

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**Clark W. Hinsdale, III (Applicant)
George and Lynn Reynolds (Property Owners)
Application
For A
Subdivision Amendment
Application # PC-03-32**

Background

This application is to amend a previously approved subdivision known variously as the ASW subdivision or the Kingsland subdivision. The ASW subdivision was approved in 1990, however the mylar was not filed within 90 days, which was required by Vermont statute and by Town regulations. Nevertheless the Planning Commission “reaffirmed” the subdivision in 1995 as a valid subdivision, but the applicant never obtained a legal means of access to the project (ie: a right-of-way over adjoining parcels), so the project was never developed.

Sketch Plan Review for the current project was held on July 2, 2003 and a site visit was held on July 23, 2003, after which the Planning Commission classified the project as a Subdivision Amendment.

Application

The application consists of:

1. An application form and appropriate fee.
2. A survey map entitled “5 Lot Subdivision Plat, George & Lynn Reynolds, Kingsland Farm Subdivision, Route 7, Charlotte, Vermont” by Summit Engineering, Inc. dated 9/11/03, last revised 9/18/03.
3. A sheet entitled “Site Plan, Clark Hinsdale III, Kingsland Farm Subdivision, Route 7, Charlotte, Vermont” by Summit Engineering, Sheet 1 of 4, dated 10/10/03, no revisions.
4. A sheet entitled “Wastewater Plan, Clark Hinsdale III, Kingsland (sic) Farm Subdivision, Route 7, Charlotte, Vermont” by Summit Engineering, Sheet 2 of 4, dated 10/10/03, no revisions.
5. A sheet entitled “Septic Details, Clark Hinsdale III, U.S. Route 7, Charlotte, Vermont” by Summit Engineering, Sheet 3 of 4, dated 10/10/03, no revisions.
6. A sheet entitled “Septic Details, Clark Hinsdale III, U.S. Route 7, Charlotte, Vermont” by Summit Engineering, Sheet 4 of 4, dated 10/10/03, no revisions.
7. A sheet entitled “Driveway Plan, Clark Hinsdale III, Kingsland Farm Subdivision, Route 7, Charlotte, Vermont” by Summit Engineering, Sheet 1 of 1, dated 10/1/03, no revisions.
8. A letter from Cathy O’Brien of Cathy O’Brien Wetland Consulting to Clark Hinsdale III dated July 3, 2003.
9. A letter from Cathy O’Brien of Cathy O’Brien Wetland Consulting to Clark Hinsdale III dated September 18, 2003.
10. A letter from April J. Moulaert of the Vermont Agency of Natural Resources to Cathy

O'Brien dated September 29, 2003.

11. A letter from Robert E. Collins, Natural Resource Consultant (for the applicant) to Clark Hinsdale III dated September 25, 2003, including drainage calculations for culvert evaluation and sizing.
12. A draft document entitled "Draft Deed Description – Lot 7 Kingsland Farm Subdivision".
13. A draft document entitled "Sewage Service Agreement, Waiver, and Easement".
14. A draft document entitled "Road Agreement and Waiver".
15. A draft document entitled "Sewer Operation and Maintenance Agreement, Kingsland Farm Subdivision, Charlotte, Vermont".
16. An Administrator's Deed from Richard W. Kozlowski, Administrator of the Estate of Marietta J.C. Palmer to Clark W. Hinsdale, III for an easement to the subject property from Thompson's Point Road.
17. A memo from the applicant entitled "Outline of Presentation", dated December 4, 2003.

Public Hearing

A public hearing for the Subdivision Amendment application was warned for November 6, 2003, however a quorum of the Planning Commission was not in attendance. The hearing was rewarned and held on December 4, 2003.

Clark Hinsdale III, David Miskell and James Ouimette were present representing the applicant. George and Lynn Reynolds were present representing the property owner. Adjoining property owners and other interested parties present were: Tom Clark, Peter Demick, David Tanzer, Lori Bottom, Peter Kahn, John Crabbe, Jill Kleinman, Sylvia Sprigg, Linda Hamilton representing the Charlotte Conservation Commission, Trina Bianchi representing the Trails Committee, Eleanor Russell representing the Selectboard, and Kate Lampton representing the Chittenden Valley Greenbelt Alliance.

Regulations in Effect

Town Plan as amended March 2002

Zoning Bylaws as amended March 2002

Subdivision Bylaws as amended March 1995

Findings

1. This application proposes to change the configuration of the subdivision from nine building lots and two open-space lots to nine building lots (in two phases) with open space located on three of the building lots (ie: Lots 3, 4 and 7). The applicant proposes that Lots 5, 6 & 7 are to be considered as Phase I, and Lots 3 and 4 are to be considered Phase II, and that additional review by the Planning Commission would occur prior to construction for residential purposes on Lots 3 and 4.
2. The applicant proposes that Lots 3, 5, 6 and 7 each be limited to one dwelling unit, however that five dwelling units be allocated to Lot 4 (approximating the existing approved configuration in the 1990 decision).
3. The Planning Commission finds that the primary resources of the parcel are the views onto the parcel from Mount Philo and wildlife habitat associated particularly with the wooded and wetland areas, and a secondary resource of the parcel is its agricultural value.

4. The applicant submitted a revised survey at the public hearing; ie: a map entitled “5 Lot Subdivision Plat, George & Lynn Reynolds, Kingsland Farm Subdivision, Route 7, Charlotte, Vermont” by Summit Engineering, Inc. dated 9/11/03, last revised 11/24/03.
5. The application proposes to access the building lots by means of a right-of-way from Thompson’s Point Road, over the parcel to the north owned by the Marietta Palmer Estate. The application includes an Administrator’s Deed from the Estate Trustee which conveys the right-of-way. The right-of-way to the subject property is to include the rights-of-way for the Demick and Kahn parcels as well as for additional lots created by the subdivision of the Marietta Palmer Estate parcel.
6. The application proposes to move the curb-cut approximately 50’ to the east of the existing curb-cut associated with the driveways for Demick and Kahn. The applicant received approval from the Charlotte Selectboard for a Highway Access Permit on November 10, 2003 for this location.
7. The application proposes that the right-of-way turns somewhat to the east as it heads south, so that it leads to the east of the Kahn and Demick parcels. The relocation of the curb-cut and right-of-way is an improvement over the location of the current driveway for Kahn and Demick, in that it will allow for agricultural use of the underlying parcel without the road separating the field, as is currently the situation.
8. The proposed relocation of the access road will result in some impact to the southern portion of the hedgerow which runs in a north/south orientation from Thompson’s Point Road to just north of the Kahn parcel. The Planning Commission finds that this location will have the least overall impact of all locations considered, in terms of the view from Mount Philo and in terms of the value of the hedgerow for wildlife habitat.
9. The submitted road plan does not include measurements and bearings, and does not include a vehicle turn-out area (12’ wide x 35’ long) every 800 feet, as is the standard of the Charlotte Fire and Rescue Recommended Standards.
10. At the public hearing the applicant submitted a sheet entitled “Marietta J.C. Palmer Subdivision, Road Details” by Civil Engineering Associates, Inc. dated 11/3/2003, no revisions.
11. The application includes two culvert designs for the stream crossing just to the north of the subject property. The two designs are not in agreement.
12. The applicant is requesting that Zoning Permits be allowed to be issued prior to the construction of the road (ie: the builder of the first dwelling would also build the road). The Planning Commission finds this acceptable however the road will need to be completed prior to the submission of an application for the first Certificate of Occupancy within the subdivision.
13. The wastewater system serving the project is located on the Crabbe and Aube parcels (to the east). At the time of the hearing the applicant did not possess an easement for the use of this system, which is currently held by the Estate of Daniel Palmer.
14. The wastewater design was approved previously, however the applicant has redesigned (down-sized) the system. The system is proposed to serve Lots 5, 6 and 7, as well as one lot to be created by the subdivision of the Marietta Palmer Estate parcel. Additional capacity is available within the easement area for Lot 4 (in Phase II) as indicated on Sheet 2 of the Wastewater Plan. Lot 3 has capacity on-lot where the septic system for Lot 1 was originally approved.
15. The Town’s septic consultant has recommended that the applicant provide some mechanism to protect the pump station from vehicular damage.
16. The proposed building envelope for Lot 5 includes a significant portion of the wooded area that is part of larger forest patch indicated as “Forest Habitat” on the map entitled

Critical Wildlife Habitat (Map 6) in the Charlotte Town Plan. The Planning Commission finds that a reduction of the building envelope will allow ample space for the construction of a residence, while reducing the prospective impact on the habitat. The building envelope on Lot 6 is primarily on the eastern edge of the woods; this dwelling would be visible from Mount Philo, but would be backed by the woods which would help it to blend into the landscape.

17. The building envelope on Lot 7 has been reduced from what was originally proposed, so that the dwelling will be sited near the hedgerow along the “old pasture lane”. This will help to keep the dwelling from dominating the field in the view from Mount Philo.
18. The application proposes a revision of the Open Space Area. Currently Lots 12 and 13 are under an Open Space Agreement recorded in volume 63 page 8 of the Charlotte Land Records. The proposed amendment would include the portions of Lots 3, 4 and 7 that are outside of the building envelopes.
19. Amending an Open Space Agreement will require approval by the Selectboard. The applicant made a preliminary presentation to the Selectboard on November 10, 2003 and received positive feedback for the proposed amendment.
20. In general, it is undesirable to amend an Open Space Agreement unless there is a clear increase in the quantity or the quality of the resource being protected. This requires analysis of the resources involved with the project, as well as the location and pattern of the proposed open space.
21. The resources on this parcel are primarily wildlife and scenic (ie: from Mount Philo). The parcel appears to no longer be capable of supporting commercial agriculture, given its size, configuration, and drainage, although it’s noted that the soils on most of the parcel are classified as “Statewide”, and it’s further noted that the easterly portion of Lot 7, which consists of Covington Silty Clay, has been used relatively recently for agricultural purposes in conjunction with the adjacent parcel to the east (Crabbe), as indicated in the 1999 orthophotos. The wildlife resources are mostly associated with the woods and wetland located on the northern portion of the parcel. As a scenic resource, the parcel is very visible from Mount Philo, being “front and center” in the westerly view from the main lookout.
22. With regard to quantity, the current open space totals 29.4 acres, while the proposed open space totals 39.3 acres. Both the existing and the proposed open space include the septic areas for Lots 1 and 2 (located on Lot 3). The proposed open space also includes driveways for Lots 3, 4 and 7.
23. With regard to location, under the existing Agreement the open space consists of two parcels dedicated only to open space, however these are located non-contiguously on opposite sides of the parcel. In the proposed layout the open space is not on dedicated lots, but the pattern does allow linkages (scenic and wildlife) throughout the parcel and between adjacent parcels, and provides for some buffering and blending of the prospective dwellings. The proposed open space does have the appearance of being the “left-over” land (ie: what is left after the building envelopes are designated). However the existing open space lots do not appear to be particularly associated with resources on the parcel; only the eastern edge of Lot 12 (currently Lot 7) seems potentially suitable for agricultural use. It appears that the proposed configuration provides the same or better protection of the most relevant resources, ie: scenic and wildlife.
24. The Planning Commission finds that tree-cutting restrictions are appropriate to protect the forest habitat, especially on Lots 4, 5 and 6.
25. Hedgerows on the subject parcel and on the Marietta Palmer Estate parcel (adjacent to the proposed access roadway) are an important characteristic for visual buffering and for

linking wildlife habitat.

26. Among the design elements which can help the development blend into the landscape when viewed from Mount Philo is the use of dark gravel for surfacing of roadways and driveways.
27. The document entitled “Draft Deed Description – Lot 7 Kingsland Farm Subdivision” indicates that proposed lots will have an easement for the use of the fire pond to be constructed on the Marietta Palmer Estate parcel (if required during the subdivision of that parcel) however the deed doesn’t indicate the proposed lots will be liable for maintenance of the fire pond and dry hydrant system.
28. The document entitled “Draft Deed Description – Lot 7 Kingsland Farm Subdivision” indicates that the proposed lots will have an easement for the use of the common sewage disposal system, and that the cost of maintenance, repair and replacement (if necessary) will be shared proportionately, however it does not state what maintenance steps should be undertaken, and it is not clear whether the applicant proposes to incorporate the document entitled “Sewer Operation and Maintenance Agreement, Kingsland Farm Subdivision, Charlotte, Vermont” into development covenants.
29. The applicant has proposed to donate a public trail easement to the town, as indicated by the “Outline of Presentation” and as stated by the applicant at the public hearing. No documents (ie: an Irrevocable Offer of Dedication and a Trail Easement) have been submitted with regard to this.
30. There are several potential routes for a public trail, however it’s not clear whether linkages are available to allow access via Greenbush Road and Thompson’s Point Road. Because of this, the easement will need to allow for some flexibility regarding location, however it should be specific enough for the applicant and the Planning Commission to be able to have a sense of the likely route.
31. The applicant stated at the public hearing that he is not proposing the transfer of density to the Carol Aube Hinsdale property, or any other property, with the current application, but indicated that such a request could be submitted in a future application.

Decision

Based on these Findings, the Planning Commission approves the application for a Subdivision Amendment with the following conditions:

1. The subdivision plat will be amended as follows:
 - A. Septic line easements will be added to serve the Marietta Palmer Estate parcel.
 - B. The northern half of the building envelope on Lot 5 will be eliminated.
 - C. The driveways for Lots 5 and 6 will remain joined with the driveway for Lot 7 until at least 150’ south of the northern lot-line of Lots 5 and 6.
 - D. Extraneous lines will be deleted on Lot 4 to the east and west of the building envelope.
 - E. Either the existing Open Space lots (ie: Lots 3 and 7) or the proposed Open Space (ie: the area outside of the building envelopes on Lots 3, 4 and 7) will be labeled as “Open Space”, if an amendment of the Open Space Agreement is approved by the Selectboard pursuant to Condition 4 herein.
 - F. The corners of building envelopes on Lots 5, 6 and 7 will be indicated with “iron pipe to be set”.
 - G. The stamp and signature of a licensed surveyor will be added.
 - H. A signature block for the Planning Commission will be added.

2. Prior to submission of the mylar to the Planning Commission pursuant to Condition 3 herein, the applicant will submit the following to the Planning Office for administrative approval:
 - A. A copy of an easement document allowing for use of the wastewater disposal system on the Crabbe and Aube parcels by the applicant
 - B. Construction plans for a proposed method of protecting the pump station.
 - C. A Road Plan with measurements and bearings and vehicle turnouts (12' x 35') every 800 feet.
 - D. An Open Space Agreement which has been approved by the Selectboard pursuant to Condition 4 herein.
 - E. An Irrevocable Offer of Dedication for the trail, and a Trail Easement which allows the trail to be located in the open space on Lots 3, 4 and, if no other routes can be obtained that allow a linkage to Greenbush Road, Lot 7, as well as over the development roadway (if allowed by Administrator's Deed to the applicant or by a future right-of-way conveyance).
3. A mylar (18" x 24") of the subdivision plat (as revised by Condition 1 herein) will be submitted to the Planning Commission for review within 60 days, and recorded in the Town Land Records within 90 days.
4. Prior to the conveyance of Lots 3, 4 and 7, the applicant will submit the proposed Open Space Agreement to the Town of Charlotte Selectboard. If approved, the applicant will execute and record the amendment within 30 days of approval by the Selectboard and prior to the conveyance of Lots 3, 4 and 7. Conveyance deeds for Lots 3, 4 and 7 will refer to said Agreement.
5. If the proposed Open Space Agreement is not approved by the Selectboard, the existing Open Space Agreement will be in full force and effect, no development may occur on Lots 3 and 7, and conveyance deeds for Lots 3 and 7 will refer to the existing Open Space Agreement.
6. Prior to the conveyance of Lots 5, 6 and 7, the applicant will execute and record the Roadway Agreement and Waiver and the Sewage Service Agreement, Easement and Waiver. Once these are recorded, the existing Roadway Agreement and Waiver and Sewage Service Agreement, Waiver and Easement will be considered null and void.
7. Prior to the conveyance of Lots 5, 6 and 7, the corners of the building envelopes on these lots will be monumented with iron pipe.
8. Prior to the conveyance of any lots associated with this Subdivision Amendment, the applicant will submit a proposed Irrevocable Offer of Dedication and a Trail Easement for review and approval by the town's attorney and the Planning Commission, and once these are approved the applicant will execute and submit to the Town the approved Irrevocable Offer of Dedication and Trail Easement.
9. This approval allows for the immediate construction of three dwelling units on each of Lots 5, 6 and 7. Additionally, after future review (triggered by new Subdivision Amendment applications) one dwelling unit may be allowed on Lot 3 and five dwelling units may be allowed on Lot 4; however there is no guarantee that these dwelling units will be approved. No residential development will occur on Lots 3 and 4 prior to the submission of an application for Subdivision Amendment, for which the Planning Commission will review (at a minimum) proposed building envelopes, access, and wastewater disposal.
10. Notwithstanding the preceding condition, one animal barn having a footprint no greater than 1300 square feet is allowed on each of Lots 3 and 4 without further application to the Planning Commission, however these structures shall not include residential living

- space. Such structures may be within or outside of building envelopes.
11. Animal fencing is allowed on all lots within and outside of building envelopes.
 12. Conveyance deeds for Lots 5, 6 and 7 will include a provision for sharing responsibility for maintenance of the fire pond (to be constructed with the Marietta Palmer Estate subdivision). The deeds will be executed essentially as submitted (ie: "Draft Deed Description – Lot 7 Kingsland Farm Subdivision"), except with the above amendment and with appropriate amendments reflecting the particular dimensions and rights of each lot respective to the approved subdivision layout.
 13. Language within the document entitled "Sewer Operation and Maintenance Agreement, Kingsland Farm Subdivision, Charlotte, Vermont" will either be included within a declaration of covenants, or the document will be recorded in the land records after review and approval of the Town Attorney and prior to the conveyance of Lots 5, 6 and 7.
 14. The applicant will obtain approval for a road name from the Selectboard prior to the submission of any Zoning Permit applications associated with this subdivision.
 15. The applicant will obtain all necessary State permits, including wastewater permits, prior to submitting any Zoning Permit applications.
 16. Zoning Permits may be issued for dwellings on Lots 5, 6 and 7 prior to the construction of the development roadway, but an application for a Certificate of Occupancy for Lots 5, 6 and 7 will not be submitted prior to the construction of the development roadway, the submission of a letter from the project engineer (or an equally qualified engineer) to the Planning and Zoning Office stating that the roadway was built in accordance to the design, and a post-construction site visit and approval by the Charlotte Road Commissioner.
 17. On Lots 4, 5 and 6 there will be no cutting of trees larger than six inches in diameter and no more than 50% of trees less than six inches in diameter outside of the building envelope and driveway location, unless the trees are diseased or dead.
 18. The hedgerow to the east of the proposed access roadway will be maintained except at the southern end of the hedgerow, ie: no farther north than 200 feet from the northern lot-line of Kahn. Also the east/west hedgerow on the north side of the area indicated on the plat as "Old Pasture Lane" and the north/south hedgerow to the east of the building envelope on Lot 4 will be maintained.
 19. The existing roadbed for the driveway currently serving Dimick and Kahn will be abandoned and eliminated once the new roadway has been constructed and approved pursuant to Condition 15 herein.
 20. The road will be built to the specification in the plan by Civil Engineering entitled "Marietta J.C. Palmer Subdivision, Road Details" dated 11/3/2003 (no revisions) and as indicated on the approved Road Plan (pursuant to Condition 2 herein) as far as the southern side of the proposed fire pond pull-off (to be constructed pursuant to the Marietta Palmer Estate subdivision). South of the fire pond the road will be built to the specification on the plan entitled "Driveway Plan, Clark Hinsdale III, Kingsland Farm Subdivision, Route 7, Charlotte, Vermont" by Summit Engineering, Sheet 1 of 1, dated 10/1/03 (no revisions).
 21. The development roadway and all individual driveways shall be surfaced with non-white crushed stone.
 22. The applicant will confirm the calculations submitted for culvert sizing with his engineer.
 23. Lots 5, 6 & 7 will only be used for Single Family Dwellings, Accessory Structures (including animal barns) and uses allowed by right, unless a Subdivision Amendment is approved by the Planning Commission.

- 24. Lighting fixtures will be shielded to direct light downward.
- 25. All new utility lines will be underground.
- 26. This decision supercedes the 1990 subdivision approval related the subject property and all conditions thereof.

Additional Conditions: All plats, plans, drawings, 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.

You and any interested parties are entitled to appeal this decision to the Environmental Court within 30 days of the date of 4th signature below approving this decision, as per requirements of 24 VSA Chapter 117, Sections 4471 and 4475.

Members Present at the Public Hearing on December 4th: Jeff McDonald, Al Moraska, Jim Donovan, Gordon Troy, Linda Radimer, and Robin Pierce.

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:_____