

**TOWN OF CHARLOTTE**  
**Zoning Board of Adjustment**  
**Appeal of Administrative Officer Opinion**

**IN RE:** 190 Hinesburg Road  
Clark W. Hinsdale III, Suzanne Hinsdale, Peter Schneider, Jessie Donovan

**Findings of Fact and Decision**

This matter came before the Board of Adjustment on the appeal of Clark W. Hinsdale III, Suzanne Hinsdale, Peter Schneider and Jessie Donovan for the 61.1± acre lot located at 190 Hinesburg Road. A Notice of Violation for disturbing the Wetlands and wetland buffers was issued by the Zoning Administrator on August 31, 2005. The Applicant filed an appeal to this Board on September 14, 2005, to have the Notice of Violation overruled. Based on information submitted with the appeal application and testimony at hearings on October 12 and November 9, 2005 the Board makes the following findings and conclusions in this matter.

**Findings of Fact**

1. The property located at 190 Hinesburg Road is owned by Clark W. Hinsdale III, Suzanne Hinsdale, Peter Schneider and Jessie Donovan. The 61.1 acre parcel is developed with an existing single family residence.
2. This property is located in the Rural Zoning District as established by the Zoning Bylaws last amended March 5, 2002.
3. The neighborhood is developed with single and/or multi family residences to the north and west, the parcel to the east contains the Charlotte Central School and the parcel to the south is zoned part rural and part Conservation; the Conservation lot being land owned by the University of Vermont.
4. The Zoning Administrator's August 31, 2005 Notice of Zoning Violation states in part that a violation occurred because the 50-foot wetland buffer and a majority of the designated Class II wetlands on this parcel had been "disturbed" due to mowing.

**Conclusions and Decision**

In accordance with 24 VSA §4465 and the Town of Charlotte Zoning Bylaws the Board first determines the appeal is timely. Section 5.12.B. of the Zoning Bylaws governs this matter. It states as follows:

A minimum undisturbed buffer zone of 50 feet is required around all Class II wetlands. The required buffer zone around a Class III wetland will be determined by the town on a case by case basis, utilizing recommendations from qualified professionals and/or State Agency of Natural Resources personnel.

The size of the buffer zone surrounding a wetland may be increased, and uses allowed within the buffer zone defined, at the discretion of the Town on the basis of the values supported by the wetland. Exemptions for wetland buffer zones, for example for farming purposes, will be consistent with the provisions of the Vermont Wetland Rules, as amended, and other applicable legislation, regulations and rules.

Based on information received and after a site visit the Zoning Administrator sent the owners a Notice of Violation stating in part that "Today's site visit confirms that the 50 foot buffer zone has been disturbed in that: **Any area constituting a majority of the designated Class II wetlands located on your property has been mowed, including any 50 foot buffer zone that may have existed.**" August 31, 2005 Notice of Violation.

At the hearing, Mr. Hinsdale testified that his wetlands consultant, Cathy O'Brien, and Mike Adams (from the Army Corps of Engineers), and Allen Quackenbush (the Vermont State Wetlands Coordinator) all visited the site. Mr. Hinsdale testified that these representatives told him that the property meets the farming exemption and the Wetland Rules allowed the mowing of the field. The Zoning Administrator testified that he was never notified of these site visits and the applicant has not submitted notice of a state CUD permit or documentation that the cutting was allowed. During the hearing, the parties agreed to seek an opinion from Mr. Quackenbush to clarify and potentially resolve this matter.

The Zoning Administrator subsequently contacted Mr. Quackenbush and he responded in a November 2, 2005 letter. In the letter Allen Quackenbush states in part:

1. Hinsdale: Mr. Hinsdale brush hogged or mowed an old agricultural field that is largely wetland, and left the trees intact. It is an Allowed Use under the agricultural exemption to reclaim this area as pasture as long as there is no filling, dredging or draining or altering the flow of water into or out of the wetland. Mr. Hinsdale stated that this area is under Current Use as agricultural land and he intends use it for agricultural purposes as meadow or pasture. Therefore, we would not find this to be a violation of the Rules, and no CUD would be required.

Based on the Zoning Bylaws regarding wetland regulations and the Vermont State Wetland Coordinator's interpretation of the Vermont Wetland Rules, the Board finds that the mowing described by the August 31, 2005 Notice of Violation constitutes an allowable disturbance of the wetlands. Therefore, this activity did not violate Section 5.12 of the Charlotte Zoning Bylaws.

**For the reasons stated above, the Board finds that no violation of the Zoning Bylaws occurred and upholds the appeal of Clark Hinsdale III, et al. (Vote – All in favor, none opposed).**

DATED AT CHARLOTTE, VERMONT THIS 21<sup>st</sup> DAY OF DECEMBER 2005.

CHARLOTTE ZONING BOARD OF ADJUSTMENT

  
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BRADY TOENSING, CHAIRMAN

**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 THIS DECISION, PURSUANT TO 24 VSA §4471 AND THE VERMONT RULES FOR ENVIRONMENTAL COURT PROCEEDINGS.**

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