

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

Clark W. Hinsdale, III and Suzanne G. Hinsdale

Final Plan Hearing For A Planned Residential Development Subdivision Application # PC-06-36

Background

The Preliminary Plan Application (PC-05-51) was approved by the Planning Commission on February 24, 2006; however it was appealed to Vermont Environmental Court by adjoining property owners (Docket # 59-3-06 Vtrec). The appeal was dismissed pursuant to the Stipulation For Dismissal dated July 14, 2006.

Application

Materials submitted with the application are listed in Appendix A.

Public Hearing

A public hearing for this application was opened on December 7, 2006, and was continued to and closed on January 18, 2007. Clark Hinsdale, III and David Miskell represented the applicant at both meetings.

The following adjoining property owners and other parties were present on the following dates:

December 7:

Mark Patane, Linda Hamilton (Conservation Commission), Clark Hinsdale, Jr., Larilee Sutor (Champlain Valley Co-housing)

January 18:

Mark Patane, Robert Hyams (Conservation Commission), Larilee Sutor (Champlain Valley Co-housing)

Regulations in Effect

Town Plan as amended March 2002

Land Use Regulations adopted March, 2006

Sewage Ordinance as amended December, 2004

Recommended Standards for Developments and Homes adopted September, 1997

Findings

1. The applicant submitted a document at the meeting on January 18, 2007 to the Planning

Commission entitled “East Thompson’s Point Road subdivision.”

2. The applicant owns two adjoining parcels on the north side of East Thompson’s Point Road, a 26.46 acre parcel (to the east) and a 10.02 acre parcel (to the west).
3. Both lots were modified by Haight and Callery as approved on March 2, 2000 and recorded in map slide 118 of the Charlotte Land Records, and the easterly lot was modified by Callery, Callery, Huntington and Beams as approved on March 20, 2003 and recorded in map slide 133.
4. In the Preliminary Plan Application, the applicant proposed five building lots (1H-5H) on the 26 acre parcel.
5. In the Final Plan Application, the applicant is proposing to include the 10 acre parcel to the west in the proposal, as was recommended by the Planning Commission in condition 8 of the Preliminary Plan Decision. Combining two parcels in a subdivision application is allowed by Section 8.4 (F) of the Charlotte Land Use Regulations (“PRDs Involving Two or More Parcels”).
6. The proposed access road has been relocated to the west and the building lots have been shifted to the north and west of what was proposed in the Preliminary Plan. A sixth building envelope is also proposed on what was the 10 acre parcel, which has now been reconfigured as a 30.72 acre parcel labeled “Parcel B.” The applicant stated at the meeting on January 18th that Parcel B is to have density for a single family dwelling.
7. The following *areas of high public value* are located on the parcels:
 - A. The subject parcel has extensive statewide agricultural soils and two pockets of prime agricultural soil near East Thompson’s Point Road and near Route 7, as indicated in Map 4 of the Town Plan.
 - B. The northern wooded area is indicated as forest habitat on Map 6 in the Town Plan.
 - C. A stream that feeds into Thorpe Brook crosses the northern portion of the property.
 - D. East Thompson’s Point Road is indicated as a “most scenic road” on Map 13 in the Town Plan. The view is of both the distant views of the Adirondacks to the west and Mount Philo to the East, and closer views of the open working landscape.
 - E. The parcel is surrounded by several properties that are in agricultural use. The former Laberge Farm is to the west (the field is now owned by Clark Hinsdale III and the homestead area is owned by Roelof Boumans and Catharina Sikkes); a portion of the Palmer Farm is to the south (now owned separately by Peter Demick and Clark Hinsdale III), and Champlain Valley Co-housing (a portion of which is in agricultural use) is to the north. Several of these parcels (or portions thereof) have been conserved.
 - F. There are several town trails and/or easements in the vicinity of the project: the trail easement on Champlain Valley Co-housing is to the north, the Melissa and Trevor Mack Trail is to the east, and Palmer Lane is to the south.
8. In the Final Plan Application the five building lots are at the northern edge of the meadow and partially in the adjoining woods to the north of the meadow. The easterly portion of the southerly meadow and the entire northern meadow are proposed to be conserved by a Conservation/Open Space Agreement with the Town. All of the conserved area is located on one lot (Parcel B).
9. The Final Plan configuration is preferable to the first proposal (in the Preliminary Plan Application), in that the open land from the 26 acre and 10 acre parcels are to be kept intact in an “open space area;” additionally, the dwellings will be much less visible and

- will have less impact on the agricultural use of the field.
10. Lots 1H, 2H and 3H will have some impact on the woods to the north of the meadow, which are part of larger block of forest habitat.
 11. As a result of recommendations by the Charlotte Conservation Commission (see Appendix B) and discussion with the Planning Commission, the applicant has proposed to mitigate the impact to the forest habitat by four measures:
 - A. The clayplain forest and riparian area in the northern open space area to the north of Lot 5H and to the west of the large open meadow is proposed to be treated as a Special Treatment Area (STA); this area is to be allowed to be maintained as open meadow or reforested at the option of the landowner.
 - B. The unnamed brook running north of and along the northerly boundary of the Patane/Jansch property is proposed to be protected by a wooded buffer extending from the Patane/Jansch property line (on the south) to approximately 50 feet north of the northerly limits of the highly erodable land along the stream.
 - C. A tree-cutting restriction is proposed for a 50 foot wide strip along the northern boundaries of Lots 2H, 3H, 4H and 5H, so as to create and maintain no less than 80% forested canopy.
 - D. A restriction will be place on all lots so that trees 12 inches in diameter at breast height (dbh) or larger will not be cut unless they are diseased, dead, or a hazard.
 12. The Selectboard has approved a Highway Access Permit (HAP-06-06) for the proposed access on East Thompson's Point Road.
 13. The site plan (by Heindel and Noyes) shows the proposed road from East Thompson's Point Road to Lot 2H to be 22 feet wide (18 foot travel portion with 2 foot shoulders), where there is a "turnaround", and then the road narrows to 14 feet in width to serve Lots 3H, 4H and 5H. The memo submitted on January 18th indicates that only the portion of the road serving Lots 4H and 5H would be 14 feet in width. Both designs comply with the Charlotte Fire and Rescue Standards with regard to road width.
 14. The project originally proposed to create five building lots on a private road, however currently the proposal includes a sixth dwelling (on Parcel B) to be located on the proposed private road. The Charlotte Fire and Rescue Standards require a fire pond for developments creating six or more dwellings.
 15. The applicant stated at the hearing that he does not intend to build on or sell Parcel B for several years.
 16. All lots are proposed to use a community wastewater system on the south side of East Thompson's Point Road. The Town's wastewater consultant has reviewed the plans and indicated (in a memo dated 11/6/06) that the plans can be approved as submitted, with the execution of a maintenance agreement and easements to be a condition of approval.
 17. The applicant will need a License Agreement from the Selectboard in order to install the wastewater force main under East Thompson's Point Road—the Selectboard has reviewed this preliminarily and no major concerns were raised.
 18. A state wastewater permit will be needed for the project.
 19. The Selectboard has preliminarily reviewed the Conservation/Open Space Agreement and no major concerns were raised.
 20. As requested by the Planning Commission in the Preliminary Plan Decision, the applicant has proposed a trail easement. The easement is currently proposed as "floating" except for the portion to the east of Lot 5H and to the west of the Patane/Jansch parcel, which is

fixed and depicted on the proposed plat. However the Trail Easement Deed and Offer of Irrevocable Dedication indicates that the trail cannot be used by the public until the exact location is agreed upon, a Stewardship Plan is agreed upon by the Owners, and the easement is signed by the Owner. This is problematic in that future owners may in fact bar the public's use of the trail by failing to agree on the location or a Stewardship Plan.

Decision

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

1. The survey plat will be revised as follows:
 - A. Dimensions will be added to building envelopes.
 - B. An easement for the wastewater pump station will be depicted in the location depicted on the Heindel and Noyes site plan (if the 20' sewer force main easement is not adequate in size).
 - C. A "special treatment area" to the north of Lot 5H and a 50 foot erosion buffer to the north of the Patane/Jansch parcel will be depicted.
 - D. The trail easement (20' in width) will be depicted starting at East Thompson's Point Road across from Palmer Lane; running north along the easterly boundary of Parcel B (or co-located with the proposed 20 foot wide sewer line easement); proceeding between Lot 5H and the Patane/Jansch parcel; then turning easterly and crossing the stream where there is an existing agricultural stream-crossing ; then proceeding north along the tree line at the western edge of the open field, to the northern boundary of Parcel B.
2. The Heindel and Noyes site plan will be revised if the road is to be built 22 feet wide (including shoulders) past Lot 2H, however the road will not be wider than 18 feet (including shoulders) past (to the east of) the driveway to Lot 3H.
3. Two paper copies (one full size and one 11"x 17") and mylars (18" x 24") of the plat (by Morrow) and site plan (by Heindel and Noyes), as amended in accordance with Conditions #1 and #2 above, will be submitted to the Planning Commission for review within 160 days; the applicant will record the mylars of the plat in the Charlotte Land Records within 180 days.
4. The Trail Easement Deed will be revised as follows:
 - A. The most recent revision date of the plat will be inserted in blanks on page one.
 - B. Paragraph a. on page one will be deleted and replaced with: "The exact location of the easement conveyed herein will be centered on the as-built trail."
 - C. Paragraph b. on page one will be deleted and replace with: "The location of the easement conveyed herein may be moved with a signed agreement by the Owners and the Town."
 - D. Paragraph c. on page one will be deleted and replace with: "The trail will cross the riparian area only at the existing agricultural crossing."
 - E. Warranty deed date, volume and page will be inserted in blanks on page 2.
 - F. In Exhibit A, first paragraph: delete the first two sentences.
 - G. In Exhibit A, section I. Purposes: delete "to the Pease Mountain Nature Area."

- H. In Exhibit A, section II Uses. 2. Trail Location: all but the last sentence will be deleted.
 - I. In Exhibit A, section III. Obligations 2. Vegetation Management: the first sentence will be deleted and replaced with “Grantees shall be allowed to mow or brush-hog vegetation within the trail easement area.”
 - J. In Exhibit A, section III Obligations 5.: the paragraph will be edited so that it states “The easement conveyed herein shall not be established for use by the public until a Public Recreation Path Stewardship Plan is agreed upon by the Charlotte Selectboard and the Charlotte Trails Committee.”
 - K. In Exhibit A, section III Obligations 6. Other Uses: the most revision date of the plat will be inserted in the blanks.
- 5. Prior to the submission of the mylar and site plan the applicant will do the following:
 - A. Obtain and record a Water and Wastewater Permit from the State.
 - B. Following the review and approval of the Town Attorney and the Selectboard, execute and record the following:
 - 1. License Agreement for road cut for wastewater force main
 - 2. Sewage Service Agreement, Waiver, and Easement
 - 3. Roadway Agreement and Waiver
 - 4. Conservation/Open Space Agreement
 - 5. Trail Easement Deed (as revised by condition 4 herein).
 - C. Obtain approval from the Selectboard for road name.
 - D. Execute and record the following essentially as submitted:
 - 1. Shared Septic System Easement, Construction, Maintenance and Operation Declaration of Covenants and Agreement
 - 2. Big Oak Lane Shared Roadway Maintenance Agreement, which will be edited to replace “Town of Charlotte Road Commissioner” with “an appropriately certified engineer.”
 - E. Submit a letter from the surveyor indicating that s/he has set the survey pins in the field as indicated on the survey.
 - 6. Prior to the submission of a Zoning Permit application for any lot within the subdivision, wooden stakes will be set at the corners of the building envelope on that lot.
 - 7. The application for the first Certificate of Occupancy shall include a letter from an appropriately certified engineer stating that the septic system has been constructed in conformance with the design, and the road has been constructed in conformance with the design up to the dwelling which is to be occupied.
 - 8. No further subdivision will be permitted. All lots will only be used for single-family dwellings and allowed accessory uses and structures.
 - 9. No dwelling unit or accessory structure except those exempt from zoning permits will be constructed outside the building envelopes depicted on the plat, except as allowed by the Open Space Agreement.
 - 10. Prior to any development of Parcel B a Subdivision Amendment will be required for which, at a minimum, access, wastewater disposal, a fire pond/dry hydrant and appropriate waiver agreements (road, sewer and fire pond/dry hydrant) will be reviewed.
 - 11. The following (A-D) are restrictions on Lots 1H, 2H, 3H, 4H, 5H and Parcel B; if there is a discrepancy between these restrictions and the Conservation/Open Space Agreement, these restrictions will control over the Conservation/Open Space Agreement:

- A. On Parcel B, the clayplain forest and riparian area in the northern open space area to the north of Lot 5H and to the west of the large open meadow is to be treated as a Special Treatment Area (STA); this area is to be allowed to be maintained as open meadow or reforested at the option of the landowner.
 - B. On Parcel B, the unnamed brook running north of and along the northerly boundary of the Patane/Jansch property is to be protected by a wooded buffer extending from the Patane/Jansch property line (on the south) to approximately 50 feet north of the northerly limits of the land subject to erosion along the stream.
 - C. On Lots 2H, 3H, 4H and 5H, a tree-cutting restriction is imposed for the 50 foot wide strip along the northern boundaries of these lots, so as to create and maintain no less than 80% forested canopy.
 - D. On Lots 1H, 2H, 3H, 4H, 5H and Parcel B, trees 12 inches in diameter at breast height (dbh) or larger will not be cut unless they are diseased or dead, or an unavoidable hazard.
12. 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.
 13. All new utility lines will be underground.
 14. The development road and all 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 December 7: Jeff McDonald, Linda Radimer, Robin Pierce, John Owen, and Andrew Thurber

Members Present at the Public Hearing on January 18: Jeff McDonald, Linda Radimer, John Owen, and Andrew Thurber

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

1. An application form; the fee was paid with the Preliminary Plan application.
2. A document entitled “Subdivision Application Requirements and Waiver Requests” dated October 23, 2006 addressing the requirements of Table 6.2 of the Land Use Regulations.
3. A survey by Stuart J. Morrow entitled “Final Plat, Major Subdivision, Property of Clark W. III and Suzanne G. Hinsdale, Charlotte, Vermont” dated July 2005, last revised on 2/28/06.
4. A site plan by Heindel and Noyes entitled “C.W. III & Suzanne Hinsdale, Charlotte, Vermont, Big Oak Proposed Subdivision” dated October 3, 2006, no revisions, sheet 1 of 3.
5. A sheet by Heindel and Noyes entitled “C.W. III & Suzanne Hinsdale, Charlotte, Vermont, Community Wastewater Details” dated October 3, 2006, no revisions, sheet 2 of 3.
6. A sheet by Heindel and Noyes entitled “C.W. III & Suzanne Hinsdale, Charlotte, Vermont, Sewer Details” dated October 3, 2006, no revisions, sheet 3 of 3.
7. A document from Heindel & Noyes, Inc. entitled “Analysis of Hydrogeologic Site Capacity, Big Oak Subdivision, East Thompson’s Point Road, Charlotte” dated Oct. 2, 2006
8. A sheet entitled “Road Profile” which depicts a road cross section.
9. A draft document entitled “Trail Easement Deed.”
10. A draft document entitled “Offer of Irrevocable Dedication.”
11. A draft document entitled “Conservation/Open Space Agreement.”
12. A draft document entitled “Sewage Service Agreement, Waiver, and Easement.”
13. A draft document entitled “Roadway Agreement and Waiver.”
14. A draft document entitled “Shared Septic System Easement, Construction, Maintenance and Operation Declaration of Covenants and Agreement—East Thompson’s Point Rd. 5 Lot Subdivision.”
15. A draft document entitled “Big Oak Lane Shared Roadway Maintenance Agreement.”
16. A draft document entitled “Lots 1H-5H, Restrictive Covenants, East Thompson’s Point Rd. Subdivision.”

APPENDIX B

The Conservation Commission submitted a memo addressed to the Planning Commission, Clark Hinsdale III and the Selectboard from Linda Hamilton, Chair, dated December 30, 2006.