

CHARLOTTE TOWN CLERK'S OFFICE
RECEIVED FOR RECORD

This 24 day of August A.D. 2010
at 10 o'clock 00 minutes a.m. and
recorded in vol. 187 on page 665-673
Attest *Shawn B. Baber* Town Clerk

Vol. 187

Page 665

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION
IN RE APPLICATION OF

Clark Hinsdale, III and Suzanne Hinsdale
173 State Park Road

Final Plan Hearing
For A

Five-Lot Subdivision and Planned Residential Development
Application # PC-10-25

Background

The Planning Commission conducted Sketch Plan Review for the proposed subdivision on February 5 and February 19, 2009, at which time the project was classified as a Major Subdivision and Planned Residential Development. The Preliminary Plan hearing was held on November 19, 2009, and a preliminary decision was issued on December 30, 2009.

Application

Materials submitted with the application are listed in Appendix A.

Public Hearing

The Planning Commission held a public hearing for this application on July 15, 2010. Clark Hinsdale, III and David Miskell were present representing the applicant. Margaret Russell of the Trails Committee and Trafton Crandall of the Conservation Commission participated in the hearing by providing verbal comments.

Regulations in Effect

Town Plan amended March, 2008

Land Use Regulations amended March, 2009

Recommended Standards for Developments and Homes adopted September, 1997

Findings

1. The applicant owns a 27.96 acre parcel of land on State Park Road within the Rural District. There is currently a single family dwelling and a barn located on the parcel.
2. The Preliminary Plan Application included a proposal to transfer density from a parcel owned by the applicant on Thompsons Point Road. However, the applicant has chosen not to proceed with that aspect of the project at this time.
3. The Final Plan Application proposes to create five lots: Lot 1 is proposed to include the existing dwelling, and Lots 2-5 are proposed as building lots for single family dwellings. The project is proposed as a planned residential development under the provisions of Chapter VIII of the Charlotte Land Use Regulations ("Regulations"); so two of the lots are smaller than the five acre minimum lot size.

Clark Hinsdale, III and Suzanne Hinsdale

Final Plan Application (PC-10-25)

Applicable standards in Chapter VII of the Charlotte Land Use Regulations are reviewed below in Findings 4-36.

Areas of High Public Value—Sections 7.2 and 7.3

4. The parcel 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 the parcel is somewhat small for stand-alone agricultural use. 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 Class 2 wetland adjacent to Kimball Brook. (From State surface water data, Town wetland data, and the application)
 - 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. The applicant stated at the hearing that the wildlife linkage along Kimball Brook is very active. (From Town Plan and applicant's testimony)
 - E. Historic districts, sites and structures: Map 12 of the Town Plan indicates structures in the vicinity of the parcel 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 13 of the Town Plan indicates a scenic vista from Mount Philo State Park and Mount Philo Road is classified as a "most scenic road". (From Town Plan)
 - G. Conserved land: The adjoining parcel to the west 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).
5. Considering the resources on and adjacent to the parcel, the Planning Commission finds that the following are the most important areas of high public value associated with the parcel: 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 parcel, and which the Planning Commission feels are most important to protect as it considers the proposed subdivision.
6. The application includes a proposed plat for the subdivision of the parcel. The plat indicates building envelopes for Lots 2, 3, 4 and 5.
7. It is noted that Sections 7.3 (D)(1), (2) and (3) of the Regulations 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.
8. The proposed building envelopes will (or will not) impact areas of high public value as follows:
 - A. A dwelling located within the building envelope on Lot 2 will be prominent from

Clark Hinsdale, III and Suzanne Hinsdale

Final Plan Application (PC-10-25)

Mount Philo Road and Mount Philo State Park. This will be an undue adverse impact on the exceptionally scenic views in these locations. At the hearing, the applicant offered to require the dwelling on the lot be earth-toned. However, the Planning Commission believes this impact can best be mitigated by adjusting the building envelope so that the dwelling will not be situated on the height of land. This adjustment is described in Condition 1 below.

- B. The building envelope on Lot 3 is located on the east side of the access road, and adjacent to the existing barn; this location provides buffers to the adjoining agricultural operation to the west and the wildlife linkage to the south and east, and so will not impact any areas of high public value.
 - C. The building envelope on Lot 4 is located outside of the 50 foot buffer that the state requires from Class 2 wetland, and it is more than 100 feet from Kimball Brook. The brook, wetland and buffers coincide with the wildlife linkage corridor. Therefore the building envelope will not impact any areas of high public value.
 - D. The building envelope on Lot 5 encompasses much of the open field on Lot 5. A prospective dwelling located in the middle of the field will be an adverse impact on the agricultural use of the parcel. However, the agricultural use of the parcel is not a prioritized area of high public value, as indicated in Finding 5. Nevertheless, this impact could be mitigated by adjusting the building envelope so that the dwelling will be situated towards one end of the parcel. The building envelope will not impact any prioritized areas of high public value.
9. With the conditions below, the Planning Commission finds that the proposed configuration of building envelopes has minimized and mitigated undue adverse impacts on prioritized areas of high public value.

Compatibility with Agricultural Operations—Section 7.4

- 10. The proposed building envelopes, community wastewater disposal area, and view easement area provide buffers between the prospective dwellings and the agricultural operation to the west.
- 11. The water and wastewater plan by Lincoln Applied Geology depicts a proposed well on Lot 5 which has an isolation zone (protective distance) located on the adjoining parcel to the west. In accordance with Section 7.4(4), this isolation should either be moved to be wholly on the applicant's property, or the application should obtain an easement for the portion of the isolation zone that is on the adjoining property.
- 12. The Final Plan Application includes a document entitled "Lots 1-5, Restrictive Covenants, Windever Farm Subdivision" which (in paragraph 9) restricts lot owners from taking any action, legal or otherwise, that would jeopardize the continued operation of the conserved farm and vineyard. While this covenant seeks to protect the adjacent agricultural operation, it does so in a way that could involve the Town in a civil law suit if the execution and recording of this covenant is a condition of this permit. Therefore the Planning Commission will not require the execution and recording of this covenant.

Facilities, Services & Utilities—Section 7.5

- 13. The proposed development will result in the creation of five lots accessed by 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")

Clark Hinsdale, III and Suzanne Hinsdale

Final Plan Application (PC-10-25)

provide specifications for "driveways," which serve 1-5 dwellings, and "access roads," which serve six or more dwellings. This Findings of Fact and Decision uses the term "road" as it is defined in the Land Use Regulations.)

14. The Driveway Design Site Plan by Green Mountain Engineering for the proposed road and driveways meets the specification for "driveways" in the Fire and Rescue Standards, except that it does not provide sufficient widths at driveway intersections with the road in accordance with these standards.
15. Additional road and driveway issues are discussed in findings below associated with Section 7.10.
16. The project is located on a ridgeline that makes it visible from both the east and the west, and also from Mount Philo State Park and Mount Philo Road. For these reasons, extensive outdoor lighting would create adverse impacts on the scenic view from many locations.

Water Supply—Section 7.6

17. Although some adjoining property owners have indicated during previous hearings that they have experienced low water yields, the applicant has indicated that he has a high producing well on the parcel.
18. The applicant has obtained a Wastewater System and Potable Water Supply Permit (WW-138-0919).
19. Finding 11 and conditions below address Section 7.6(4).

Sewage Disposal—Section 7.7

20. All lots are proposed to use a community wastewater disposal system located on the adjacent parcel to the west. The applicant retained an easement for this use in the Warranty Deed to Numondo America, L.P recorded at volume 183 page 23 of the Charlotte Land Records.
21. Each lot is granted a perpetual non-exclusive easement for use of the community wastewater disposal system within the document entitled Shared Septic System Easement, Construction, Maintenance and operation Declaration of Covenants and Agreement—Windever Farm State Park Rd. 5 Lot Subdivision. Each lot is also assigned responsibility for maintaining the community system within this document.
22. The applicant has obtained a Wastewater System and Potable Water Supply Permit (WW-138-0919).
23. WW-138-0919 allows each dwelling to have up to five bedrooms, whereas the Covenant indicates each dwelling may have up to four bedroom.
24. An existing seepage bed serves the existing dwelling. The application narrative states that this bed is to be abandoned, and the survey by Morrow does not depict an easement for the seepage bed to serve Lot 1. However, the site plans by Lincoln Applied Geology do not indicate that the seepage bed will be abandoned.

Stormwater Management & Erosion Control—Section 7.8

25. Due to the gentle topography of the building sites and the large size of the proposed lots, which will allow for sheet flow and infiltration of stormwater run-off, the project is not expected to create stormwater problems. Therefore no stormwater facilities are proposed and none will be required.
26. A State permit for stormwater control is not required. The applicant has applied for a State permit for Stormwater Discharges Associated with Construction Activity on Low Risk Sites to address erosion control.

Landscaping and Screening—Section 7.9

27. This criterion does not require consideration for this project.

Roads, Driveways & Pedestrian Access—Section 7.10

28. The proposed private road uses the existing driveway serving the parcel.
29. The application narrative states that the road is to be widened by two feet in order to meet the Fire and Rescue Standards.
30. The Charlotte Road Commissioner has determined that the existing driveway width and culvert length and diameter within the State Park Road right-of-way meet the Town's specifications, so a Highway Access Permit is not needed.
31. The road will need to be named in accordance with the E-911 Ordinance. The applicant has indicated that he intends to request the road to be named Windever Lane.
32. Each lot is granted a non-exclusive easement over the shared right-of-way within the document entitled Holstein Lane Shared Roadway Maintenance Agreement. Each lot is also assigned responsibility for maintaining a pro-rated portion of the shared road. It is noted that the the document's references to Holstein Lane should be changed to Windever Lane.
33. The applicant has indicated a willingness to reserve a right-of-way easement to the adjacent parcel to the east (owned by Charles W. and Gwen D. Allmon Revocable Trust) in the event that access to that parcel is secured. The Planning Commission notes that, should the owner seek to develop that parcel, such an access may be preferable to an access from Mount Philo Road or State Park Road. The Planning Commission also notes that such a proposal may trigger the need for a fire pond and the widening of the access road.
34. The applicant is proposing to donate a 20 foot wide pedestrian trail easement to the Town 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.
35. The trail easement is proposed to be located approximately adjacent to State Park Road; however, this area includes steep slopes, wetland, and Kimball Brook. The applicant has offered to allow the trail to be located within a 100 foot corridor adjacent to the State Park Road right-of-way in order to allow such areas to be avoided—however, it is not clear that the trail will be able to cross Kimball Brook and the adjacent wetlands within this 100 foot corridor.

Land to be Conserved—Section 7.11

36. This criterion will be discussed below.

The applicable standards in Chapter VIII are reviewed below in Findings 37-52.

General Standards

37. 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. However, as noted in the Preliminary Decision, given that the parcel is prominently within viewsheds that are considered very scenic in the Town Plan, clustering is not appropriate on the central and northern portion of the parcel. (The Preliminary Decision also noted that clustering would be appropriate on the southwest portion of the parcel, where Phase 2 was to be located).
38. With conditions described below, the proposed development meets the goals and policies

Clark Hinsdale, III and Suzanne Hinsdale

Final Plan Application (PC-10-25)

of the Town Plan by minimizing and mitigating impacts on areas of high public value.

39. The subject parcel could conceivably be subdivided into five lots of at least five acres each—therefore, the proposed density is appropriate.

Rural District Standards

40. 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 and the associated concentration of development within a defined area is not appropriate for this site.
41. The application proposes 13.9 acres (49.97%) of the 27.96 acre parcel as “Open Space Area”.
42. The application indicates that portions of all lots outside of the building envelopes should be counted towards the 50% open space requirement within Section 8.4(C)(1). The application also indicates (implicitly) that the open space requirement should be addressed by building envelopes and restrictions within Warranty Deeds rather than by an Open Space Agreement.
43. The proposed Open Space Area includes the easterly portions of Lots 2, 3 and 4.
44. The prioritized areas of high public value encompassed within the proposed Open Space Area are Kimball Brook, adjacent wetland, stream and wetland buffers, and wildlife linkage. The views from Mount Philo Road and Mount Philo State Park are also protected by the proposed Open Space Areas.
45. The Planning Commission finds that, due to the sensitive nature of the wildlife linkage on Lot 4 and its close proximity relative to the building envelope on that lot, all of the area outside of the building envelope on Lot 4 should be included in the Open Space Area.
46. The prioritized area of high public value associated with Lot 2—the view from Mount Philo Road and Mount Philo State Park—can be sufficiently protected by a building envelope.
47. Accordingly, the Planning Commission finds that the application can meet the open space requirement of Section 8.4(C)(1) with the designated Open Space Area, which should include all of Lot 4 outside of the building envelope and the eastern portion of Lot 3, as proposed, and with the portion of Lot 2 outside of the building envelope. The area on Lot 5 outside of the building envelope does not contribute to the 50% requirement as it does not contribute to protection of any prioritized areas of high public value.
48. The Planning Commission finds that the sensitive nature of Kimball Brook and the associated wetland and the wildlife linkage warrant the use of an Open Space Agreement to enforce the protection of these resources. The Open Space Agreement is to include or reference wildlife management provisions to be approved by the Charlotte Conservation Commission.

Other

49. At the hearing, the applicant stated that he will need an Act 250 Permit for the project due to other development he has undertaken during the past five years.
50. It is hereby noted that the proposed view easement located on Lot 5 in favor of Lot 4 was proposed entirely by the applicant, and is not a requirement of the Town, and the Town is not responsible for enforcing this view easement.
51. It is hereby noted that the subject parcel’s entire density will be used with the approval of this application.

Clark Hinsdale, III and Suzanne Hinsdale

Final Plan Application (PC-10-25)

Decision

Based on these Findings, the Planning Commission approves the Final Plan Application for the proposed five-lot subdivision planned residential development with the following conditions:

1. The survey by Morrow and the site plan (Sheet 1) by Lincoln Applied Geology will be amended as follows:
 - A. The building envelope on Lot 2 will be amended so all sides are 150 feet, and the easterly boundary will be shifted 70 feet to the west.
 - B. The Open Space Area on Lot 2 will be deleted.
 - C. The Open Space Area will be expanded to include all of Lot 4 outside of the building envelope.
 - D. The dimensions of building envelopes and the Open Space Area will be indicated; and the distances between the building envelopes and the two closest property lines will be indicated.
 - E. A potential access and utility right-of-way to the Allmon parcel via the shared private road will be depicted and labeled.
 - F. A vehicle turnaround on the road that complies with the Fire and Rescue Standards will be depicted; this may be located at a driveway entrance.
 - G. The proposed well on Lot 5 will be moved so that the isolation zone is located wholly on the applicant's parcel, unless an appropriate easement is obtained as described below.
 - H. As desired by the applicant, either the survey will depict an easement for the existing seepage bed on Lot 3 to serve Lot 1, or the wastewater disposal site plan will indicate that the existing seepage bed is to be abandoned.
2. Mylars (18" x 24") of the survey by Morrow and the site plan (Sheet 1) by Lincoln Applied Geology, as amended in Condition 1 above, will be submitted to the Planning Commission for review and signature within 160 days. The applicant will record the signed mylars in the Charlotte Land Records within 180 days.
3. Prior to the submission of the mylars in accordance with Condition 2 above, the applicant will:
 - A. Obtain an Act 250 Permit if one is required by the State.
 - B. Obtain a state stormwater permit for construction activity on low risk sites.
 - C. Execute and record the following documents after review and approval by the Selectboard and Town Attorney:
 - i. Roadway Agreement and Waiver
 - ii. Sewage Service Agreement, Waiver and Easement
 - iii. Offer of Irrevocable Dedication, which is to be amended to allow the siting of the trail easement within 100 feet from the southerly parcel boundary or as needed to obtain permits to cross Kimball Brook and adjacent wetland.
 - iv. Grant of Trail Easement, which is to be amended to allow the siting of the trail easement within 100 feet from the southerly parcel boundary, or as needed to obtain permits to cross Kimball Brook and adjacent wetland.
 - v. An Open Space Agreement for the area designated on the survey as "Open Space Area" (to be amended as described in Condition 1 above). The Open Space Agreement is to include or reference a wildlife management

Clark Hinsdale, III and Suzanne Hinsdale

Final Plan Application (PC-10-25)

- plan which is to be approved by the Charlotte Conservation Commission.
- D. Execute and record the following documents:
 - i. Shared Roadway Maintenance Agreement (after changing Holstein Lane to Windever Lane wherever it appears, and indicating in the 2nd paragraph on page 1 that the road runs to northern end of Lot 3)
 - ii. Shared Septic System Easement, Construction, Maintenance and operation Declaration of Covenants and Agreement—Windever Farm State Park Rd. 5 Lot Subdivision (after editing so that the number of bedrooms per dwelling to matches WW-138-0919).
 - E. Either move the proposed well located on Lot 5 as described in Condition 1.E. above, or obtain and record an easement from the adjoining landowner for isolation zone (protective distance for the well) located on the adjoining parcel.
 - F. Submit a letter from the surveyor indicating he has set the survey markers or pins in the field as indicated on the plat. If the survey markers or pins cannot be set at this time because of frozen ground, the applicant shall submit a letter from the surveyor indicating that he will set the markers or pins when the ground thaws and has been paid to do so.
4. Prior to obtaining a Certificate of Occupancy for the third dwelling, the applicant will obtain approval from the Selectboard for a road name to comply with the E-911 Ordinance.
 5. No new pole-mounted light fixture will be taller than 8' off the ground, and no new building-mounted light fixture will be taller than 15' off the ground. Fixtures will be shielded to direct light downward, and will not direct light onto adjacent properties or roads, and will not result in excessive lighting levels that are uncharacteristic of the neighborhood. There will be no street lighting.
 6. All new utility lines will be underground.
 7. All new driveways shall be surfaced with non-white crushed stone. Where the roadway and driveway are to be widened, they may be paved to match the existing paved driveway, but they shall not be surfaced with white crushed stone.

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 July 15, 2010: Jeff McDonald, Jim Donovan, Linda Radimer, Peter Joslin, Eleanor Russell, Paul Landler and Gerald Bouchard