

This 18th day of January A.D. 20 19
 at 11 o'clock 0 minutes 19 m. a.m.
 recorded in vol. 236 on page 318-323
 Attest: [Signature] Town Clerk

**CHARLOTTE PLANNING COMMISSION
 SUBDIVISION REVIEW
 FINDINGS OF FACT AND DECISION**

**Nordic Holsteins, LLC / Clark Hinsdale, III
 Final Plan Application for a Boundary Adjustment between 1711 and 1824 Hinesburg Road
 Application # PC-18-194-BA**

Introduction and Procedural History

This proceeding involves the review for a Boundary Adjustment submitted by Clark Hinsdale, III for approval under the Town of Charlotte Land Use Regulations (hereafter referred to as "the Regulations"). The application was received on October 24, 2018. A notice of public hearing was published in "*The Citizen*" newspaper on November 8, 2018. An electronic notice was posted on the Charlotte Town website meeting calendar. Hardcopies of the notice were posted at the following three locations: the Town Offices at 159 Ferry Road, the Old Brick Store in the West Charlotte Village, and Spear's Corner Store in the East Charlotte Village on November 5, 2018; and were mailed out to all adjoining landowners to the property on November 21, 2018

The application proposes to adjust acreage between three adjoining properties located at 1711 and 1824 Hinesburg Road. A Sketch Plan Review (**PC-18-151-SK**) was undertaken by the Planning Commission at their public meeting on October 4, 2018 where it was approved that the applicant Clark Hinsdale, III may submit an application for a portion of the proposal (i.e. this Boundary Adjustment proceeding) without a Sketch Plan Review letter.

The Planning Commission participated in a site visit to the property at 6:00 PM on Thursday October 4, 2018 (prior to the aforementioned Sketch Plan Review meeting held that evening) hosted by the applicant Clark Hinsdale, III. Commissioners in attendance included Peter Joslin (Chair) and Charlie Pughe (Vice Chair). Also in attendance were Amos Baer, Krista Hoffsis, members of the Trails Committee and Conservation Commission, the Town Planner, Mike Hinsdale, et al.

The Boundary Adjustment application was considered by the Planning Commission at the warned public hearing held on December 6, 2018 at approximately 7:40 PM. Present at the public hearing were the following members of the Planning Commission: Peter Joslin (Chair), Gerald Bouchard, Dick Eastman, Charlie Pughe (Vice Chair), Marty Illick, and David Kenyon. Additional participants and attendees included: the Town Planner, the applicant Clark Hinsdale, III, Suzanne Hinsdale, Robert "Brownie" Adsit, Tom Baginski, Allison Baginski, Jeff Falardi, Amy Janetti, Isaiah Kiley, Nick Janetti, Michael Hinsdale, Steve Schubart, John Quinney, Carrie Spear, Frank Tenney, Bill Stuono, Sue Leonard, Rick Leonard, Ethan Leonard, Leslie Carew, Kim Westphal, Ed Sulva, Linda Randall, Keith Randall, John Parker, Bruce Bernier, Mel Huff, Peter Walker, Eric Buttery, Peter Schubart, Kurt Wetzell, Mark Benware, Trina Bianchi, Marc Richter, Irene Horbar, Bruce Hasse, Sarah Thompson, Bill Doris, Jason Pidgeon, Susan Moraska, et al.

Exhibits

The following exhibits were submitted for the application:

1. Completed application form signed by Clark Hinsdale, III dated October 24, 2018;

2. Proposed draft survey map: "Boundary Adjustment Plat – Properties of Nordic Holsteins, LLC and Hinsdale Trust – Charlotte, Vermont" (dated October 2018) by Stuart J. Morrow, Consulting Land Surveyor, Shelburne, Vermont;
3. Map Slide 192, Page 1; Survey - "Boundary Adjustment Plat – Properties of Clark W. Hinsdale Jr. Testamentary Trust – Charlotte, Vermont" (dated Nov 2013 / Revised Apr 2015) by Stuart J. Morrow, L.S. No. 565, Shelburne, Vermont;
4. Map Slide 186, Page 6; Survey - "ALTA/ACSM Land Title Survey – Properties of Clark W. Hinsdale, Jr. Testamentary Trust - Hinesburg Road, Charlotte Vermont" (dated April 2014) by Stuart J. Morrow, Consulting Land Surveyor, No. 565, Shelburne, Vermont;
5. Map Slide 131, Page 5; Survey - "Plat of Boundary Survey – Properties of Clark W. Hinsdale, Jr. – Charlotte, Vermont" (dated May 1999) by Stuart J. Morrow, No. 565, Shelburne, Vermont;
6. Vermont Superior Court – Environmental Division – Docket No. 116-8-14 Vtec; Hinsdale Trust Boundary Adjustment Application (After Remand), Decision on the Merits, Approved by Thomas S. Durkin, Judge: January 5, 2016;
7. Vermont Superior Court – Environmental Division – Docket No. 116-8-14 Vtec; Hinsdale Trust Boundary Adjustment Application (After Remand), Judgement Order, Approved by Thomas S. Durkin, Judge: January 5, 2016;
8. Vermont Superior Court – Environmental Division – Docket No. 116-8-14 Vtec; In Re: Hinsdale Trust Boundary Adjustment (After Remand), Stipulation and Proposed Order (signed by Hinsdale: 6 Nov 2014 / signed by Town of Charlotte Duly Authorized Agent 12 Nov 2014);
9. Charlotte Land Records – Volume 232 Pages 468-473 (27 Mar 2018) Conveyance of 14.65 acre Lot 1 from Clark Hinsdale, III to Charlotte Solar, LLC; Volume 96, Pages 90-91 (31 Aug 1997) Conveyance of 46.12 acres from LeClair to Clark Hinsdale, Jr.;
10. Planning Commission Minutes from meetings held on *October 4 and December 6, 2018*;
11. PC-18-151-SK - Hinsdale Map - Trail Easement Options: Conceptual alternatives map of possible trail routes from East Charlotte Village to **Lot 1**;
12. Public Comment Letters submitted to the Planning Commission: Dick and Linda Stowe of Sheehan Green (dated 4 Dec 2018) E-mail Re: "*Text to Peter Joslin*"; William Stuono of Sheehan Green (dated 6 Dec 2018) E-mail Re: "*Input and testimony for Thursday's Dec 6 PC meeting, PC-18-194-BA*";

Regulations in Effect

Charlotte Town Plan, 2018

Charlotte Land Use Regulations, 2016

Recommended Standards for Developments and Homes, 1997

Findings

Background

1. Clarke Hinsdale submitted an application to adjust three adjoining properties within the Rural Zoning district (RUR) along the northerly side of Hinesburg Road to the west of the East Charlotte Village (i.e. Baptist Corners). According to the proposed survey submitted for this application (see Exhibit 2 above), the properties include:

- a. **Lot 1:** the 71.48 acre northern parcel of 1711 Hinesburg Road owned by Nordic Holsteins, LLC, which is proposed to be adjusted/increased to 122.19 acres.
 - b. **Lot 2A:** the 33.63 acre northern forested portion of the 1824 Hinesburg Road parcel (i.e. the 65.01 acre parcel adjoining the “solar array” lot) owned by the Testamentary Trust of Clark W. Hinsdale, Jr., which is proposed to be adjusted to **Lot 1**.
 - c. **Lot 2B:** the 31.38 acre southern portion of the 1824 Hinesburg Road that adjoins the “solar array” lot and is owned by the Testamentary Trust of Clark W. Hinsdale, Jr. No development is proposed for this lot within this boundary adjustment application.
 - d. **Lot 3:** the 17.08 acre portion of the southern parcel of 1711 Hinesburg Road owned by Nordic Holsteins, LLC (formerly known as the “Bean Farm”) that is proposed to be adjusted to **Lot 1**.
2. The majority of **Lot 2A** has been designated as a ‘No Build Area’ as per Condition #7 of a decision from the Vermont Environmental Court, Docket No. 116-8-14 Vtec (refer to Exhibits 3, 6, 7, and 8 above). Finding of Fact 21(d) of the Decision on the Merits (Exhibit 6 above) states:

“Development of the northern portion of Lot 2 is to be further restricted, in that the portion of Lot 2 more than 2,300 feet north of Hinesburg Road shall be designated as a permanent “no build area.” No structure of any type may be located in this area, and any development of any type of road in this area is subject to the Planning Commission’s master plan review and approval.”

Furthermore, Conditions 4 and 5 of the decision stipulates that any development of the existing 65.01 acre lot comprising **Lots 2A** and **2B** may not be developed without first submitting a master plan, which is stated in Stipulation and Proposed Order (Exhibit 8, above) as:

“(4) Because Lot 2 contains extensive areas of high public value, including forested wildlife habitat to the north and statewide agricultural soils to the south, no development shall occur on Lot 2 that is not exempt from municipal regulations under 24 V.S.A. §4413(b) and 24 V.S.A. §4413(d) prior to the submission of a master plan by the applicant and approval by the Planning Commission.”

“(5) The master plan developed for Lot 2 shall include a wildlife habitat assessment using the Protocol for Assessment of Impacts of Proposed Development on Significant Wildlife Habitat in Charlotte, Vermont (attached hereto as Exhibit A), and it shall indicate proposed open space, proposed development areas, proposed building envelopes, and approximate locations for associated infrastructure. The master plan shall be submitted with an application for a subdivision and planned residential development. Designated open space shall encompass, at a minimum, an area equivalent to 50% of the acreage of Lot 2.”

Condition 7 hence concludes (also see Exhibit 8):

“...The No Build Area will retain its density provided by the Land Use Regulations; this density may be used on other portions of Lot 2 or transferred to another lot. With any master plan/planned residential development submitted with Condition #5 herein, an applicant may use some or all of the No Build Area, excluding any portions used for infrastructure if such area is materially impacted by such infrastructure, towards the percentage open space requirement [currently 50% as per Section 8.4(C)(1) and (D)(2) of the Charlotte Land Use Regulations]. . .”

2.3 Application of District Standards – Table 2.5 Rural District (RUR) – (E) Dimensional Standards

1. The dimensional standards for the Rural District indicate the *Minimum Lot Area* to be five (5) acres.
2. At 33.63 acres, **Lot 2A** has a possible 6.7 units of density available. See **Finding 7.2(D)(1)** below for further discussion.

3.2 Road, Driveway and, Pedestrian Access Requirements

1. According to the December 6, 2018 minutes (see Exhibit 10 above), the applicant has been in discussion with the Charlotte Trails Committee, the Charlotte Land Trust, and the Charlotte Conservation Commission on possible trail access connecting **Lot 1** to the East Charlotte Village/Baptist Corners. The three potential alternative routes (indicated in Exhibit 11, above) discussed included: 1. An existing floating trail easement originating from the McCargo/Swift (i.e. Petdia II, LLC) property to the west, 2. An existing easement originating from the east at Spear Street along the northern boundary of the Bradley Cemetery, and 3. A conceptual access that traverses the "Sheehan Green" subdivision area.

7.2 General Standards - Areas of High Public Value

1. Agricultural Use: **Lot 1** and **Lot 3** are enrolled in Forestry Use Value Appraisal (i.e. "current use"). **Lot 2A** is not enrolled in "current use".
2. Primary Agricultural Soils (Prime and Statewide - PAS): The majority of the three lots comprise Statewide soils, according to the *USDA Natural Resources Conservation Service (NRCS)* GIS database.
3. Surface Waters, Wetlands, and Associated Setback and Buffer Areas: Mud Hollow Brook traverses **Lot 1**, and the Bingham Brook tributary traverses **Lot 3**.
4. Wildlife Habitat: Approximately 63 acres of *Significant Forest Habitat*, 50 acres of *Significant Linkage Habitat*, and 24 acres of *Significant Aquatic Habitat* exists in the current lot configuration of the forested areas of the properties. The *Significant Forest Habitat* was identified within **Lot 2A** as an area to be protected via a designated 'No Build Area' that was stipulated within an Environmental Court decision 116-8-14 Vtec (see Exhibits 3, 6, 7, and 8 above).
5. Water Supply Source Protection Areas (SPAs) – The entirety of the parcel falls within the surface water source protection area for the Champlain Water District.
6. Historic Districts, Sites, and Structures: "Baptist Corners Historic District" exists about 800 feet to the east, along Hinesburg Road.
7. Conserved Land on Adjacent Parcels: A 236.58-acre easement owned by the Vermont Land Trust (VLT) exists on the 1711 Hinesburg Road properties. **Lot 2A** should either be added to the adjoining VLT conservation easement, or conserved within an Open Space Agreement.

7.2(D) General Standards - Density

"...Development density shall be based on the allowed densities for the zoning district(s) in which the subdivision is located. Areas of High Public Value can be used for development density unless the property has been conserved through a legal mechanism such as a Grant of Development Rights, Conservation Easement, or Open Space Agreement. . ."

1. As **Lot 2A** should be conserved to protect the wildlife habitat as indicated in **Findings 2** and **7.2(4)**, there would be a possible 6.7 units of development density available for transfer off-property.

Decision

Based on the foregoing Findings of Fact and Conclusions, the Planning Commission approves the application for a Boundary Adjustment subject to the following conditions:

1. Two paper copies (one full size and one 11"x 17"), an electronic copy, and a mylar (measuring 18" x 24", with a margin of 2" outside of the border line for binding on the left edge of the sheet with a 1" border on all remaining edges) of the plat 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, after being signed by the Chair or Vice-Chair of the Planning Commission. **Approved plats not filed and recorded within this 180 day period shall expire.**
2. Prior to the submission of the mylar to the Planning Commission, the applicant shall:
 - a. Submit letter documenting that the adjusted 122.19 acre property has been accepted into a conservation easement by VLT; or submit a draft Open Space Agreement (OSA) for the adjusted 122.19 acre property articulating the protection of the *Significant Forest Habitat*, *Significant Linkage Habitat*, and *Significant Aquatic Habitat* (identified in **Finding 7.2(4)**) in a form acceptable to the Town Attorney and the Planning Commission.

This will satisfy the conservation portion of the master planning requirement (via a PRD as per Section 8.4(C)(1) of the Regulations) for the development of **Lot 2B** (or "Lot 2" indicated in Docket No. 116-8-14 Vtec; see Exhibits 6-8 above).

- b. Revise the survey plat to include:
 - i. Updating the property labels to reflect the Lot numbers (i.e. **Lot 1**, **Lot 2A**, **Lot 2B**, and **Lot 3**) as they are indicated in **Finding 1** above.
 - ii. Adding a note that accounts for the 6.7 units of total transferable development density allowable for **Lot 2A** as per **Findings 2.3(2)** and **7.2(D)(1)** above.
 - iii. Adding a note indicating that the adjusted 122.19 acre property has been conserved in accordance with Planning Commission decision PC-18-194-BA. The note shall further state that the conservation of the 33.63 acre **Lot 2A** fulfills the open space designation acreage requirement of Conditions #5 and #7 of the Vermont Superior Court decision, Docket No. 116-8-14 Vtec; and Section 8.4(C)(1) of the Regulations pertinent to any future Planned Residential Development (PRD) that may occur on **Lot 2B** (pending the approval of a master plan by the Planning Commission).
 - iv. Updating the listing "153.57 Acres – Total" on the acreage table indicated on **Lot 1** to "122.19 Acres - Total".
 - v. Removing the listing "31.28 Acres – Adj From Hinsdale Trust – South" from the acreage table indicated on **Lot 1**.
 - vi. Updating the 'Existing Boundary' label between **Lot 2A**, the northern portion of 1824 Hinesburg Road (indicated as 33.63 acres) and the southern portion of the 1824

- Hinesburg Road parcel (indicated as 31.38 acres) to a full 'Boundary Line' as indicated in the Legend of the survey.
- vii. Updating the 'Existing Boundary' labels within the adjusted 122.19 acre property (i.e. **Lot 1, Lot 2A, and Lot 3**) to 'Former Boundary'
 - viii. Adding the 'No Build Area' label to the portion of **Lot 2A** covered under Condition #7 of 116-8-14 Vtec, which was also included in the survey in *Map Slide 192, Page 1* (see Exhibit 3 above).
 - ix. Adding a note stating "The 'NO BUILD AREA' is based on Condition #7 of the Stipulation between Clark Hinsdale III, Trustee of the Clark Hinsdale, Jr. Testamentary Trust and The Town of Charlotte as per the decision of the Vermont Superior Court Docket No. 116-8-14 Vtec.
 - x. Adding the delineation of the 10.01 acre 'Excluded' area around the farmstead portion of the southern parcel of 1711 Hinesburg Road, owned by Nordic Holsteins, LLC (formerly known as the "Bean Farm").
 - xi. Adding a note or a label to the map that references the existing VLT Ecological Special Treatment Area (i.e. easement) upon the 1711 Hinesburg Road property.
 - xii. Adding the existing sixty-foot (60') trail easement (including the deed reference) that originates from the western side of Spear Street at the northern boundary of the Bradley Cemetery, and traverses westward along the northern terminus of the "Sheehan Green" subdivision (and **Lot 2B**) to **Lot 1**.
 - xiii. Add a note referencing the floating trail easement (including the deed reference) via the Petdia II, LLC parcel to the west of the project area.
- c. Submit a letter from the surveyor indicating that s/he has set the survey pins in the field as indicated on the survey.

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 the 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 the permit and would be subject to enforcement action by the Town. **This approval shall expire if the mylar is not filed and recorded in the Charlotte land records within 180 days.**

This decision may be appealed to the Environmental Division of the Vermont Superior Court by the applicant or an interested person who participated in the proceeding. Such appeal must be taken within 30 days of the latest date of 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 December 6, 2018: Peter Joslin (Chair), Charlie Pughe (Vice Chair), Gerald Bouchard, Dick Eastman, Marty Illick, and David Kenyon.

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:

1/17/2019

2. Signed:

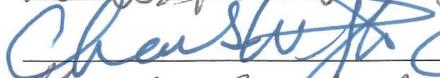


For / Against

Date Signed:

1/17/2019

3. Signed:



For / Against

Date Signed:

1/17/2019

4. Signed:



For / Against

Date Signed:

1/17/2019

5. Signed:



For / Against

Date Signed:

1/17/2019

6. Signed:



For / Against

Date Signed:

1.17.19

7. Signed:

For / Against

Date Signed:
