

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**Catherine Baker and Stanley Shapiro, Property Owner
Clark Hinsdale, III, Applicant**

**Final Plan Application
For A
Two-Lot Subdivision
Application # PC-06-37**

Background

Sketch Plan Review for this project was conducted on October 5, 2006.

Application

Materials submitted with the application are listed in Appendix A.

Public Hearing

A public hearing for this application was held on December 7, 2006. Clark Hinsdale, III and David Miskell represented the applicant at the hearing, and Catherine Baker and Stanley Shapiro were also present. James Lynch, an adjoining property owner, was present and participated in hearing.

Regulations in Effect

Town Plan as amended March 2002

Land Use Regulations adopted March, 2006.

Sewage Ordinance as amended December, 2004.

Recommended Standards for Developments and Homes adopted September, 1997

Findings

1. At the hearing, the applicant submitted a memo to the Charlotte Planning Commission from Clark Hinsdale, III regarding "Final Hearing—Two-lot Subdivision" dated December 7, 2006; and an undated document entitled "Hinsdale and Baker/Shapiro Septic Force Main Boring Under the Railroad" from David Miskell.
2. The application proposes the subdivision of a 46.8 acre parcel (according to survey submitted with the application) into two lots.
3. Lot 1 is proposed to be 1.1 acres and includes the existing house (which had a fire and is not currently occupied) and an existing wastewater disposal system that serves the house. Lot 2 is proposed to be 45.7 acres, including 5.5 acres on the west side of the railroad tracks and 41.35 acres on the east side of the railroad tracks. Since Lot 1 is proposed to be 3.9 acres less than the minimum lot size of five acres, 3.9 acres must be removed from the "density acreage" of Lot 2; so Lot 2 will have 41.8 acres for density purposes.

4. The creation of one or more lots that are less than the minimum lot size is allowed as a “planned residential development” in accordance with Chapter VIII of the Charlotte Land Use Regulations. Section 8.4(B)(6) of the Regulations requires that, to approve such a configuration, the Planning Commission must find that the project will minimize adverse affects upon *areas of high public value* (Table 7.1 of the Land Use Regulations), and that the development area is appropriate for the proposed density.
5. The parcel includes the following *areas of high public value*:
 - The parcel was, until recently, an *active horse farm* for many years;
 - The parcel has extensive tracts of both *prime and statewide soils*.
 - An *unnamed stream* (possibly intermittent) crosses the parcel on the east side of the railroad. There appears to be *wetland* in this location, according to Map 7 of the Town Plan.
 - Map 6 of the Town Plan indicates that there is *wildlife corridor* along the eastern boundary of the parcel.
 - Map 13 of the Town Plan indicates that Lake Road (which is near the property) is a *most scenic road*. There are also *scenic views and vistas* within the neighboring Charlotte Park and Wildlife Refuge.
 - The Charlotte Park and Wildlife Refuge has been *conserved* by the Vermont Land Trust; the parcel across Greenbush Road has also been *conserved* by the Vermont Land Trust; and the town has *conserved* a portion of the Ready parcel, just north of the Charlotte Park and Wildlife Refuge.
6. The Planning Commission finds that the proposed subdivision minimizes adverse affects upon *areas of high public value*, in that by making Lot 1 smaller than the minimum lot size, more of the *areas of high public value* will be maintained on one parcel, allowing for easier and better management of these resources (the horse farm in particular).
7. The proposed 1.1 acre parcel (Lot 1) for the existing house is an appropriate size and location for a single family dwelling. It is noted that a replacement wastewater disposal area will be provided off-lot via an easement, and that 3.9 acres of density will be removed from Lot 2.
8. The application proposes to move the driveway, and to provide a shared driveway between Lot 1 and Lot 2. The current property owner previously received a Highway Access Permit (HAP-04-06) for this proposed relocation. The applicant has indicated a desire that the new driveway not be constructed until additional planning has occurred for future use(s) of Lot 2.
9. Prior to the fire occurring to the house on Lot 1, the current property owners applied for and received a Septic Permit (04-24-S) for a new wastewater disposal with capacity for five bedrooms. This Septic Permit has since expired. The applicant stated at the hearing that this Septic Permit would have allowed the house to increase from four bedrooms to five bedrooms, however the system was designed to serve the existing house (four bedrooms) and the barn (one bedroom), which was being served by a holding tank. Therefore Septic Permit 04-24-S did not increase capacity for the dwelling—it remained at four bedrooms.
10. It is not clear whether one of the reasons for obtaining Septic Permit 04-24-s was that the existing wastewater disposal system serving the house was failing. Ms. Baker stated at the hearing that system was not failing prior to the fire, although it is noted that the design for 04-24-S did not fully comply with the Vermont Environmental Protection Rules.

11. The current application includes a designated replacement wastewater disposal area for the existing house on Lot 1, but not a new primary wastewater disposal area. No wastewater disposal system is proposed for Lot 2, under the provisions of Section 7.7(C) of the Land Use Regulations.
12. The applicant has indicated that there is an apartment in the barn on Lot 2 that has been used on an intermittent basis, and that the bathroom in the barn is served by a holding tank.
13. James Lynch, an adjoining property owner, stated at the hearing that he has a water easement over the Baker/Shapiro property. The proposed plat submitted with the application does not clearly indicate the easement.
14. The applicant stated at the hearing that a spring has been used as a water source for the house and barn.
15. The applicant has indicated that he may in the future apply for affordable housing and/or an equestrian facility on Lot 2.
16. Section 7.1(2) of the Land Use Regulations indicates the Planning Commission may require a master plan in the event the Commission determines that development of additional portions of the parcel is reasonably likely in the foreseeable future. Section 7.7(C)(5) has similar language when applicants are seeking an exemption from wastewater disposal requirements. Although a master plan would certainly be desirable, the applicant has indicated that planning for potential use(s) on Lot 2 has not progressed to the point where a master plan is possible. Nevertheless, Section 8.6(B)(8) of the Land Use Regulations states “in approving a minor subdivision, the designation of open space may be deferred by the Planning Commission until a further subdivision is proposed; at that time the Planning Commission may require that the designated open space include sufficient acreage to account for the original minor subdivision under the open-space requirements of these regulations.”

Decision

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

1. The subdivision plat will be amended as follows:
 - A. An easement for the force-main to the proposed replacement wastewater disposal system in favor of Lot 1 over Lot 2 and the railway will be depicted.
 - B. The water line easement (to Lynch and Lot 1) will be depicted.
 - C. The existing spring will be depicted.
 - D. A note will be added stating that Lot 2 has not been approved for wastewater disposal.
 - E. Note #2 (as submitted) will be clarified.
2. Two paper copies (one full size and one 11”x 17”) and a mylar (18” x 24”) of the plat, as amended in accordance with Condition #1 above, 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.
3. Prior to the submission of the mylar in accordance with Condition #2 above, the applicant will obtain and record in the Charlotte Land Records the following:

- A. A wastewater disposal permit from the State; and
 - B. An easement from the State of Vermont and Vermont Railway, Inc. allowing a septic force main (for the replacement wastewater disposal system for Lot 1) to cross under the railroad.
4. Prior to the submission of the mylar in accordance with Condition #2 above, the applicant will submit to the Planning and Zoning Office a wetland delineation performed by a wetlands ecologist for the route of the proposed force main to the replacement wastewater system serving Lot 1; if the delineation indicates that a Class II wetland will need to be crossed, a Conditional Use Determination will be obtained and recorded in the Charlotte Land Records prior to the submission of the mylar in accordance with Condition #2 above.
 5. Prior to the submission of the mylar in accordance with Condition #2 above, the applicant shall submit a letter from the surveyor indicating that he has set the survey pins in the field as indicated on the survey. If the survey pins cannot be set at this time because of frozen ground, the applicant shall submit a letter from the surveyor indicating that s/he will set the pins when the ground thaws and has been paid to do so.
 6. Prior to the submission of the mylar in accordance with Condition #2 above, the applicant shall submit a certification from an appropriate licensed designer or engineer indicating that the existing wastewater disposal system is functioning and shows no sign of failure.
 7. Prior to the submission of the mylar in accordance with Condition #2 above, the applicant shall submit a certification from an appropriate licensed designer or engineer indicating that the replacement wastewater disposal area designated for Lot 1 meets the Vermont Environmental Protection Rules.
 8. Lot 1 will be conveyed subject to the “Baker/Shapiro Lot One Replacement Sewage Easement,” the “Baker Well and Water Line Easement,” and the “Baker Shared Roadway and Maintenance Agreement” essentially as submitted, either incorporated within the conveyance deeds or as separate documents. Lot 2 will be conveyed with corresponding easements and agreements.
 9. A certification of the functioning of the wastewater disposal system on Lot 1 by an appropriate licensed designer or engineer will be submitted to the Planning and Zoning Office one year following the full-time occupancy of the dwelling on Lot 1.
 10. The apartment in the barn shall not be occupied for any purpose prior to the applicant obtaining a Subdivision Amendment which provides a design for a fully complying wastewater disposal system.
 11. Prior to any development of Lot 2, a Subdivision Amendment will be required for which, at a minimum, access, wastewater disposal, a building envelope and designated open space will be required. A resource management plan may also be required.
 12. All new utility lines will be underground.
 13. No pole-mounted light fixture will be taller than 8’ off the ground, and no building-mounted light fixture will be taller than 20’ off the ground. Fixtures will be shielded to direct light downward.
 14. Prior to applying for a Zoning Permit for any new development on Lot 2, the driveway will be moved as indicated in this application and HAP-04-06. The new common driveway will be surfaced with non-white crushed stone. The existing entrance to the driveway will be removed and seeded after the new driveway is constructed.
 15. The applicant is not prejudiced from applying for affordable housing and/or an equestrian

facility on Lot 2 in the future.

- 16. The Planning Commission will not require open space to be designated at this time, however any future subdivision or development on Lot 2 will require the designation of open space. The total current acreage (46.8 acres) will be considered when calculating the open space as provided for in Section 8.4 (C) of the Charlotte Land Use Regulations (or succeeding town regulations in effect).

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 December 7th: Jeff McDonald, Linda Radimer, John Owen, and Andrew Thurber

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: _____
- 6. Signed: _____ For / Against Date Signed: _____

APPENDIX A

- 1. An application form and appropriate fee.
- 2. A letter dated August 29, 2006 from Stanley Shapiro and Catherine Baker to the Town of Charlotte authorizing Clark Hinsdale, III to apply for a subdivision on their behalf.
- 3. A memo dated November 14, 2006 entitled "Subdivision Application Requirements and Waiver Requests, Final Application."

4. A letter dated November 14, 2006 from Craig D. Heindel of Heindel & Noyes, Inc. to Clark Hinsdale III.
5. Test pit logs by Heindel & Noyes, Inc. for the Baker/Shapiro Property, Greenbush Road, Charlotte, Vermont for test pits #7, #8 and #9, excavated on August 10, 2006.
6. A survey by Stuart J. Morrow entitled "Final Plat, Minor Subdivision, Property of Cathy Baker and Stanley Shapiro, Charlotte, Vermont" dated August, 2006, no revisions.
7. A draft document entitled "Baker/Shapiro Lot One Replacement Sewage Easement."
8. A draft document entitled "Baker Shared Roadway and Maintenance Agreement."
9. A draft document entitled "Baker Well and Water Line Easement."