

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

Samuel W. and Priscilla L. Spear Revocable Trust

**Preliminary Plan Application
For A
Two Lot Subdivision
Application # PC-09-25**

Background

The subject parcel was created by a subdivision (PC-05-53) approved on February 13, 2006. Sketch Plan Review for the current subdivision was held on July 16 and August 20, 2009. The project was classified as a Major Subdivision because it will create four lots from a parcel within a ten year period.

Application

Materials submitted with the applications are listed in Appendix A.

Public Hearing

A public hearing for this application was held on November 19, 2009. Samuel Spear and Michael Spear were present representing the applicant. Gordon Troy and Andrew Thurber, both adjoining property owners, were present and participated in the hearing. No other interested parties were present or made written submissions.

Regulations in Effect

Town Plan, amended March, 2008

Land Use Regulations adopted March, 2009.

Recommended Standards for Developments and Homes adopted September, 1997

Findings

Background

1. The applicant owns a 124 acre parcel of land in the Rural District, which has frontage on both Lake Road and Ferry Road. The parcel was created by a three-lot subdivision approved in 2006 (PC-05-53), for which the parcel was labeled "Lot 3." The parcel currently has no improvements or development.
2. The application proposes to create two lots, labeled Lot 3 and Lot 4 on the proposed plat. Lot 3 is proposed to be 85.2 acres and Lot 4 is proposed to be 38.8 acres.

Areas of High Public Value—Sections 7.2 and 7.3

3. The parcel includes or is adjacent to the following areas of high public value:
 - A. Land in active agricultural use: The northwestern portion of the parcel, which

consists of the western portion of proposed Lot 3, is currently used for agriculture—it is leased to a local dairy farmer for corn and hay production. (from observation and applicant’s testimony)

- B. Primary agricultural soils: The parcel includes large areas with prime and statewide soils. There are a few pockets of soils that don’t qualify as either statewide or prime. (from NRCS data)
 - C. Surface waters, wetlands and associated setbacks and buffer areas: There are a few wetlands on the parcel. Those along the eastern and western boundaries of the parcel are smaller and probably Class 3; those on the southern portion of the parcel are larger and may be Class 2. (from Town Plan map 7)
 - D. Wildlife habitat: Town Plan map 6 indicates forested habitat on the southern portion of the parcel and along the hedgerow on the western boundary; associated support habitat along the eastern portion of the parcel; and a linkage on the northwest boundary. (from Town Plan map 6)
 - E. Scenic views and vistas: A portion of Lake Road is classified as “most scenic road” on map 13 of the Town Plan. (from Town Plan map 13)
 - F. Conserved land: An adjoining parcel to the southeast (the Mack farm) has been conserved via a Grant of Development Rights to the Vermont Land Trust, the Vermont Department of Agriculture, Food and Markets, and the Vermont Housing and Conservation Board. A town trail easement is located on the parcel on the east side of Lake Road. (from town land records)
4. Considering the resources on and adjacent to this parcel, the Planning Commission finds that the following are the most important areas of high public value: the land in active agricultural use, which includes some of the land with prime agricultural soils; and the forested wildlife habitat on the southern portion of the parcel. These are prioritized resources that most strongly characterize the property, and which the Planning Commission feels are most important to protect.
 5. The applicant indicated that development is not being proposed at this time on Lot 3.
 6. At the hearing on November 19, the applicant and Planning Commission discussed a potential location for a building envelope on Lot 4 on the north-central portion of the lot where there is an existing clearing.
 7. The impacts of the subdivision can be evaluated by analyzing the proposed building envelope and related infrastructure on Lot 4, and areas that are not proposed to be within the open space area on Lot 3.
 8. The proposed development has the potential to impact the following areas of high public value:
 - A. A portion of the area in agricultural use on Lot 3.
 - B. Prime and statewide agricultural soils on both lots.
 - C. Class 3 wetland on Lot 3.
 - D. Forest wildlife habitat on Lot 4 and associated support wildlife habitat on both lots.
 9. Because the proposed development has the potential to impact significant amounts of areas of high public value, any future development of Lot 3 will require a subdivision amendment, which will be discussed below.

Compatibility with Agricultural Operations—Section 7.4

10. The Planning Commission finds that the building envelope on Lot 4, as discussed at the

hearing, will not impact agricultural operations. Compatibility with agricultural operations will need to be reviewed prior to development of Lot 3.

Facilities, Services & Utilities—Section 7.5

11. The Preliminary Plan Application does not include a driveway plan.

Water Supply—Section 7.6

12. The application did not include information for Lot 4.

Sewage Disposal—Section 7.7

13. The application proposes one septic system for Lot 4, and requests a deferral for providing a septic design for Lot 3.

14. The Town's consultant issued a memo dated 9/28/09 which indicates that soils on Lot #4 have sufficient capacity for a mound that can serve one two-bedroom dwelling and one three-bedroom dwelling; however, the design was not submitted with the Preliminary Plan Application. The applicant has not submitted complete soil test pit information for Lot 3.

15. Easements, a sewage waiver agreement, and a maintenance agreement will be needed for the lots using the shared system. The application includes draft documents.

Stormwater Management & Erosion Control—Section 7.8

16. This criterion does not require consideration for the development as proposed.

Landscaping and Screening—Section 7.9

17. This criterion does not require consideration for the development of Lot 4.

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

18. At the hearing on November 19, the applicant stated that separate accesses are proposed for each lot.

19. At the hearing on November 19, the applicant indicated that the desired location for the access on Lot 4 is on the northern portion of Lot 4.

20. The Planning Commission preliminarily finds that separate accesses may be used for Lots 3 and 4. Although shared accesses are preferred, the combined frontage of Lots 3 and 4 on Lake Road is approximately 2,000 feet, which can reasonably accommodate two accesses without creating adverse impacts to areas of high public value. Final locations of the accesses for both lots will need further review by the Planning Commission, and will also need Highway Access Permits from the Selectboard.

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

21. Section 8.2(B)(1) of the Charlotte Land Use Regulations indicates that the planned residential development (PRD) provisions shall be applied to all major subdivisions.

22. One of the PRD provisions is a requirement, under Section 8.4(C)(1), to designate at least 50% of the parcel as open space. 50% of the parcel equals 62 acres.

23. The application proposes open space be designated on portions of both Lot 3 and Lot 4.

24. The proposed open space on Lot 3 encompasses 50 acres and includes much of the area that is in agricultural use.

25. The plat indicates two options for the configuration of the open space on Lot 4. One option for open space on Lot 4 (called here "Option 1") splits 13.87 acres of open space

between the western and eastern ends of Lot 4. The other option for open space on Lot 4 (called here "Option 2") creates 12.57 acres of open space in one block on the western end of Parcel 4. Both options provide the required number of acres of open space.

26. The Planning Commission finds that Option 2 protects more contiguous forested wildlife habitat and wetland than Option 1, and also creates a larger corridor in conjunction with the proposed open space on Lot 3; and therefore Option 2 is the preferable option.
27. Since the applicant has indicated that the Final Plan Application will not include a proposed building envelope on Lot 3, the Final Plan Decision is likely to include a condition that prior to any development on either lot, an application for a Subdivision Amendment will need to be submitted to the Planning Commission.
28. The Planning Commission finds that it is reasonably likely that development could be sited on Lot 3 in a manner that does not create an undue adverse impact on areas of high public value located on or in the vicinity of the parcel. Some additional information is needed for the deferral of a septic design as described below.
29. Additional information is needed for Lot 4, as described below.

Decision

Based on these Findings, the Planning Commission approves the Preliminary Plan Application for the proposed Subdivision with the following conditions:

1. All plans submitted with the Final Plan Application that are revised from the Preliminary Plat Application will include a revision date.
2. Prior to submitting the Final Plat Application, the applicant will:
 - A. Provide a preliminary review of the proposed open space plan to the Charlotte Selectboard.
 - B. Obtain a Highway Access Permit from the Selectboard for the proposed access on Lot 4.
3. The Final Plat Application will include:
 - A. A final plat with:
 - i. A building envelope on Lot 4 approximately one acre in size and centered on the existing cleared area, with dimensions and distance measurements to the two nearest lot lines.
 - ii. Designated open space areas drawn by the surveyor and including distance and acreage measurements.
 - iii. The proposed access.
 - B. A driveway plan with width and cross-section. This may be included on the plat or it may be a separate plan.
 - C. Complete soil test pit information for Lot 3 and a complete water and wastewater disposal plan for Lot 4.
 - D. A draft Open Space Agreement (a boilerplate can be provided by the Town).

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 November 17, 2009: Jim Donovan, Linda Radimer, Peter Joslin, Ellie Russell, John Owen

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 in association with the application:

- 1. A Preliminary Plan application form and the appropriate fee for an eight-lot subdivision.
- 2. A letter dated September 15, 2009 from Sam Spear to Charlotte Planning Commission.
- 3. A letter dated September 21, 2009 from Sam Spear to Charlotte Planning Commission.
- 4. A survey by Ronald L. LaRose entitled "Plat Showing a subdivision of lands of Samuel & Priscilla Spear, Lake Road & Ferry Road, Charlotte, Chittenden County, Vermont" dated August 18, 2008, no revisions, with hand drawn open space areas depicted.
- 5. A plan by Lincoln Applied Geology, Inc. entitled "Samuel & Priscilla Spear, 1503 Ferry Road, Charlotte, Vermont, Site Plan" dated 9/21/05, no revisions.
- 6. A sheet labeled "Depth to Water Below Grade" with monitoring results for 14 data points on 25 dates.
- 7. A graph entitled "Spear Property Spring Water Level Monitoring Data."
- 8. A detail sheet entitled "Samuel & Priscilla SpearProperty (sic), Charlotte, Vermont, Ground Water Monitoring Well Detail."
- 9. A soil log for 10 test pits labeled "Samuel & Priscilla Spear, Performed 8/15/05 by Jamey Holstein, Spencer Harris, Town of Charlotte Sewage Officer, in Attendance."

10. A letter dated March 9, 2006 from Tom P. Kilbourn of Lincoln Applied Geology to Dolores M. LaRiviere, Vermont Department of Environmental Conservation regarding “M-4-06-8; Monitoring proposal for Priscilla and Samuel Spear property located on Ferry Road, Charlotte, VT.”
11. A letter dated November 30, 2006 from Steven LaRosa of Lincoln Applied Geology to Dolores M. LaRiviere, Vermont Department of Environmental Conservation regarding “M-4-06-8-Ground Water Level Monitoring Results for Priscilla and Samuel Spear Property.”