

CHARLOTTE PLANNING COMMISSION

RECONSIDERED AND RESTATED FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**Clark Hinsdale, Jr.,
Damon Silverman and Lori Racha**

**Final Plan Hearing
For A
Subdivision Amendment
Application # PC-06-19**

Background

Sketch Plan Review for this project was conducted on May 4, 2006.

Application

Materials submitted with the application are listed in Appendix A.

Public Hearing

A public hearing for this application was held on August 3 and August 17, 2006. Clark Hinsdale, Jr., Clark Hinsdale, III, David Miskell and Damon Silverman represented the applicant at the hearing. A site visit was conducted on August 12, 2006. A Findings of Fact and Decision was issued on September 15, 2006. On October 5, 2006, the applicant requested that the Planning Commission reconsider its decision, pursuant to Section 9.9(E)(4)(b) of the Charlotte Land Use Regulations. The Planning Commission agreed to re-open the public hearing to hear the applicant's concerns; the hearing was re-opened and closed on November 16, 2006. Material submitted by the applicant for the reconsideration are listed in Appendix B. This Findings of Fact and Decision reflects the reconsideration.

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. The application seeks approval to create a building envelope on Parcel A-1. Additionally, the application seeks approval to upgrade a wastewater disposal system designed for Parcel A-1A (an 8.17 acre lot owned by Damon Silverman and Lori Racha) to add a pre-treatment system, which will enlarge the system's capacity, enabling it to be shared between Parcel A-1A and Parcel A-1.
2. The subject parcel is currently in agricultural use, and is part of an extensive and productive agricultural network surrounding Mount Philo.

3. The subject parcel has soils that are classified as prime and statewide agricultural soils, as shown on Map #4 of the Charlotte Town Plan.
4. The subject parcel is adjacent to (across the road from) Mount Philo State Park.
5. Mount Philo Road is depicted as a “Most Scenic Road” on Map 13 in the Town Plan, and *most scenic views* are indicated on this map and Map 12 from Mount Philo Road to the west.
6. The Mount Philo Inn complex is listed in the Town Plan as an historic site, and is also on the State Register.
7. A VAST trail runs through the parcel. The location of the proposed building envelope should not prohibit continued use of the trail.
8. The highest values on the parcel are the agricultural attributes and the contribution to the scenic view from Mount Philo Road and from Mount Philo summit. The potential impact on Mount Philo Inn, as an historic structure, is also a consideration.
9. The applicant stated at the hearing that he is attempting to conserve the remainder of Parcel A-1, and members of the Charlotte Land Trust have indicated that the land trust is assisting with funding applications, although the outcome is not certain.
10. The applicant stated at the hearing that if funding is not available to conserve the remainder of Parcel A-1, he will retain development rights on the remainder (except for the proposed building envelope), and conserve the development rights as part of a non-contiguous PRD application [via Section 8.4(F) of the Charlotte Land Use Regulations].
11. The proposed building envelope is located on the statewide agricultural soils, which would normally be a significant concern. However the proposed envelope minimizes the impact on agricultural soils by being sited at the edge, i.e. near Mount Philo Road, in the vicinity of other dwellings. The impact will be mitigated as well by the future conservation (voluntarily) of the remainder of Parcel A-1.
12. The building envelope has been reduced in size in response to the Planning Commission’s concerns expressed at Sketch Plan Review.
13. Notwithstanding Finding 12, the size of the dwelling on Parcel A-1 could create a significant adverse impact on the scenic quality along Mount Philo Road.
14. The neighborhood consists of dwellings of various sizes, and also includes the Mount Philo Inn. The Lister’s Office indicates sizes of the dwellings (measured by heated space) on neighboring properties as follows:
 - 5631 Mount Philo Road = 1,996 square feet
 - 5654 Mount Philo Road = 1,354 square feet
 - 5655 Mount Philo Road = 2,108 square feet
 - 5780 Mount Philo Road = 2,912 square feet
 - 5807 Mount Philo Road = 1,063 square feet
 - 27 Inn Road (the Mount Philo Inn) = 7,112 square feet
 - 30 Inn Road = 2,570 square feet
 - 95 Inn Road = 3,900 square feet
15. The dwelling on Parcel A-1A was recently constructed, so the Lister’s Office does not have data on the dwelling. According to the Zoning Permit Application, the gross size of the structure on Parcel A-1A, including garage, porches and decks, is 3,927 square feet.
16. In order to allow a new dwelling on Parcel A-1 to fit with the character of the neighborhood and to minimize the adverse impact on the scenic quality along Mount Philo Road, a size limit for the dwelling on Parcel A-1 is appropriate. Considering the

sizes of neighboring dwellings, a size limit of 3,500 square feet (of above-grade interior living space) is appropriate.

17. The applicant has obtained a Highway Access Permit (HAP-06-04) from the Selectboard—which required the curb-cut be moved 25-50 feet to the north of where it was originally proposed. The plat submitted with this application does not account for this condition.
18. The Town’s wastewater consultant reviewed the application in memos dated 6/26/06 and 7/31/06. The memos indicate that the system is approvable in terms of its meeting the technical requirements of the Charlotte Sewage Ordinance and the Vermont Environmental Protection Rules. However the memos note concerns as described below.
19. The pump station and pre-treatment system are located in the middle of the agricultural field on Parcel A-1. This creates an obstruction within the field that is to be conserved for agricultural use and will negatively impact the scenic view from Mount Philo and Mount Philo Road.
20. If a service road were to be needed to maintain the pump-station and pre-treatment system it would negatively impact the agricultural and scenic resources. The applicant stated at the hearing on November 16th that a service road is not needed for this purpose.
21. In the letter to the applicants dated June 2, 2006, which followed Sketch Plan Review, the Planning Commission specifically addressed the siting of the pump station and pre-treatment system, stating that “the pump station and sand filter should be shifted either east or west, so that it is not sited in the middle of the open field on Lot A-1.”
22. The Town’s wastewater consultant believes the pump station and pre-treatment system do not need to be located as they are indicated in the application—i.e. approximately 160 feet south of the boundary line between Parcel A-1 and Parcel A-1A, which is in the middle of the agricultural field.
23. The Planning Commission finds that the location of the pump station and pre-treatment system creates an undue adverse impact on the agricultural and scenic resources associated with the open field, since they could be located in such a way as to avoid the adverse impacts on these resources.
24. The Town’s wastewater consultant noted, upon visiting the site, that the applicant has already constructed the proposed wastewater disposal system including the pump station and pre-treatment system (prior to obtaining this approval from the Planning Commission).
25. Condition #13 of PC-05-14 states “Prior to any development of Lot A-1, a Subdivision Amendment will be required for which, at a minimum, access, wastewater disposal, and a building envelope will be reviewed.” Therefore, in the opinion of the Town Attorney, the construction of the pump station and pre-treatment system prior to approval of the current application constitutes a violation of Condition #13.
26. A Notice of Violation was not issued for the above stated violation because PC-06-19 was presently in front of the Planning Commission, which had the potential to amend Condition #13 of PC-05-14.

Decision

Based on these Findings, the Planning Commission approves the Final Plat Application for the proposed Subdivision Amendment with the following conditions:

1. The subdivision plat will be amended as follows:
 - A. The proposed curb-cut to Parcel A-1 will be depicted as required by HAP-06-04.
 - B. The easement for the sewer line and pump station/pre-treatment system will be amended as required by Condition #3 below.
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 following will occur:
 - A. The pump station and pre-treatment system will be relocated to Parcel A-1A or to the building envelope on Parcel A-1, while meeting the minimum isolation distance from the wells on the parcels (as required by the Vermont Environmental Protection Rules). The existing tank for the pump station and pre-treatment system will be removed, and the site will be restored to its original condition.
 - B. The applicant will obtain the appropriate wastewater disposal permit from the State;
 - C. The applicant will submit an "as built" wastewater system plan and detail sheet(s);
 - D. 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;
 - E. The Sewage Service Agreement, Waiver and Easement will be submitted to the Selectboard for approval. Once approved the document will be executed by the applicant and the Selectboard Chair and recorded in the Charlotte Land Records;
 - F. The Shared Septic System Easement, Maintenance and Operation Agreement will be executed by the parties in the same approximate form as it was submitted, with corrections only for any technical deficiencies, and recorded in the Charlotte Land Records.
4. Prior to the submission of a Zoning Permit application for Parcel A-1, wooden stakes will be set at the corners of the building envelope on that lot.
5. No dwelling unit or accessory structure except those exempt from zoning permits will be constructed outside of the building envelope for Parcel A-1 as depicted on the plat.
6. The *above grade interior living space* on Parcel A-1 shall not exceed 3,500 square feet. *Interior living space* shall include any enclosed living and home office areas, enclosed porches and decks, and space in accessory structures such as barns or garages used for such purposes. *Above grade interior living space* will not include basements, unoccupied garages, barns, sheds, open porches, open decks, open patios, etc.
7. 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.
8. All new utility lines will be underground.
9. The driveway shall be surfaced with non-white crushed stone.
10. The Planning Commission will not require open space to be designated at this time, however any future subdivision of Parcel A-1 will require the designation of open space as provided for in Sections 8.4 (C) and 8.6 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 August 3: Jeff McDonald, Jim Donovan, Linda Radimer, Robin Pierce, and Andrew Thurber.

Members Present at the Public Hearing on August 17: Jeff McDonald, Jim Donovan, Robin Pierce, John Owen, Peter Joslin and Andrew Thurber.

Members Present at the Public Hearing on November 16: Jeff McDonald, Jim Donovan, Linda Radimer, Robin Pierce, John Owen, Peter Joslin 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: _____
- 7. Signed: _____ For / Against Date Signed: _____

APPENDIX A

- 1. An application form and appropriate fee.
- 2. A document entitled "Subdivision Application Requirements and Waiver Requests, Mount Philo Final Plan For Subdivision Modification, Clark Hinsdale Jr., June 20, 2006."
- 3. A survey by Stuart J. Morrow entitled "Final Plat, Subdivision Modification, Properties of Clark W. Hinsdale Jr. and Lori Racha and Damon Silverman, Charlotte, Vermont" dated December, 2004, last revised 3/22/06.
- 4. A draft document entitled "Shared Septic System Easement, Maintenance and Operation Agreement."

5. A draft document entitled “Sewage Service Agreement, Waiver and Easement.”
6. (Submitted with Septic Permit application 06-18-S) Sewage disposal plans including the following:
 - A. A plan by Civil Engineering Associates, Inc. entitled “Clark W. Hinsdale Jr., Proposed Wastewater System, Mount Philo Road, Charlotte, Vermont, Overall Site Plan Lots A-1 & A-1A, Drawing # C1” dated September, 2005, revised 6/6/06.
 - B. A plan by Civil Engineering Associates, Inc. entitled “Clark W. Hinsdale Jr., Proposed Wastewater System, Mount Philo Road, Charlotte, Vermont, Wastewater Site Plan Lots A-1 & A-1A, Drawing # C2 dated September, 2005, revised 6/6/06.
 - C. A sheet by Civil Engineering Associates, Inc. entitled “Clark W. Hinsdale Jr., Proposed Wastewater System, Mount Philo Road, Charlotte, Vermont, Wastewater Details Lots A-1 & A-1A, Drawing # C3” dated September, 2005, revised 6/6/06.
 - D. A sheet by Civil Engineering Associates, Inc. entitled “Clark W. Hinsdale Jr., Proposed Wastewater System, Mount Philo Road, Charlotte, Vermont, Wastewater Details Lots A-1 & A-1A, Drawing # C4” dated September, 2005, revised 6/6/06.

APPENDIX B

1. A memo to the Charlotte Planning Commission from Clark W. Hinsdale, Jr. represented by Clark W. Hinsdale, III regarding “Request for Reconsideration - #PC-06-19” dated September 24, 2006.
2. A memo to the Charlotte Planning Commission from Clark Hinsdale, II regarding “Reconsideration Request for #PC-06-19” dated November 16, 2006.