

# CHARLOTTE PLANNING COMMISSION

## FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**Susan W. Horsford  
1033 Converse Bay Road**

**Final Plan Hearing  
For A  
Two-Lot Subdivision and  
Application # PC-10-01**

### **Background**

The Planning Commission conducted Sketch Plan Review on June 18, 2009 (PC-09-09) and classified the project as a Minor Subdivision.

### **Application**

Materials submitted with the application are listed in Appendix A.

### **Public Hearing**

A public hearing for this application was opened on February 18, 2010 and continued to and then closed on March 4, 2010. The applicant submitted a request to reopen the hearing on March 10, 2010 which was heard and approved on March 18, 2010. The hearing was reopened on May 3, 2010 and, following the acceptance of additional testimony and materials, was then closed.

The following parties were present and participated in the hearing:

February 18: Susan Horsford (applicant); Andrew Thurber, Carl Lisman (adjoining property owners)

March 4: Susan Horsford

March 18: No parties were present; Susan Horsford had previously submitted a written request to the Planning Commission to reopen the hearing.

May 6: Susan Horsford

### **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's property is an approximately 100 acre parcel located northerly and easterly of Converse Bay Road, within the Rural District and Shoreland District.
2. The applicant's property on the west side of Converse Bay Road is considered a separate parcel by land use case law, so is not part of this application.

3. The 100 acre parcel was not previously subdivided under the Town's subdivision bylaws or Land Use Regulations.
4. A single family dwelling is located on the parcel.
5. The proposed subdivision will create two lots: Lot 1 is a 20 acre vacant lot, and Lot 2 is an 80 acre lot which includes the existing single family dwelling.
6. Lot 1 is not currently proposed as a building lot, but the applicant has indicated that development may be proposed on Lot 1 in the future. The applicant has indicated she currently has no plans for further subdivision of Lot 2, although it is possible that subdivision of Lot 2 could be proposed in the future.

#### Section 7.2—Areas of High Public Value

7. The following areas of high public value (as listed in Table 7.1 of the Charlotte Land Use Regulation) are located on or in close proximity to the parcel:
  - A. Agricultural use: Portions of the parcel are being hayed (indicated by the applicant).
  - B. Agricultural soils: There is a large swath of prime agricultural soil in the center of the parcel, and another area with prime soils on the eastern portion of the parcel. There are statewide agricultural soils on much of the rest of the parcel (from NRCS data).
  - C. Surface water: There are two wetlands: a relatively thin strip on the west side of the parcel and a wider swath on the east (from Town wetland map, Town Plan Map 7; also, at the applicant's request, staff from the Vermont Department of Environmental Conservation visited the site and confirmed the existence of the westerly wetland, although neither wetland has been delineated).
  - D. Wildlife habitat: There is forest habitat in the northeast corner of the parcel and associated support habitat adjacent to the forest habitat and also at the western end of the parcel (from Town Plan Map 6).
  - E. Scenic views: Converse Bay Road and Cedar Beach Road are labeled "most scenic roads" on Map 13 of the Town Plan.
  - F. Conserved land on adjacent parcels: A portion of the Deeds parcel to the south is conserved by the Vermont Land Trust.
8. As indicated above, the resources (areas of high public value) on the parcel are extensive and diverse, including agricultural, wildlife habitat, wetland and scenic values. The agricultural resources are primarily in the center of the parcel, and the wetland and habitat resources are primarily on the eastern portion of the parcel, although the far western end of the parcel also includes wetland and associated support habitat.
9. The Planning Commission finds that the prime agricultural soils in the center of the parcel and the wetland and wildlife habitat on the eastern portion of the parcel are priorities for protection, as these are large blocks of high quality resources. The wetland and wildlife habitat on the eastern portion of the parcel are also parts of larger blocks of these resources on adjacent parcels.
10. The prioritization described above does not mean that the resources on the western portion of the parcel are not important or that impacts on these resources should not be minimized to the extent feasible.

#### Section 7.3—District Standards

11. The proposed layout results in the prioritized resources being located entirely on Lot 2.
12. The applicant has not proposed a building envelope on Lot 1, but has indicated an

approximate location where development, including house sites and an access drive or roadway, may be proposed in the future.

13. The potential house-sites on Lot 1 are located approximately in the northeast portion of Lot 1; these would impact statewide agricultural soils, and possibly the scenic view from Converse Bay Road.
14. With regard to a potential access drive or roadway, the applicant's preferred location would enter Lot 1 from Converse Bay Road at the westerly edge of the lot. Additionally, at the hearing on May 3, the applicant submitted a revised plat by Morrow which depicts a proposed 50 foot wide right of way over Lot 2 from Converse Bay Road to Lot 1, adjacent to the easterly boundary of the Botjer parcel. This right-of-way was proposed only if the applicant's preferred location is not possible.
15. A driveway or roadway starting at the westerly edge of Lot 1 would need to cross an area that is indicated as wetland on the Town's wetland map, as well as supportive wildlife habitat.
16. A driveway or roadway starting within the proposed 50 foot wide right of way adjacent to the eastern edge of the Botjer parcel would need to cross statewide agricultural soils.
17. Both locations for a potential driveway or roadway could impact the scenic view from Converse Bay Road.
18. Although the potential house-sites and driveway or roadway will impact resources as described above, these impacts will be on resources that, in the Planning Commission's analysis, were not prioritized for protection.
19. Considering the extensiveness of the areas of high public value, it would be impossible for a subdivision to avoid some impact on an area of high public value. The proposed layout has minimized the encroachments into these areas, as required by Section 7.3(D) of the Land Use Regulations.

#### Section 7.4—Compatibility with Agricultural Operations

20. The application did not propose a building envelope. To ensure compatibility with current and prospective agricultural operations, a building envelope will be required prior to development of Lot 1.

#### Section 7.5—Utilities

21. Information about the location of utilities was not included with the application.

#### Section 7.7—Wastewater Disposal

22. The application did not include a wastewater disposal design for Lot 1, but test pit information was included with the application.
23. The Town's wastewater consultant viewed the test pits and indicated in a memo dated November 9, 2009 that there is sufficient wastewater disposal capacity for at least one residence.
24. Lot 1 is less than 25 acres. The Planning Commission notes that future development of Lot 1 appears to be likely, and therefore waives the requirement that Lot 1 be 25 acres or more and enrolled in the Use Value Appraisal Program [as required by Section 7.7(C)(2) in order to be exempt from requirement for submission of a wastewater system design].
25. Portions of the proposed boundary between Lot 1 and Lot 2 follow existing hedge rows [as required by Section 7.7(C)(3)].

26. Information about the existing wastewater disposal system serving the dwelling on Lot 2 was not included in the application.

#### Section 7.10—Access

27. As described above, the application proposes two options for access to Lot 1. A state or federal wetland permit may be needed to use the access at the western edge of Lot 1. If the right of way over Lot 2 is to be used as the access, a legal easement will be needed.
28. From the site visit, it appears that an access serving Lot 1 in either of the proposed locations would not have a grade in excess of the Town's standard; however, this may need to be confirmed once a specific building location is identified.
29. Except as noted above, specific details regarding a proposed access were not provided with the application.

### **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 survey plat will be revised to include a statement that Lot 1 has not been approved for sewage disposal.
2. One paper copy (11"x 17") and one mylar (18" x 24") of the plat submitted at the hearing on May 6 and revised in accordance with Condition 1 above will be submitted to the Planning Commission for review and signature within 160 days. The applicant will record the signed mylar 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 complete the following steps:
  - A. Submit a letter from the surveyor indicating he has set the survey markers in the field as indicated on the plat. 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 he will set the pins when the ground thaws and has been paid to do so.
  - B. The existing wastewater disposal system will be inspected by a state licensed designer, and a letter will be submitted indicated that the system is functioning appropriately and that the infiltration area shows no indication of surfacing. Additionally, the septic tank will be pumped and inspected for adequate sizing and appropriate construction as required by Section 7.7(B)(3) of the Charlotte Land Use Regulations.
4. Prior to the submission of a Zoning Permit application for Lot 1, and prior to the initiation of any pre-development site work on or serving on Lot 1, the applicant shall apply to the Charlotte Planning Commission and receive approval for a Subdivision Amendment which will address, at a minimum, impacts to areas of high public value, designation of a building envelope, the proposed location of utilities, wastewater disposal and access. Sketch Plan Review is required in advance of the submission of the Subdivision Amendment application, and a Highway Access Permit from the Selectboard will also be needed.
5. The Planning Commission will not require open space to be designated at this time, however, a future subdivision of either Lot 1 or Lot 2 may require the designation of open space. The total current acreage (100 acres) will be considered when calculating the

percentage of open space as provided for in the Charlotte Land Use Regulations in effect at that time.

- 6. The deed conveying Lot 1 will include a statement that it is not currently approved for wastewater disposal.

**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 4<sup>th</sup> 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 February 18, 2010:** Jeff McDonald, Jim Donovan, Eleanor Russell, John Owen, Linda Radimer and Peter Joslin

**Members Present at the Public Hearing on March 4, 2010:** Jeff McDonald, Jim Donovan, Eleanor Russell, John Owen, Linda Radimer, Peter Joslin and Paul Landler

**Members Present at the Public Hearing on March 18, 2010:** Jeff McDonald, Jim Donovan, Eleanor Russell, John Owen, Linda Radimer, Paul Landler

**Members Present at the Public Hearing on May 3, 2010:** Jim Donovan, Eleanor Russell, John Owen, Linda Radimer, Peter Joslin and Paul Landler

**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**

The following items were submitted with the application:

1. An application form and appropriate fee.
2. A plat by Stuart J. Morrow entitled "Final Plat, Minor Subdivision, Property of J. Susan Horsford, Charlotte, Vermont" dated August, 2009, no revisions.
3. A memo from Susan Horsford dated January 15, 2010.
4. A letter from Jeffrey Keeney of High Knob Design Associates, LLC to Susan Horsford dated November 11, 2009.
5. Results from seven test pits submitted by High Knob Design Associates, LLC