

**STATE OF VERMONT
VERMONT ENVIRONMENTAL COURT
DOCKET NO. 23-1-07 Vtec
CHARLOTTE PLANNING COMMISSION**

**FINDINGS OF FACT AND DECISION
AS ORDERED BY
THE VERMONT ENVIRONMENTAL COURT**

IN RE APPLICATION OF

**Clark Hinsdale, Jr.,
Damon Silverman and Lori Racha**

**Final Plan Hearing
For A
Subdivision Amendment
Application # PC-06-19**

The parties to the above-referenced appeal, **CLARK HINSDALE, JR., DAMON SILVERMAN AND LORI RACHA**, and the **TOWN OF CHARLOTTE**, have stipulated to this **FINDINGS OF FACT AND DECISION**. Based upon the agreement and the stipulation of the parties to the above-referenced appeal, it is hereby **ORDERED** and **ADJUDGED** as follows:

Background

Sketch Plan Review for this project was conducted on May 4, 2006. A public hearing for the Subdivision Amendment application was held on August 3 and August 17, 2006. Clark Hinsdale, Jr., Clark Hinsdale, III, David Miskell and Damon Silverman represented the applicant at the hearing. A site visit was conducted on August 12, 2006. The Planning Commission issued Findings of Fact and Decision PC-06-19 on September 15, 2006. On October 5, 2006, the applicant requested that the Planning Commission reconsider its decision, pursuant to Section 9.9(E)(4)(b) of the Charlotte Land Use Regulations. The Planning Commission agreed to re-open the public hearing to hear the applicant's concerns; the hearing was re-opened and closed on November 16, 2006. The Planning Commission issued a Reconsidered Findings of Fact and Decision PC-06-19 on December 27, 2006. On January 24, 2007, the applicant appealed the Planning Commission's decision to Vermont Environmental Court (Docket No. 23-1-07 Vtec). The applicant and Town entered into mediation on April 19, 2007, pursuant to an order from the Court. Mediation was facilitated by Donald Powers, Esq. This Findings of Fact and Decision reflects the resulting Settlement Agreement and Order from the Court.

Application

Materials submitted with the application are listed in Appendix A.

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 application seeks approval to create a building envelope on Parcel A-1. Additionally, the application seeks approval to upgrade a wastewater disposal system designed for Parcel A-1A (an 8.17 acre lot owned by Damon Silverman and Lori Racha) to add a pre-treatment system, which will enlarge the system's capacity, enabling it to be shared between Parcel A-1A and Parcel A-1.
2. The subject parcel is currently in agricultural use, and is part of an extensive and productive agricultural network surrounding Mount Philo.
3. The subject parcel has soils that are classified as prime and statewide agricultural soils, as shown on Map #4 of the Charlotte Town Plan.
4. The subject parcel is adjacent to (across the road from) Mount Philo State Park.
5. Mount Philo Road is depicted as a "Most Scenic Road" on Map 13 in the Town Plan, and *most scenic views* are indicated on this map and Map 12 from Mount Philo Road to the west.
6. The Mount Philo Inn complex is listed in the Town Plan as an historic site, and is also on the State Register.
7. A VAST trail runs through the parcel. The location of the proposed building envelope should not prohibit continued use of the trail.
8. The highest values on the parcel are the agricultural attributes and the contribution to the scenic view from Mount Philo Road and from Mount Philo summit. The potential impact on Mount Philo Inn, as an historic structure, is also a consideration.
9. The applicant stated at the Planning Commission hearing that he is attempting to conserve the remainder of Parcel A-1, and members of the Charlotte Land Trust have indicated that the land trust is assisting with funding applications, although the outcome is not certain.
10. The applicant stated at the Planning Commission hearing that if funding is not available to conserve the remainder of Parcel A-1, another option would be to retain development rights on the remainder (except for the proposed building envelope), and conserve the development rights as part of a non-contiguous PRD application [via Section 8.4(F) of the Charlotte Land Use Regulations].
11. The proposed building envelope is located on the statewide agricultural soils, which would normally be a significant concern. However the proposed envelope minimizes the impact on agricultural soils by being sited at the edge, i.e. near Mount Philo Road, in the vicinity of other dwellings. The impact may also be mitigated as well by the future conservation (voluntarily) of the remainder of Parcel A-1.
12. The building envelope has been reduced in size in response to the Planning Commission's concerns expressed at Sketch Plan Review.
13. Notwithstanding Finding 12, the size of the dwelling on Parcel A-1 could create a significant adverse impact on the scenic quality along Mount Philo Road.
14. The neighborhood consists of dwellings of various sizes, and also includes the Mount Philo Inn. The Lister's Office indicates sizes of the dwellings (measured by heated space) on neighboring properties as follows:
 - ∃ 5631 Mount Philo Road = 1,996 square feet

- ⊖ 5654 Mount Philo Road = 1,354 square feet
 - ⊖ 5655 Mount Philo Road = 2,108 square feet
 - ⊖ 5780 Mount Philo Road = 2,912 square feet
 - ⊖ 5807 Mount Philo Road = 1,063 square feet
 - ⊖ 27 Inn Road (the Mount Philo Inn) = 7,112 square feet
 - ⊖ 30 Inn Road = 2,570 square feet
 - ⊖ 95 Inn Road = 3,900 square feet
15. The dwelling on Parcel A-1A was recently constructed, so the Lister's Office does not have data on the dwelling. According to the Zoning Permit Application, the gross size of the structure on Parcel A-1A, including garage, porches and decks, is 3,927 square feet.
 16. In order to allow a new dwelling on Parcel A-1 to fit with the character of the neighborhood and to minimize the adverse impact on the scenic quality along Mount Philo Road, a size limit for the dwelling on Parcel A-1 is appropriate.
 17. The applicant has obtained a Highway Access Permit (HAP-06-04) from the Selectboard—which required the curb-cut be moved 25-50 feet to the north of where it was originally proposed. The plat submitted with this application does not account for this condition.
 18. The Town's wastewater consultant reviewed the application in memos dated 6/26/06 and 7/31/06. The memos indicate that the system is approvable in terms of its meeting the technical requirements of the Charlotte Sewage Ordinance and the Vermont Environmental Protection Rules.
 19. The pump station and pre-treatment system are located in the middle of the agricultural field on Parcel A-1.
 20. If a service road were to be needed to maintain the pump station and pre-treatment system it would negatively impact the agricultural and scenic resources. The applicant stated at the Planning Commission hearing on November 16th that a service road is not needed for this purpose.
 21. Condition #13 of PC-05-14 states "Prior to any development of Lot A-1, a Subdivision Amendment will be required for which, at a minimum, access, wastewater disposal, and a building envelope will be reviewed."
 22. During mediation, the applicants acknowledged that the pump station and pre-treatment system located on Lot A-1 were installed prior to obtaining final approval from the Planning Commission for Subdivision Amendment (#PC-06-19).
 23. During mediation, the applicant stated that moving the pump station and pre-treatment system would cost approximately \$25,000.
 24. The Planning Commission found that the location of the pump station and pre-treatment system are an undue adverse impact, since they create an obstruction within the field that is to be conserved for agricultural use and will negatively impact the scenic view from Mount Philo and Mount Philo Road, and they could be located in such a way as to have less impacts on these resources. However in mediation, the Town agreed to allow the pump station and pre-treatment system to remain in place as located and installed.
 25. During mediation, the Town and the applicant agreed to revised conditions of approval, as stated below.

Decision

Based on the above Findings and the agreement and the stipulation of the parties to the above-referenced appeal, the Final Plat Application for the proposed Subdivision Amendment is **APPROVED** with the following conditions:

1. The subdivision plat will be amended so that the proposed curb-cut to Parcel A-1 will be depicted as required by HAP-06-04.
2. Two paper copies (one full size and one 11" x 17") and a mylar (18" x 24") of the plat, as amended in accordance with Condition #1 above, will be submitted to the Planning Commission for review within 160 days; the Planning Commission will sign the mylar provided that conditions set forth in Condition #3 below have been met; the applicant will record the mylar of the plat in the Charlotte Land Records within 180 days.
3. Prior to the submission of the mylar in accordance with Condition #2 above, the following will occur:
 - A. The applicant will obtain the appropriate wastewater disposal permit from the State;
 - B. The applicant shall submit a letter from the surveyor indicating that he has set the survey pins in the field as indicated on the survey;
 - C. The Sewage Service Agreement, Waiver and Easement will be submitted to the Selectboard for approval. Once approved the document will be executed by the applicant and the Selectboard Chair and recorded in the Charlotte Land Records;
 - D. The Shared Septic System Easement, Maintenance and Operation Agreement will be executed by the parties in the same approximate form as it was submitted, with corrections only for any technical deficiencies, and recorded in the Charlotte Land Records.
 - E. The applicant will make a donation of \$2,500.00 to the Charlotte Land Trust.
4. Prior to the submission of a Zoning Permit application for Parcel A-1, wooden stakes will be set at the corners of the building envelope on that lot.
5. No dwelling unit or accessory structure except those exempt from zoning permits will be constructed outside of the building envelope for Parcel A-1 as depicted on the plat.
6. The principal dwelling and any attached accessory dwelling on Parcel A-1 shall have not more than 4,000 square feet (total) of above grade interior living space, and shall be designed so that there is not one continuous roof ridge line. *Interior living space* shall include any enclosed living and home office areas, enclosed porches and decks. *Above grade interior living space* will not include basements, unoccupied garages, barns, sheds, open porches, open decks, open patios, etc.
7. A total of 1,200 square feet of above grade interior living space (as defined in Condition 6) shall be allowed in a detached accessory structure or structures on Parcel A-1 with appropriate permits. All detached accessory structures with above grade interior living space shall be located at least 50 feet from the principal dwelling and any attached accessory dwelling.
8. All buildings within the building envelope on Parcel A-1 shall have earth tone exterior finishes (excluding window cladding) intended to blend in with the surroundings to the greatest extent practical.
9. 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.
10. All new utility lines will be underground.
11. The driveway shall be surfaced with non-white crushed stone.
12. The Planning Commission did not require open space to be designated at this

time, however any future subdivision of Parcel A-1 will require the designation of open space as provided for in Sections 8.4 (C) and 8.6 of the Charlotte Land Use Regulations (or succeeding town regulations in effect).

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.

Members Present at the Public Hearing on August 3: Jeff McDonald, Jim Donovan, Linda Radimer, Robin Pierce, and Andrew Thurber.

Members Present at the Public Hearing on August 17: Jeff McDonald, Jim Donovan, Robin Pierce, John Owen, Peter Joslin and Andrew Thurber.

Members Present at the Public Hearing on November 16: Jeff McDonald, Jim Donovan, Linda Radimer, Robin Pierce, John Owen, Peter Joslin and Andrew Thurber.

APPENDIX A

The application consisted of:

1. An application form and appropriate fee.
2. A document entitled "Subdivision Application Requirements and Waiver Requests, Mount Philo Final Plan For Subdivision Modification, Clark Hinsdale Jr., June 20, 2006."
3. A survey by Stuart J. Morrow entitled "Final Plat, Subdivision Modification, Properties of Clark W. Hinsdale Jr. and Lori Racha and Damon Silverman, Charlotte, Vermont" dated December, 2004, last revised 3/22/06.
4. A draft document entitled "Shared Septic System Easement, Maintenance and Operation Agreement."
5. A draft document entitled "Sewage Service Agreement, Waiver and Easement."
6. (Submitted with Septic Permit application 06-18-S) Sewage disposal plans including the following:
 - A. A plan by Civil Engineering Associates, Inc. entitled "Clark W. Hinsdale Jr., Proposed Wastewater System, Mount Philo Road, Charlotte, Vermont, Overall Site Plan Lots A-1 & A-1A, Drawing # C1" dated September, 2005, revised 6/6/06.
 - B. A plan by Civil Engineering Associates, Inc. entitled "Clark W. Hinsdale Jr., Proposed Wastewater System, Mount Philo Road, Charlotte, Vermont, Wastewater Site Plan Lots A-1 & A-1A, Drawing # C2 dated September, 2005, revised 6/6/06.
 - C. A sheet by Civil Engineering Associates, Inc. entitled "Clark W. Hinsdale Jr., Proposed Wastewater System, Mount Philo Road, Charlotte, Vermont, Wastewater Details Lots A-1 & A-1A, Drawing # C3" dated September, 2005, revised 6/6/06.
 - D. A sheet by Civil Engineering Associates, Inc. entitled "Clark W. Hinsdale Jr., Proposed Wastewater System, Mount Philo Road, Charlotte, Vermont, Wastewater Details Lots A-1 & A-1A, Drawing # C4" dated September, 2005, revised 6/6/06.

