

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

Clark Hinsdale, III and Suzanne Hinsdale

Preliminary Plan Application

For A

Five Lot, Eight Unit Planned Residential Development

Subdivision Involving Two Parcels

Application # PC-09-28

Background

Sketch Plan Review for the proposed subdivision was held on February 5 and February 19, 2009. The project was classified as a Major Subdivision and Planned Residential Development.

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. Clark Hinsdale, III and David Miskell were present representing the applicant. James Greenway, an adjoining property owner, and Sylvia Sprigg, a nearby property owner, and Margaret Russell and John Limanek of the Trails Committee participated in the hearing. Mark Lyons, an adjoining property owner, was present but did not participate 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 27.96 acre parcel of land on State Park Road and a 53.82 acre parcel of land on East Thompson's Point Road.
2. The parcel on State Park Road was most recently reconfigured by a Subdivision Modification in 2003, which reduced its size from 83.5 acres to 27.96 acres.
3. The parcel on East Thompson's Point Road was most recently reconfigured by a Subdivision Modification in 2005, which separated Lot 2 into Lot 2A and Lot 2B. Lot 2B is involved with the current application. It is 53.82 acres, but has 22.75 acres of density associated with it (as noted in Finding 14 of PC-05-37), since portions of the parcel have been conserved.
4. The application proposes to create five lots out of the parcel on State Park Road. Lot 1 is

proposed to include the existing dwelling. Lots 2, 3 and 4 are proposed as building lots for single family dwellings; Lot 3 is proposed to also include an existing barn. Lot 5 is proposed to receive fifteen acres of density from the parcel on East Thompson's Point Road, which would allow a total of four dwelling units to be developed on Lot 5 or on lots created out of Lot 5.

5. The application indicates that the project is to be developed in two phases. The first phase is to include an application for Final Plan Approval to create Lots 1-5, which will allow these lots to be separately conveyed and which will also allow Lots 2, 3 and 4 to be developed with single family dwellings (after all other necessary permits are obtained). Phase 1 also includes the transfer of the fifteen acres of density from the East Thompson's Point Road parcel to Lot 5. The second phase is to include the further subdivision and/or development of Lot 5 to create four dwelling units on Lot 5 or on lots created from Lot 5.
6. The phasing of the project was proposed by the applicant; it is not a requirement of the Town.

Applicable standards in Chapter VII of the Charlotte Land Use Regulations are reviewed below in Findings 7-37.

Areas of High Public Value—Sections 7.2 and 7.3

7. The parcel on State Park Road includes or is adjacent to the following areas of high public value:
 - A. Land in active agricultural use: the parcel has been associated with agricultural activity on adjacent parcels, and includes a barn; but it is somewhat small for a stand-alone agricultural parcel. The adjacent parcel to the west is in active agricultural use. (from observation and applicant's testimony)
 - B. Primary agricultural soils: the parcel includes statewide soils as well as some soils that don't qualify as either statewide or prime. (from NRCS data)
 - C. Surface waters, wetlands and associated setbacks and buffer areas: Kimball Brook runs through the southeast corner of the parcel, and there is wetland associated with Kimball Brook that is likely to be a Class 2 wetland, therefore a 50 foot buffer is likely to apply. (from State surface water data and Town wetland data)
 - D. Wildlife habitat: Town Plan map 6 indicates a wildlife linkage runs along Kimball Brook, and map 13 indicates a wildlife crossing where Kimball Brook crosses State Park Road. (from Town Plan)
 - E. Historic districts, sites and structures: Map 12 indicates structures along Route 7 and also structures within the Mount Philo Inn complex are considered historic sites. (from Town Plan)
 - F. Scenic views and vistas: Map 12 indicates a scenic vista from Mount Philo State Park and Mount Philo Road is classified as a "most scenic road" on map 13 of the Town Plan. (from Town Plan)
 - G. Conserved land: the adjoining parcel to the west (owned by the applicant) 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. The Melissa and Trevor Mack Trail runs through this parcel. (from town land records)
8. The parcel on East Thompson's Point Road includes or is adjacent to the following areas

of high public value:

- A. Land in active agricultural use: the western portion of the property has been farmed for many years, and appears to still be actively farmed. The eastern portion was fallow for many years, but is now back in production. (from observation and applicant's testimony)
 - B. Primary agricultural soils: the western and eastern portions of the parcel have statewide soils; the middle portion has prime soil—however this is where the wastewater disposal areas are located. (from NRCS data)
 - C. Surface waters, wetlands and associated setbacks and buffer areas: there are intermittent streams running through the parcel, and two fairly small wetland patches. (from State surface water data and Town wetland data)
 - D. Scenic views and vistas: East Thompson's Point Road is labeled a "most scenic road" on map 13 in the Town Plan. The parcel is also in view from the top of Mount Philo. (from Town Plan)
 - E. Conserved land: the eastern portion of the parcel 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. The former Laberge Farm (to the northwest) has also been conserved via a grant to the same organizations, and the field directly to the north (in the "Big Oak" subdivision) is restricted by an Open Space Agreement with the Town. Condition 17 of the Estate of Marietta J. Palmer subdivision (PC-04-20) restricted the development of Lots 1 and 2, but did not remove the density from these lots. (from land records). The applicant stated at the hearing that an additional 18 acres of this parcel will be conserved in the near future by an additional Grant of Development Rights to the Vermont Land Trust, the Vermont Department of Agriculture, Food and Markets, and the Vermont Housing and Conservation Board.
9. Considering the resources on and adjacent to the State Park Road parcel, the Planning Commission finds that the following are the most important areas of high public value: the scenic views from Mount Philo State Park and from Mount Philo Road, Kimball Brook and the associated wetland and wildlife habitat linkage, the active agricultural use on the adjacent parcel to the west, and the conserved status of that parcel. These are the resources that most strongly characterize the property, and which the Planning Commission feels are most important to protect.
 10. Considering the resources on and adjacent to the East Thompson's Point Road 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 the land with primary agricultural soils which has also been conserved, and the scenic views from East Thompson's Point Road and Mount Philo State Park. These are the resources that most strongly characterize the property, and which the Planning Commission feels are most important to protect.
 11. The proposed aggregation of density will result in eight dwelling units being located on lots created from the State Park Road parcel; it will also remove the prospect of three dwelling units being proposed on the East Thompson's Point Road parcel, leaving density for one dwelling unit on that parcel.
 12. The application includes a proposed plat for the subdivision of the State Park Road parcel. The plat indicates specific locations and building envelopes for Lots 2, 3 and 4.

13. The proposed development on Lots 2, 3 and 4 will impact the following areas of high public value:
 - A. A dwelling on Lot 2 will be visible from Mount Philo Road and the parking area and road at Mount Philo State Park. This will be an adverse impact on the exceptionally scenic views in these locations. However, one house by itself would not create an undue adverse impact in this location.
 - B. The building envelope on Lot 4 is 100 feet from Kimball Brook; although this complies with Section 3.15(A) of the Land Use Regulations (which requires a 100 foot setback from named streams), it does impact the wildlife linkage associated with Kimball Brook. Additionally, the building envelope may encroach on the 50 foot buffer that the State requires for Class 2 wetlands, which the applicant has not delineated but appears likely to be associated with the brook, and it is located right at the edge of the bank, which may be an unstable location. These impacts are unduly adverse, as the southeast boundary of the building envelope could easily be shifted westward to mitigate the impact without substantively changing the suitability, desirability or cost of development on that lot.
14. It is noted Sections 7.3 (D)(1), (2) and (3) indicate that building envelopes, lot lines, infrastructure, roads, driveways and utility corridors should not create any undue adverse impacts on areas of high public value, and that building envelopes shall be designed to minimize undue adverse impacts.
15. With the exception of the eastern edge of the building envelope on Lot 4, the Planning Commission finds that the proposed configuration of Lots 1, 2, 3 and 4 has minimized undue adverse impacts on areas of high public value.
16. The application does not indicate specific locations for future development on Lot 5.
17. The Planning Commission finds that four dwelling units can likely be located on Lot 5 in a manner that will not create undue adverse impacts on areas of high public value, assuming the addition of trees on the parcel so that it begins to blend better with the residential areas to the south and north of the property; however, development on Lot 5 will need to be reviewed according to procedures and standards within the Land Use Regulations after plans have been submitted. Requirements relating to the siting of structures and other improvements, and landscaping will likely be conditions for any approval of such development.

Compatibility with Agricultural Operations—Section 7.4

18. The Preliminary Plan Application does not specifically address the compatibility of the proposed development with the adjoining agricultural operation, which is considered an area of high public value. The applicant will be encouraged to address this issue in the Final Plan Application.

Facilities, Services & Utilities—Section 7.5

19. Phase 1 of the proposed development will result in the creation of four lots on a private road. (To clarify the use of the term “road,” the Land Use Regulations define “road” as a right of way serving three or more lots, and the E-911 Ordinance requires the naming of an access that serves three or more dwellings; however, the Fire and Rescue Recommended Standards for Developments and Homes (“Fire and Rescue Standards”) provide specifications for “driveways,” which serve 1-5 dwellings, and “access roads,” which serve six or more dwellings.)

20. For Phase 1, the access will need to be named, and it must meet the specification for “driveways” in the Fire and Rescue Standards. The Preliminary Plan Application does not indicate the width or cross-section of the existing road, and it does not provide a plan for improvement of the road, pull-offs or turn-arounds in accordance with the Fire and Rescue Standards.
21. For Phase 2, the access will likely need to meet the specification for “access road” (as indicated in the Fire and Rescue Standards) until the point where it serves five or fewer dwellings. If the access needs to be widened at the intersection with State Park Road, a Highway Access Permit will be needed.
22. For Phase 2, a fire pond and dry hydrant will be needed in accordance with Section 7.5(B) and the Fire and Rescue Standards. The proposed plat identifies a potential location for the fire pond on the southeast corner of Lot 5.
23. Utility infrastructure and associated easements were not addressed with the Preliminary Plan Application, but warrant consideration in the Final Plan Application.

Water Supply

24. The application indicates the development will be served by six drilled wells, one of which is existing.
25. The proposed well on Lot 4 is to the east of the building envelope—which means it is closer to Kimball Brook. An alternative location should be explored.
26. Lot 1 is proposed to be served by the existing well on proposed Lot 3. An easement will be required for this off-site well, and also for the shared wells serving Phase 2.
27. A maintenance agreement may be required for the shared water supplies.
28. Homeowners in the area have indicated that their wells can occasionally run dry. This concern was not raised at the Preliminary Plan Hearing, but is a situation to be considered during the review of the Final Plan Application.

Sewage Disposal

29. The application proposes one shared system to serve seven lots, and one individual system on Lot 2 serving that lot. The existing seepage bed serving the existing dwelling is proposed to be abandoned.
30. The Town’s consultant reviewed test pits in September, 2009, and indicated in a memo dated 9/14/09 that soils are suitable for a six-home community system. This would be sufficient capacity for the proposed Phase 1.
31. The Town’s consultant has not reviewed the complete Preliminary Plan Application.
32. 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

33. This criterion was not addressed with the Preliminary Plan Application, but warrants consideration in the Final Plan Application.

Landscaping and Screening

34. This criterion does not require consideration for the development of Lots 1-4.
35. This criterion will require much greater scrutiny for the development of Lot 5, as this lot is very visible from the top of Mount Philo.

Roads, Driveways & Pedestrian Access

36. This criterion does not require consideration, except as discussed under Emergency Services.

Land to be Conserved

37. This criterion will be discussed below.

The applicable standards in Chapter VIII are reviewed below in Findings 38-49.

General Standards

38. Clustering development is often the approach that is used to design development in a manner that is consistent with the goals and policies of the Town Plan. The proposed development on the State Park Road parcel does not use a “cluster” layout for Phase 1, but does use a cluster layout for Phase 2. Given that the parcel is prominent within viewsheds that are considered very scenic in the Town Plan, clustering is not appropriate on the central and northern portion of the parcel, but it is appropriate on the southwest portion of the parcel, where Phase 2 is to be located. With conditions described below, the proposed development meets the goals and policies of the Town Plan by minimizing impacts on areas of high public value.
39. The State Park Road parcel could conceivably be subdivided into five lots of at least five acres each—therefore, the proposed density of Phase 1 is appropriate.
40. The East Thompson’s Point Road parcel is restricted by grants of development rights. These restrictions create a question as to what density is left on the parcel.

Rural District Standards

41. As a Conservation Project under Section 8.4(C)(1) of the Land Use Regulations, the proposed layout does not maximize the reduction of lot sizes—however, as discussed above, such a reduction may not be appropriate for this site.
42. To determine the percentage of land that must be conserved, the combined acreage of the State Park Road parcel and the East Thompson’s Point Road parcel need to be considered. Together, they are 81.86 acres. Therefore, in accordance with Section 8.4(C)(1), 40.93 acres need to be conserved. The applicant stated at the hearing that he was in the process of donating 18 acres to add on to 21.9 acres that were previously 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. The addition of the 15 acres to be conserved via the current application result in a total of 54.9 acres, which is more than the required 50% of the total acreage of both parcels. A mechanism to conserve the 15 acres associated with the current application should be proposed with the Final Plan Application.

PRDs Involving Two or More Parcels

43. The prospective development of four dwelling units on Lot 5 (or on lots subdivided from Lot 5) is appropriate for the settlement pattern of the area, which includes some small clusters of dwellings along Windy Ridge Road, Upper Old Town Trail, and adjacent to the Mount Philo Inn complex.
44. Both parcels are in the Rural District.
45. The application does not include a proposed plat for the East Thompson’s Road parcel, as is required under Section 8.4(F)(6)(a).

46. The application does not include a draft agreement, such as a Conservation Agreement or a Grant of Development Rights that restricts the area from which density is proposed to be donated.
47. Although some clarifications are needed, as described below under Conditions, the Planning Commission finds that the proposed density aggregation is acceptable.

Other

48. The applicant is proposing to donate a trail easement in a location that has been identified by the Charlotte Trails Committee as an important linkage between Mount Philo State Park and the Melissa and Trevor Mack Trail, and also as a hazardous location for on-road pedestrian and bicycle use.
49. The Planning Commission notes that the applicant has previously proposed to transfer density to the parcel owned by Carol Aube Hinsdale in order to resolve a density violation on that property; however, at the time that proposal was made the Charlotte Land Use Regulations did not permit the aggregation of density between non-contiguous parcels. The Planning Commission further notes that, as the Land Use Regulations currently allow for the aggregation of density between non-contiguous parcels, and as there remains a density violation on the parcel owned by Carol Aube Hinsdale, it may be appropriate for one unit of density to be reserved for the purpose of addressing that violation.

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. The Final Plat Application will include the following items:
 - A. An analysis of, and possible mitigation for, incompatibility between the proposed development and the adjacent agricultural operation.
 - B. A road and driveway plan indicating widths and cross sections.
 - C. An analysis of well yields in the vicinity of the development.
 - D. An analysis of stormwater and erosion control issues.
 - E. A proposed plat for the East Thompson's Road parcel with information required by Section 8.4(F)(6)(a) of the Charlotte Land Use Regulations, and showing land that has already been conserved and land that is restricted by PC-04-20.
 - F. A draft document (such as a Conservation Agreement) that removes density from the East Thompson's Road parcel.
 - G. A proposed utility plan which depicts how power, telephone and cable will be brought to each dwelling. This may be a sketch which has been created by or reviewed by the appropriate utility companies.
 - H. A proposed location of the trail easement along State Park Road.
3. Plats and plans submitted with the Final Plan Application will depict the southeast border of the building envelope on Lot 4 at least 30 feet to the west of its location on the Preliminary Plat.
4. The proposed drilled well on Lot 4 will be located within the building envelope.

- 5. Phase 2 will require a complete application process, consisting of Sketch Plan Review, Preliminary Plan Review and Final Plan Review.
- 6. It is likely that the Findings of Fact and Decision for the Final Plan Application for Phase 1 will include a condition requiring that once density units have been transferred to Lot 5, they cannot be moved to another parcel unless all density on Lot 5 is removed simultaneously with the conserving of Lot 5.
- 7. It is likely that the Findings of Fact and Decision for the Final Plan Application for Phase 2 will include a condition requiring the planting of at least four large shade trees for each density unit aggregated onto Lot 5 prior to the development of that unit.

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 memo entitled “Subdivision Application Requirements and Waiver Requests”
3. A survey by Stuart J. Morrow entitled “Preliminary Plat, Major Subdivision, Property of Clark W. III and Suzanne G. Hinsdale, 173 State Park Road, Charlotte, Vermont” dated September, 2009, no revisions.
4. A plan by Stuart J. Morrow entitled “Preliminary Plan, Major Subdivision, Property of Clark W. III and Suzanne G. Hinsdale, 173 State Park Road, Charlotte, Vermont” dated December, 2008, no revisions.
5. A survey by Civil Engineering Associates, Inc. entitled “Subdivision Modification, Property of Suzanne Hinsdale and Clark Hinsdale III, Route 7 & Thompson’s Point Road, Charlotte, Vermont” dated July 5, 2005, last revised 10/05.
6. A plan by Lincoln Applied Geology, Inc. entitled “Hinsdale Property, State Park Road, Charlotte, Vermont, Site Plan of Proposed Subdivision with Water and Wastewater Systems” dated October, 2009, no revisions.
7. A document from Lincoln Applied Geology, Inc. entitled “Hinsdale Property, State Park Road, Charlotte, Site, Soil and Hydrogeologic Evaluation Summary, 7-Lot Mount and Lot 2 Mound.”
8. A letter from Cara Montgomery of Vermont Land Trust to Clark Hinsdale, III dated October 19, 2009 with accompanying map showing protected and excluded property.
9. A draft document entitled “Lots 1-5, Restrictive Covenants, Hinsdale Homestead Subdivision.”
10. A draft document entitled “Lots 1-5, Restrictive Covenants, Windever Farm Subdivision.”
11. A draft document entitled “Shared Septic System Easement, Construction, Maintenance and Operation Declaration of Covenants and Agreement—Windever Farm State Park Rd. 5 Lot Subdivision.”
12. A draft document entitled “Holstein Lane Shared Roadway Maintenance Agreement.”
13. A draft document entitled Sewage Service Agreement, Waiver, and Easement.”
14. A draft document entitled “Roadway Agreement and Waiver.”
15. A draft document entitled “Grant of Trail Easement.”
16. A draft document entitled “Offer of Irrevocable Dedication.”