

**CHARLOTTE PLANNING COMMISSION
FINDINGS OF FACT AND DECISION IN RE APPLICATION OF**

Clark Hinsdale, Jr. Testamentary Trust

**Application #PC-14-16 Reconsideration of the Final Plan Application (PC-13-23) for a
Boundary Adjustment for properties located on the north side of Hinesburg Road and
identified as the “Leclair Parcel” and the “Eno Lot”**

Background

On December 9, 2013, the Charlotte Planning Commission issued a decision denying the applicant’s request for a boundary adjustment as presented in application PC-13-23. On February 20, 2014, the applicant submitted a memo asking the Planning Commission to reconsider the application by asking for a remand from the Environmental Court. On March 20, 2014, the Planning Commission voted to accept a remand from the Environmental Division of the Vermont Superior Court and the matter was remanded by Judge Durkin on March 31, 2014.

Application

There was no formal application submitted nor required for this request; however, the following new materials were presented and put on record:

1. A memo from Clark Hinsdale, III dated February 20, 2014 Re: Why I Feel Ambushed By The Solar Array Boundary Adjustment Denial.
2. A memo from Clark Hinsdale, III dated May 1, 2014 and received on May 5, 2014 Re: Remand of Hinesburg Road Boundary Adjustment and including the following:
 - a. A twelve page Memorandum and a two page Description of a portion of the property involved in the boundary adjustment from Jim Ouimette, attorney for Mr. Hinsdale.
 - b. A copy of the proposed Boundary Adjustment Plat prepared by Stuart J. Morrow and dated May 1999.
3. A memo from Clark Hinsdale, III dated May 13, 2014 and received on May 14, 2014 Re: Additional Thoughts – future of 65 acres bordering the solar array.
4. An email from Elizabeth Bassett and John Pane dated May 15, 2014.
5. A ‘memorandum’ from Stephen P. Colvin, 1955 Hinesburg Road, dated May 14, 2014 and including copies of the following:
 - a. An “Exclusive Option to Purchase or Lease Real Estate” signed by Mr. Hinsdale and Thomas Hunton of American Capital Energy, Inc. on June 12, 2011.
 - b. Page 16 of the Standard Contract for Qualifying SPEED Resources entitled “Attachment B Documentation of Site Control”.
 - c. A letter from Brendan O’Shea of the State of Vermont Agency of Agriculture dated December 9, 2011.
 - d. A letter from Clark Hinsdale, III addressed to Lars Cartwright of Charlotte Solar, LLC (but with salutation to Ms. Hudson, Clerk of the Public Service Board dated January 20, 2012).
 - e. A two page Decommissioning Plan prepared by Charlotte Solar LLC and dated January 25, 2012.
 - f. A memorandum from Jay Myrto, RGS Energy to Lars Cartwright, Charlotte Solar, LLC dated January 19, 2012 Re: Decommissioning costs for Charlotte Solar Project.
 - g. The Prefiled Direct Testimony of Lars Cartwright and Jay Myrto on Behalf of Charlotte, Solar, LLC dated January 26, 2012.
6. A copy of the Certificate of Public Good dated January 22, 2013 and the Stipulation between the Town of Charlotte and Charlotte Solar, LLC dated May 30, 2012 by Charlotte Solar, LLC and June 1, 2012 by the Town of Charlotte.

Public Hearing

Public hearings for this application were held on May 15 and June 5, 2014. A site visit was also conducted on June 5, 2014. Clark Hinsdale III represented himself. The following interested parties were present and participated in the hearings: Stephen Colvin, 1955 Hinesburg Road; Peter Ker Walker, 1916 Hinesburg Road; and Ray Applegate, 1979 Hinesburg Road. A written response was received from Elizabeth Bassett.

Regulations in Effect

Town Plan, amended March, 2013

Land Use Regulations adopted November, 2010

Recommended Standards for Developments and Homes adopted September, 1997

Findings

Previously issued Findings, as set forth in the December 9, 2013 decision, related to “The Project” and the “Project Classification” were reviewed by the Planning Commission. No additional findings or modifications to findings were deemed necessary under those headings. Accordingly, those previously issued Findings (and any other findings not otherwise altered, amended or modified herein) are hereby adopted and incorporated herein by reference.

The Subdivision Review Standards and associated findings under Application PC-13-23 are presented below with additional findings from this proceeding presented in *italics*.

Section 7.1 Application of Subdivision Standards

1. 15. Lot 2 of the proposed boundary adjustment will be 65 acres. The applicant did not provide any information within the application or at the hearing with regard to the proposed use of Lot 2. Development of Lot 2 appears to be likely. **The Planning Commission finds that a master plan for the entire parcel identifying Areas of High Public Value, the general location of potential infrastructure and an estimate of the type, density and timing of future development is warranted.**

The applicant has no immediate plans for development of Lot 2 but has indicated his cursory thoughts on “three zones” created by the permitted siting of the solar array:

- *The open land between the Solar Array and Hinesburg Road (part of proposed Lot 2) is envisioned for a range of uses encouraged in village districts should this area become part of the East Charlotte Village District.¹*
- *The solar array (proposed Lot 1) is committed to energy production for the next 25 years.*
- *The wooded parcel to the north (part of proposed Lot 2) contains Areas of High Public Value and the applicant has deferred future plans on this property until there is a better understanding of these areas and how they will fit with neighboring properties and community interests.*

Section 7.2 General Standards

2. 16. Development Suitability requires that proposed projects be suitable for the intended use of the land and shall not result in undue adverse impacts, among other things, to the character of the surrounding area. Moreover, proposed projects should not have an undue adverse impact on Areas of High Public Value as described within the Regulations, among which are lands in active

¹ A portion of this Lot was considered for expansion of the Village District during an East Charlotte Village Planning Process that occurred in 2009. The Plan is conceptual and has not been incorporated into the Town Plan or the Land Use Regulations at this time.

agricultural use and with prime and statewide agricultural soils. Furthermore, the soils of the parcels under review contain both prime and statewide agricultural soils, an area of high public value defined in the Regulations. **The Planning Commission finds the configuration of the proposed boundary adjustment resulting in a 14.66 acre parcel bifurcating existing, uninterrupted actively used agricultural land with agriculture soils to be in contradiction to the standard imposed under Section 7.2.**

The newly proposed Lot 1 and portions of Lot 2 contain both prime and statewide agricultural soils. These soils are considered to be an Area of High Public Value under Charlotte's Land Use Regulations.

Under Section 6.1, Boundary Adjustments are considered a type of subdivision and as such are reviewed for undue adverse impacts to Areas of High Public Value. The following Areas of High Public Value have been identified within the project area:

- *Land in active agricultural use*
- *Primary agricultural soils (prime and statewide)*
- *Wildlife Habitat*
- *Conserved land on adjacent parcels*

3. 17. Section 7.2(C) Lot Layout, at subsection (5), irregularly shaped lots are expressly prohibited unless warranted by topography, surface waters, or to avoid the fragmentation of significant or cultural features. **The Planning Commission finds that the project will result in the creation of a lot (i.e. Lot 2) with irregular jogs and doglegs which has the result of fragmenting the otherwise uninterrupted farmland.**

7.2 (C)(5) Lot Layout

Irregularly shaped lots (e.g. with curves, jogs, doglegs; excessively rectilinear, etc.) shall not be created unless warranted by topography, surface waters, or to avoid the fragmentation of significant natural or cultural features.

Lot 2 will be an irregularly shaped lot. The creation of this irregularly shaped lot is not warranted by topography, surface waters, or to avoid the fragmentation of significant natural or cultural features.

Section 7.3 District Standards

4. 18. (A) Settlement Patterns. (1) A project shall be designed to maintain and extend traditional or planned settlement patterns, and (2) maintain contiguous tracts of open land with adjoining parcels. **The Planning Commission finds the configuration of the proposed boundary adjustment in contradiction to the standard imposed under Section 7.3 (A). The proposed boundary adjustment results in a 14.66 acre parcel that does not extend traditional settlement patterns and results in the fragmentation rather than the maintenance of contiguous tracts of open land.**

(A) Settlement Patterns

A subdivision shall be designed to achieve the purpose, objectives and intended settlement patterns of the zoning district(s) in which it is located, as defined in Chapter II and the Charlotte Town Plan. Subdivisions of land shall, to the extent feasible:

- (1) Maintain and extend traditional or planned settlement patterns, including lot areas and configurations, building locations, and road networks;*
- (2) Maintain contiguous tracts of open lands with adjoining parcels, including but not*

necessarily limited to Areas of High Public Value as defined under Subsection 7.2(A); and
(3) *Connect with and extend existing roads, trails, and utility corridors.*

The proposed lot area and configuration does not serve to maintain or effectively extend traditional or planned settlement patterns. Moreover, it disrupts effective future planning for this area through the impractical parcelization of Areas of High Public Value – primary agricultural soils and lands in active agricultural use.

5. 19. (D) Rural Zoning District (2) Lot lines shall be located so as to not create adverse impacts on Areas of High Public Value by the parcelization, fragmentation, isolation, or destruction of such areas. **The Planning Commission finds the configuration of the proposed boundary adjustment in contradiction to the standard imposed under Section 7.3 (D). The proposed boundary adjustment fragments the actively used agricultural land and creates an isolated parcel out of character with the surrounding area.**

(D) Rural, Shoreland & Conservation Districts

Within the Rural, Shoreland and Conservation Districts, all subdivisions and associated site development shall be designed and reviewed according to the following standards:

- (2) Lot lines, infrastructure, and roads, driveways and utility corridors shall be located so as not to create any undue adverse impacts on Areas of High Public Value by the parcelization, fragmentation, isolation, or destruction of such areas.*
- (3) Roads, driveways and utility corridors, to the extent feasible shall be shared, and located to follow existing linear site features such as existing roads and utility corridors, tree lines, or field edges, and to avoid creating undue adverse impacts by fragmenting Areas of High Public Value.*
- (4) Areas of High Public Value should be identified and considered for inclusion as designated open space on the subdivision plat. Buffer areas, management plans, conservation easements, restrictions on further subdivision, or comparable site protection mechanisms and mitigation measures may be required to ensure the long-term conservation of these areas.*
- (5) Clustering of development, including the creation of lots with an area less than the minimum lot size for the district, is to be off-set with the dedication of open space. In instances in which the clustering and / or creation of small lots is needed to avoid undue adverse impacts to Areas of High Public Value, the Commission may require that the subdivision be reviewed concurrently as a planned residential development in accordance with Chapter VIII.*

There are approximately 46 acres of agricultural fields on the project site and the newly proposed Lot 1 contains 14.65 acres of those 46 acres. While a potential 30% reduction in lands dedicated to agriculture may not be considered an undue adverse impact, the configuration of the proposed Lot 1 and the associated right-of-way unduly bisects the original 46 acres.

Section 7.10 Roads, Driveways & Pedestrian Access

(B) Standards. All Subdivision intended for development must meet the road, driveway, and pedestrian access standards set forth in Section 3.2

Section 3.2 Road, Driveway and Pedestrian Access Requirements

(D) Roads and Driveways.

(2) Design.

(c) Road and driveways should be located to avoid fragmentation of and / or adverse impacts to areas of high public value listed in Table 7.1. Additionally, to the extent feasible, roads should follow

existing linear features such as utility corridors, tree lines, hedgerows and fence lines.

6. The newly proposed driveway serving Lots 1 and 2 does not follow existing linear features. The applicant has indicated that the driveway as proposed is in a better location than one that would follow the hedgerow separating the Bean Farm and the subject property because it is in a better drained area.

The Planning Commission does not disagree that the location of the curb cut and driveway onto the property may be located in a better drained area. Nevertheless, the Commission finds that the layout of the driveway adversely impacts the agricultural soils on the property and the continued agricultural use of the property by fragmenting that portion of the proposed Lot 2 located between Lot 1 and Hinesburg Road.

Decision

Based on these Findings, the Planning Commission upholds its decision to deny the application for a Boundary Adjustment.

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 Hearings on May 15, 2014 and / or June 5, 2014: Marty Illick, Jeff McDonald, Linda Radimer, Peter Joslin, Gerald Bouchard and Paul Landler.

Vote of Members after Deliberations: The following is the vote for or against the decision.

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|------------|---|--|--------------|-----------------------------|
| 1. Signed: | <u>P. Wilson</u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>7.15.14</u> |
| 2. Signed: | <u>Gerald A. Bouchard</u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>7-16-2014</u> |
| 3. Signed: | <u>Martine E. Dyer</u> | <input type="radio"/> For / <input checked="" type="radio"/> Against | Date Signed: | <u>7.16-2014</u> |
| 4. Signed: | <u>[Signature]</u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>7.15-14</u> |
| 5. Signed: | <u>[Signature]</u> | <input type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u> </u> |
| 6. Signed: | <u>[Signature]</u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>7/17/14</u> |
| 7. Signed: | <u> </u> | <input type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u> </u> |