of the adjacent parcel.

Facilities, Services & Utilities—Section 7.5

11. As a minor subdivision, the project does not trigger requirements for creating a fire pond, park, or playground.
12. Lot 13 will need easements for utility lines serving the prospective dwelling, including lines for electricity, telephone, and cable television.
13. The Land Use Regulations require all such utility lines to be located underground.

Water Supply—Section 7.6

14. The application proposes that Lot 13 is to be served by an existing well located on the adjacent lot to the south. Lot 13 will therefore need an easement for the use of this well.
15. A Wastewater System and Potable Water Supply Permit (WW-138-1017) has been issued for the subdivision of Lot 12 and the creation of Lot 13.

Sewage Disposal—Section 7.7

16. The application proposes that Lot 13 is to be served by a wastewater disposal system to

be located on the adjacent lot to the north. Lot 13 will therefore need an easement for the use of this wastewater disposal system.

17. A Wastewater System and Potable Water Supply Permit (WW-138-1017) has been issued for the subdivision of Lot 12 and the creation of Lot 13.

Stormwater Management & Erosion Control—Section 7.8

18. This criterion does not require consideration due to the flat terrain and the limited nature of the development.

Landscaping and Screening—Section 7.9

19. This criterion does not require consideration due to the limited nature of the development.

Roads, Driveways & Pedestrian Access—Section 7.10 and Section 3.2

20. The application proposes that Lot 13 will be served by an existing private road, named Eastry Court, and then by a driveway which will be within a 60 foot wide right-of-way over the adjacent parcel to the north, which is owned by the applicant.
21. Eastry Court currently serves as access to four single family dwellings; so Lot 13 will be the fifth dwelling served by this road.
22. The applicant stated at the hearing that Eastry Court has been constructed to 14 feet wide, which meets the Town's specification for roads serving less than six dwellings.
23. Lot 13 will need an access right-of-way over Eastry Court and over the adjacent lot to the north.

Land to be Conserved—Section 7.11 and General Standards—Section 8.4(B)

24. The application has been proposed as a planned residential development as provided in Section 8.2 (B)(3) of the Land Use Regulations.
25. The application involves two parcels, as allowed by Section 8.4(F) of the Land Use Regulations.
26. Section 8.4(C)(1) requires the designation of at least 50% of the lot(s) as open space. The combined acreage of Lot 10 and Lot 12 is 15.03 acres. 50% of the combined acreage equals 7.5 acres.
27. The application proposes 7.5 acres on Lot 10 to be dedicated to open space. The proposed open space includes agricultural soils, stream and wetland, which are areas of high public value listed in Table 7.1 of the Land Use Regulations.
28. The Planning Commission finds that the proposed open space is sited in an effective and appropriate location and configuration that will help to protect areas of high public value on the parcel.
29. Section 8.4(F)(6)(a) of the Land Use Regulations requires that the removal of density be accomplished through a conservation easement, and that the easement be accompanied by a plat which depicts the boundaries of the portion of the parcel to be designated as open space and restricted by a conservation easement, and a table indicating the existing density and the reduction of density resulting from the Planning Commission's approval of the application.
30. The plans submitted do not depict the five acre portion of Lot 10 that is to be conserved; and they do not provide a table indicating the reduction of density. Additionally, the plans submitted with the application do not clearly indicate the location of Lot 10 relative to other parcel and roads.
31. The location of the proposed building lot is appropriate with regard to density and

configuration, considering existing development in the vicinity.

Decision

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

1. A plat (two paper copies, one full size and one 11ø x 17ø) will be submitted that depicts Lot 10 relative to adjoining parcels and roads, and it will also include the following:
 - A. the five acre portion of the parcel to be conserved;
 - B. the 2.5 acre portion of the parcel to be designated as open space; and
 - C. a table indicating that the original 10 acres of density will be reduced to five acres of density via the conservation agreement with the Town.
2. Mylars (18ø x 24ø) of the plat of Lot 10 and the plat depicting the subdivision of Lot 12 into two lots (as was submitted with the application on paper) will be submitted to the Planning Commission for review and approval within 160 days; the applicant will record the signed mylars of the surveys in the Charlotte Land Records within 180 days.
3. Prior to the submission of the mylars in accordance with Condition 2 above, the applicant will complete the following steps:
 - A. Submit a letter from the surveyor indicating he has set the survey markers or pins in the field as indicated on the survey plat. If the survey markers or pins cannot be set at this time because of frozen ground, the applicant shall submit a letter from the surveyor indicating that he will set the markers or pins when the ground thaws and has been paid to do so.
 - B. Submit a Conservation Agreement, an Open Space Agreement, and a Roadway Agreement and Waiver to the Selectboard for review and approval, and once approved, execute the documents and resubmit them to the Selectboard for execution.
 - C. Submit a draft deed for Lot 13 that includes easements for utilities, access, wastewater disposal and water supply, for review by the Town Planner.
4. The applicant will simultaneously record in the Charlotte land records the mylars identified in Condition 2 above and the Conservation Agreement, the Open Space Agreement, and the Roadway Agreement and Waiver after adding the appropriate map slide number into the documents.
5. The conveyance deed for Lot 13 will include easements for utilities, access, wastewater disposal and water supply, as approved by the Town Planner.
6. Prior to the submission of a Zoning Permit application for Lot 13, wooden stakes will be set at the corners of the building envelope on that lot.
7. No pole-mounted light fixture will be taller than 8ø off the ground, and no building-mounted light fixture will be taller than 15ø off the ground. Fixtures will be shielded to direct light downward, and will not direct light onto adjacent properties or roads, and will not result in excessive lighting levels that are uncharacteristic of the neighborhood.
8. All new utility lines will be underground.
9. All new driveways shall be surfaced with non-white crushed stone.

Additional Conditions: All plats, plans, drawings, documents, testimony, evidence and conditions listed above or submitted at the hearing and used as the basis for the Decision to grant

permit shall be binding on the applicant, and his/her/its successors, heirs and assigns. Projects shall be completed in accordance with such approved plans and conditions. Any deviation from the approved plans shall constitute a violation of permit and be subject to enforcement action by the Town.

This decision may be appealed to the Vermont Environmental Court by the applicant or an interested person who participated in the proceeding. Such appeal must be taken within 30 days of the date of the 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 October 7: Jeff McDonald, Linda Radimer, Ellie Russell, Paul Landler and Gerald Bouchard

Vote of Members after Deliberations:

The following is the vote for or against the application, with conditions as stated in this Decision:

- 1. Signed: _____ For / Against Date Signed: _____
- 2. Signed: _____ For / Against Date Signed: _____
- 3. Signed: _____ For / Against Date Signed: _____
- 4. Signed: _____ For / Against Date Signed: _____
- 5. Signed: _____ For / Against Date Signed: _____
- 6. Signed: _____ For / Against Date Signed: _____
- 7. Signed: _____ For / Against Date Signed: _____

APPENDIX A

The following items were submitted with the application:

- 1. An application form and appropriate fee.
- 2. A survey by Ian A. Jewkes of Krebs & Lansing Consulting Engineers, Inc. entitled "Subdivision Plan, Lot 12 of the Patnaude Family Trust, Eastry Court, Charlotte, Vermont" dated September 21, 2010, no revisions.
- 3. A plan by Stephen Revell of Lincoln Applied Geology, Inc. entitled "Patnaude Family Trust Property, Lots 11, 12 & 13, Eastry Court, Charlotte, Vermont, Site Plan Showing Proposed Subdivision of Lot 12 with Lot 13 Off-Site Water & Wastewater Systems," dated 9/1/2010, no revisions.
- 4. A plan by Stephen Revell of Lincoln Applied Geology, Inc. entitled "Patnaude Family Trust Property, Lot 10 & 11, Eastry Court, Charlotte, Vermont, Blow-Up of Mound Disposal Area for Lot 11 & 13 & Lot 10 Property Dimensions," dated 9/1/2010, no revisions.