

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

David Schermerhorn Trust

**Final Plan Application
For A
Four-Lot Subdivision
Planned Residential Development
Application # PC-08-06**

Background

Sketch Plan Review was held on June 15, 2006, and the Preliminary Hearing was held on July 19 and August 2, which resulted in a Preliminary Findings of Fact and Decision issued on September 13, 2007.

Application

Materials submitted with the application are listed in Appendix A.

Public Hearing

A public hearing for this application was held on April 17, 2008. David Schermerhorn, Sue Schermerhorn, and Peter DeGraff were present representing the applicant. No adjoining property owners were present or participated in the hearing.

Regulations in Effect

Town Plan adopted March, 2008

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 has proposed to create four lots from a 69.31 acre parcel. Lot 1 is to be 26.88 acres and is to include the existing dwelling and adjacent structures which are used for a horse boarding stable; Lot 2 is to be a building lot of 35.35 acres; Lot 3 is to be a building lot of 3.25 acres; and Lot 4 is to be a building lot of 3.83 acres.
2. The subject parcel includes or is adjacent to the following *areas of high public value*:
 - A. Land in active agricultural use: The property is operated by the owner as a horse farm. The adjoining property to the northeast is operated as a dairy farm.
 - B. Prime and statewide soils: There is a small pocket of prime agricultural soil near Church Hill Road and statewide agricultural soils on much of the rest of the parcel (from VCGI data);
 - C. Steep slopes (equal to or in excess of 15%) are located on the parcel near Church

Hill Road, and along the west side of proposed Lot 1 (from the applicant and VCGI data);

- D. Surface water: The applicant has field delineated the wetland on the southern and northwest portion of Lot 2 and the eastern portions of Lots 3 and 4. The Town’s Conservation District (a zoning district) is a 200 foot-wide strip that runs along the McCabe Brook headwater stream. Additionally, there are three ponds located on the parcel, one near Church Hill Road and two on Hinesburg Road. The two ponds on Hinesburg Road have dry hydrants for fire protection.
 - E. Forest and Associated Support Wildlife Habitat is on the subject parcel, and a Major Wildlife Linkage is adjacent to the northeast portion of the parcel, all as indicated on Map 6 of the Town Plan .
 - F. Water supply source projection area for the Charlotte Central School’s drilled well is 1,000 feet from the well, and includes a portion of the applicant’s parcel (from the application and Town records);
 - G. Historic District—the “Charlotte Center Historic District,” which is located at the intersection of Church Hill Road and Hinesburg Road, is in the State Historic Register, and also may be in the National Register of Historic Places (from Town and State data);
 - H. Conserved Land— 11.5 acres on the east side of the applicant’s parcel (adjacent to the Foote farm) is conserved with the Vermont Land Trust—this was not conserved as part of a subdivision. The Foote farm (to the east of the applicant’s parcel) is also conserved with the Vermont Land Trust. (From Town records and the applicant’s testimony). Open space on the Schneider/Donavan project is located on the south side of Hinesburg Road across from the subject parcel (from Town records).
3. Considering the resources on the parcel, the Planning Commission finds that the following are the most important *areas of high public value* on the parcel (not necessarily in order of priority): the agricultural operation, primary agricultural soils, wetland and the associated buffer, McCabe’s Brook headwater stream, forested wildlife habitat and the water supply source protection area. These are the resources that most strongly characterize the property, and which the Planning Commission feels are most important to protect.
 4. As proposed, the project will impact the following *areas of high public value*:
 - A. Lot 2 will impact the agricultural operation (although there is a potential that Lot 2 could still be used for agricultural purposes), statewide agricultural soils, wetland and wetland buffer, and forested wildlife habitat.
 - B. Lots 3 and 4 will impact prime agricultural soils, wetland and wetland buffer and steep slopes.
 5. The applicant has proposed two “open space areas” which will be designated as “no build” areas:
 - A 7.4 acre area which encompasses the northwest portion of Lot 2 and the easterly portions of Lots 3 and 4. This designation will protect the hayfield on Lots 2 and 3, and the pond and wetland on Lots 3 and 4.
 - A 15.95 acre area which includes the western portion of Lot 1 and the eastern portion of Lot 2. The purpose of this open space is to keep undeveloped an area that is used for the agricultural operation and is also an important wildlife corridor associated with

McCabe's Brook. This area also borders the conserved Foote farm.

6. The project will therefore result in 23.35 acres of new open space, which is 34% of the parcel. With the 11.5 acres that have already been conserved, the total area designated as open space will be 50% of the parcel.
7. The Planning Commission finds the proposed open space to be appropriately sized and configured to protect *areas of high public value* to a degree that is commensurate with the intensity of the proposed development. The "no build" areas will retain their density, but no structures will be allowed within these areas. The use of "no build" designation rather than a conservation easement is acceptable considering the application proposes considerably less than the zoning density allows.
8. The plat includes a proposed density allocation chart, which indicates the following: of the 69.31 acres, 11.5 acres have already been conserved, and the four proposed lots will utilize 20 acres of density; therefore, 37.8 acres of density will remain. At five acres per dwelling or lot, 37.8 acres could be used to create seven additional dwellings or lots. The chart on the plat divides the allocation of this remaining density, with four dwellings or lots to be associated with Lot 1 and three dwellings or lots to be associated with Lot 2.
9. The Planning Commission finds the proposed density allocation is acceptable. Allocating all seven units of remaining density to either Lot 1 or Lot 2 would likely not be a feasible master plan considering the limitations on both lots.
10. The project proposes three access points—the Lot 1 driveway (which is existing and serves the existing dwelling), the proposed driveway for Lot 2, and the proposed shared driveway for Lots 3 and 4. The Land Use Regulations support minimizing the number of curb-cuts. The fact that the application proposes three access points is a result of the hilly topography and also the relatively dispersed configuration of the lots.
11. The applicant has obtained Highway Access Permits for the two proposed curb-cuts (HAP-07-01 & HAP-07-02).
12. The proposed driveway for Lot 2 (from Hinesburg Road) will cross a Class II wetland. The applicant has obtained a Conditional Use Determination from the State for the wetland impacts created by the driveway on Lot 2. The CUD application indicates the driveway will have a 10-foot wide travel width and a 12-foot base width through the wetland and buffer.
13. The proposed 10 foot wide driveway for Lot 2 is less than the 14 foot standard within the Recommended Standards for Developments and Homes (adopted by the Planning Commission September 2, 1997), which was created to allow tanker trucks to pass each other in the event water shuttling is needed during a fire. However, the applicant stated at the hearing that a permit condition would be acceptable which requires the installation of a sprinkler system in the dwelling that will be built on Lot 2. The Charlotte Fire Chief has indicated that sprinkler systems are acceptable alternatives to the road and driveway width standards.
14. The CUD application indicates the force mains for Lots 3 and 4 will be installed in one trench. This will require coordination between lot owners during construction.
15. The proposed finish grade of the driveways for Lots 3 and 4 is less than 8%, which complies with the Recommended Standards for Developments and Homes; obtaining these grades will require significant fill, but will not require blasting or excavating.
16. The Town's wastewater consultant has reviewed the wastewater disposal plans, and issued a memo dated 7/16/07 and a second undated memo which indicate that the

wastewater disposal plans are acceptable.

17. As depicted on Sheet 2 in the packet of plans by Otter Creek Engineering and as stated by the applicant at the hearing, utility lines are proposed to be installed over Church Hill Road and Hinesburg Road. The Planning Commission notes that in Section 5.8.12 of the Town Plan, policies #1 and #4 indicate that utility lines, including those that “feed” subdivisions, should be located underground. Additionally Section 7.5(C)(1) of the Land Use Regulations states “all utility lines connecting to and within the subdivision, including but not limited to electric, gas, telephone, and cable television, shall be located underground.” Considering these provisions in the Town Plan and Land Use Regulations, the Planning Commission will require undergrounding of the utility lines, as indicated in the conditions below.
18. The plat submitted with the application shows a building envelope for Lot 2 that includes most of the lot that is not to be designated as “open space” or septic area. The building envelope includes the central portion of the lot which is suitable for agriculture, and the northeast portion of the lot which has forested wildlife habitat and is adjacent to both a major wildlife linkage and conserved farmland on the adjacent parcel. As proposed, this building envelope will create undue adverse impact on the noted *areas of high public value*; it is noted that there is considerable area on Lot 2 for creating a building envelope that would not have such adverse impacts.
19. Although siting a building envelope on the northeast portion of the parcel would result in the least agricultural and scenic impacts, if the lot were to be used for a stand-alone agricultural operation, the likelihood is that agricultural structures would be located directly adjacent to the farm fields—so agricultural land would be impacted anyway. So siting the building envelope in the northeast portion of the lot would result in impacting the wildlife resources without reducing impacts on the agricultural resources.
20. A revised building envelope for Lot 2 was sketched at the hearing—this revision would reduce the prospective impact on both the agricultural and wildlife resources.
21. The Planning Commission indicated at the hearing that, were a future application to provide sufficient rationale for moving the building envelope on Lot 2 in a manner that is compatible with the Town Plan and Land Use Regulations in effect at that time, the relocation of the building envelope could be reconsidered in the future. Also, a future proposal for subdividing Lot 2 would not be limited to the building envelope created during the current review.
22. Except as noted in Findings 17 and 18, the design of the project has minimized impacts on areas of *high public value* by clustering Lot 3 and Lot 4 in the northwest corner of the parcel and by designating appropriated sized and sited “open space areas.”
23. The Planning Commission finds that the proposed development, with revisions as indicated below, has minimized the impact on areas of high public value and will not create undue adverse impacts.

Decision

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

1. The survey plat by Stuart J. Morrow will be revised to depict the building envelope for

- Lot 2 approximately as it was sketched at the final hearing.
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 herein 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.
 3. Prior to the submission of the mylar in accordance with Condition #2 above, the applicant will do the following:
 - A. Submit a letter from the surveyor indicating he has set the survey pins in the field as indicated on the survey.
 - B. Obtain, execute and record a License Agreement as required by Condition #7 below.
 4. Warranty deeds for Lots 2, 3 and 4 will be amended as follows:
 - A. Deeds for Lots 2, 3 and 4 will include a reference to the Conditional Use Determination 2006-176.
 - B. Deeds for Lots 3 and 4 will include a reimbursement provision for the construction of shared infrastructure in the event that the lots are purchased and developed separately. The provision will enable the buyer that first builds on either of Lot 3 or 4 to construct the shared driveway, install both force mains in one trench, and install underground utility lines within a shared sleeve, and obtain a pro-rated reimbursement from the buyer who subsequently builds on the other lot.
 5. Prior to the submission of zoning permit applications for each of Lots 2, 3 and 4, wooden stakes will be set at the corners of the building envelope on each of those lots.
 6. The driveway for Lot 2 may be constructed narrower than the 14 foot wide standard; however the dwelling on Lot 2 will have a residential fire sprinkler system designed to the 13-R standard. The sprinkler system shall be able to maintain an acceptable flow rate for residential fire loads for the occupied spaces for a minimum of 20 minutes, or for the time specified under the 13-R standard, whichever is greater. It is the responsibility of the homeowner to ensure their sprinkler system is maintained and operational at all times.
 7. All new utility lines will be underground, including those that are to cross town highways. The applicant will obtain a License Agreement from the Selectboard for underground utility lines that are to be located within the town right-of-way. A boilerplate License Agreement can be provided by the Town.
 8. 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, and will not direct light onto adjacent properties or roads, and will not result in excessive lighting levels that are uncharacteristic of the neighborhood.
 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 March 20: John Owen, Peter Joslin, Ellie Russell and Robin Pierce

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 document from Otter Creek Engineering entitled “David Schermerhorn Trust, Church Hill Road Subdivision, Charlotte, Vermont, Final Subdivision Application, Responses to Charlotte Land Use Regulations-Table 6.2”
- 3. A list of property abutters.
- 4. Wastewater System and Potable Water Supply Permit WW-4-2838.
- 5. Conditional Use Determination #2006-176 for wetland impacts.
- 6. A survey by Stuart J. Morrow entitled “Final Plat Major Subdivision, Property of David G. Schermerhorn Revocable Trust, Charlotte, Vermont” dated January, 2008, no revisions.
- 7. A packet by Otter Creek Engineering, Inc. entitled “David Schermerhorn, Church Hill Road Subdivision, Charlotte, Vermont” with the following sheets:
 - A. Sheet 1 entitled “Overall Subdivision Plan and Index Sheet” dated 1/23/07, last revised 2/14/08.
 - B. Sheet 2 entitled “Site Plan” dated 1/23/07, last revised 3/4/08.
 - C. Sheet 3 entitled “Site Plan” dated 1/23/07, last revised 1/31/08.
 - D. Sheet 4 entitled “Site Plan” dated 1/23/07, last revised 3/4/08.

- E. Sheet 5 entitled "Site Plan and Profile" dated 1/23/07, no revisions.
 - F. Sheet 6 entitled "Sanitary Sewer Profile" dated 1/23/07, last revised 1/31/08.
 - G. Sheet 7 entitled "Sanitary Sewer Profile" dated 1/23/07, last revised 1/31/08.
 - H. Sheet 8 entitled "Notes and Details" dated 1/23/07, no revisions.
 - I. Sheet 9 entitled "Notes and Details" dated 1/23/07, no revisions.
8. A sheet by Otter Creek Engineering, Inc. entitled "David Schermerhorn-Charlotte, Vermont, Lot 3 Drive Profile" dated 2/28/07, no revisions.
 9. A sheet by Otter Creek Engineering, Inc. entitled "David Schermerhorn-Charlotte, Vermont, Lot 4 Drive Profile" dated 2/28/07, no revisions.
 10. Draft warranty deeds for Lot 2, Lot 3 and Lot 4.