

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

Estate of Marietta J. Palmer

**Preliminary Plat Hearing
For A
Major Subdivision
Creating Five (5) Building Lots
Application # PC-04-07**

Background

The parcel was originally subdivided in 1975, and has had several permits associated with it. The most recent permits were a Subdivision Modification in September 2000 to alter the boundary with the parcel owned by Sylvia Sprigg (now owned by Peter and Susanna Kahn), and a Subdivision Modification in January 2001 to alter the boundaries with two parcels owned by Merry Lynn Palmer (one of which is now owned by Peter Demick and one of which is now owned by Clark Hinsdale III).

Richard Kozlowski, Esq. of Lisman, Webster, Kirkpatrick and Leckerling, P.C. is the executor of the estate. Eric Farrell of Redstone was designated by Mr. Kozlowski as the contact person for this application.

Sketch Plan Review for the current project was held on July 2, 2003, a site visit was held on July 23, 2003 and a letter to the applicant was issued on August 8, 2003.

Application

The application consists of:

1. An application form and appropriate fee.
2. A survey map by Civil Engineering Associates, Inc. entitled "Property of the Estate of Marietta J.C. Palmer, Route 7/Thompson Point Road, Charlotte, Vermont; Plat of Boundary Retracement" dated 10/30/2003, last revised 2/05/04.
3. A survey map by Civil Engineering Associates, Inc. entitled "Property of the Estate of Marietta J.C. Palmer, Route 7/Thompson Point Road, Charlotte, Vermont; Plat of Proposed Subdivision" dated 10/30/2003, last revised 2/05/04.
4. A plan by T.J. Boyle and Associates entitled "The Estate of Marietta Palmer, Natural Resources and Coverage Plan" dated February 12, 2004, no revisions.
5. A wastewater disposal plan (two sheets) by Heindel and Noyes entitled "Marietta J.C. Palmer Estate, Charlotte, Vermont, Proposed Subdivision" dated February 11, 2004, no revisions.
6. Documentation of soil profiles for test pits excavated on November 4, 2002 and May 12, 2000, as well as earlier permits, tests and calculations.
7. A fire pond plan (five pages) by Robert Collins entitled "Marietta Palmer Estate, Proposed Subdivision Fire Pond" dated 2/2/2004, no revisions.

8. A document entitled "Easement Summary, 5 lot subdivision, Estate of Marietta J.C. Palmer, Charlotte, Vermont".
9. A document entitled "Estate of Marietta J. Palmer, Subdivision of Remaining Lands, Schedule of Septic Easement Rights".
10. A draft document entitled "Shared Roadway and Fire Pond Agreement".
11. A draft document entitled "Shared Septic System Agreement, Lots 2 and 4, Palmer Subdivision, Charlotte, Vermont".
12. A draft document entitled "Sewage Service Agreement, Waiver and Easement".
13. A draft document entitled "Roadway Agreement and Waiver".
14. A draft document entitled "Fire Pond System Agreement, Waiver and Easement".

Public Hearing

A public hearing for this application was held on March 4, 2004. Eric Farrell was present at the hearing representing the applicant.

Adjoining property owners and other interested parties present were: Sylvia Sprigg, Clark Hinsdale III, Peter Demick, Richard Yandow, Peter Kahn, Linda Hamilton (Conservation Commission), Trina Bianchi (Trails Committee), and Bill April (Trails Committee)

Regulations in Effect

Town Plan as amended March 2002

Zoning Bylaws as amended March 2002

Subdivision Bylaws as amended March 1995

Findings

1. The subject parcel is 118.4 acres, and is located in the Rural and Industrial Districts. The parcel includes the farmhouse on Route 7 (which currently serves as two dwelling units) and adjacent buildings, but is otherwise undeveloped.
2. The portion of the property know as "the Palmer commercial lot" has been conveyed and is not part of the current application.
3. Large portions of the parcel have historically been used for agriculture. Most of the parcel has soils of statewide significance. There is a pocket of prime soil located on Lot 2, and also one near the farmhouse on Lot 4.
4. Town Plan Map #6 indicates a wildlife corridor and wetland habitat associated with Thorpe Brook run across the westerly portion of the parcel. There are a few pockets of wetland on other parts of the parcel. Forested habitat is located in the wooded area adjacent to the Demick and Kahn parcels. There is no associated support habitat on the parcel.
5. The subject parcel is adjacent to several parcels that have important agricultural and wildlife resources, some of which have been protected: the Conservation Fund parcel (agricultural and wildlife resources) is to the north and west, the Nature Conservancy parcel (wildlife resources) is to the southwest, Claflin Farm (agricultural) is to the south, the Demick and Kahn parcels (forest habitat) are to the south, and the Hinsdale parcel

- (agricultural) is to the east.
6. Town Plan Maps #12 and #13 depict important vistas at the intersection of Thompson's Point Road and Greenbush Road (towards the southeast); Thompson's Point Road is labeled as a "most scenic public road" along the northern boundary of the subject parcel on Map 13. The subject parcel is partially within view from Route 7 (as far as the hedgerow on Lot 2) and is clearly in view from Mount Philo.
 7. The farmhouse on Lot 4 is listed in the Vermont Historic Register (H-36 Avery Palmer house) and is eligible for the National Historic Register (as indicated in a letter dated December 22, 1999 from Elsa Gilbertson of the Division for Historic Preservation, Vermont Agency of Commerce and Community Development).
 8. Because the parcel is over 25 acres in size, Section 5.15 of the Zoning Bylaws and Chapter VI Section 2.M. of the Subdivision Bylaws require review under the Planned Residential Development (PRD) provisions.
 9. The project does not have a typical PRD configuration. Only Lot 5 is proposed to be less than the minimum lot size in the district. Many of the setbacks appear to be less than what is required for a conventional layout, however the setbacks have not been labeled so it is not clear from the application the specific setbacks being proposed.
 10. The applicant has requested that three units of density be allocated to Lot 4, however the application did not include a proposed covenant to reduce the density accordingly on another portion of the subject parcel.
 11. The applicant has not submitted a proposed covenant to address the reduced acreage of Lot 5 by reducing density on another portion of the subject parcel.
 12. No portion of the subject parcel is proposed to be permanently protected; instead, building envelopes are being proposed.
 13. The Planning Commission discourages the proposed use of building envelopes as the sole means of conserving open space; however it is noted that the proposed density is much less than what could potentially be allowed based on the acreage of the subject parcel. Therefore the Planning Commission finds the use of building envelopes acceptable in this situation, with some modifications to the envelopes and a requirement for future review on Lot 1 as noted below.
 14. It is noted that the large agricultural field on the parcel is proposed to be divided between Lots 1 and 2. Although this may be considered a fragmentation of this important resource, the proposed layout (with some modifications) provides for continued agricultural use on both lots. While the field may be divided by crop, it can retain its agricultural and aesthetic values since new development will be primarily located south of the field (with the exception of the western building envelope on Lot 1).
 15. The western building envelope on Lot 1 provides a 150 foot setback from Thorpe Brook and a 50+ foot setback from the associated wetland depicted in Town Plan Maps #6 and #7 (as depicted in the Boyle plan). However this proposed building envelope does encroach on the wildlife corridor indicated on Town Plan Map #6. It is further noted that the wetland, streambank and setback have not been field delineated or field verified.
 16. At the public hearing the applicant indicated that the southern building envelope on Lot 1 could be considered a "potential building area" within which a more specific building envelope will be delineated when development is proposed for that lot.
 17. Chapter VII Section 11.D. of the Charlotte Subdivision Bylaws states that "setbacks of a minimum of 200 feet from residences and residential wells to the lot lines of agricultural

operations may be required unless a smaller setback can be demonstrated to have no adverse impact.”

18. The building envelope on Lots 2 and 3 are less than 200 feet from the areas on Lots 1 and 2 that are proposed to remain in agricultural use.
19. The proposed building envelope for Lot 2 is not compatible with the surrounding pattern of development and open space, in that it extends northward toward the agricultural area and away from the other existing and proposed dwellings in the vicinity. As noted above, Thompson’s Point Road is a “most scenic public road” on Town Plan Map #13, and the proposed building envelope would allow a dwelling to dominate this pastoral view.
20. The proposed building envelope on Lot 4 encroaches on the Class III wetland, the wetland setback, and the farm pond.
21. The proposed building envelope on Lot 5 encroaches on the Class III wetland, the wetland setback, and the proposed fire pond.
22. The main proposed access is via Palmer Lane, which is a private road. The right-of-way was approved by the Planning Commission during the Reynolds/Hinsdale (Kingsland) Subdivision review, and the Selectboard has issued an Access Permit. The road has not yet been constructed. An unexecuted maintenance agreement was submitted with the application.
23. During the review of the Kingsland subdivision it was discussed that Palmer Lane would replace the existing driveway serving the Demick/DeMarco and Kahn parcels, however this understanding was never formalized.
24. Palmer Lane is proposed to serve at least ten lots, ie: Kingsland Lots 5, 6 and 7; Palmer Lots 1-5, Demick/DeMarco, Kahn, and the two Hinsdale parcels. It may also serve additional lots created from Lot 5 and from the “shop lot” now owned by Clark Hinsdale III, which would be more desirable than a new access on Route 7.
25. At the public hearing the applicant submitted a sheet by Civil Engineering Associates entitled “Marietta J.C. Palmer Subdivision, Road Details” dated 11/3/2003, no revisions (which is what was submitted for the Kingsland subdivision, but was missing from the Town file) and a sheet by T.J. Boyle and Associates entitled “Gravel Driveway Details” dated March 4, 2004, no revisions.
26. Lot 1 is proposed to have two means of access. One access, which serves the western building envelope, uses an individual curb-cut at the northeast corner of the lot, with the driveway running along the hedgerow (as depicted in the Boyle plan). An Access Permit application has been submitted for this curb-cut, and should be acted upon between the Preliminary and Final reviews.
27. The second access to Lot 1 runs along the very southern strip of the subject parcel (which is to be part of Lot 1) from Palmer Lane (as depicted on the Boyle plan). This driveway is problematic in that it runs through a wooded area that is indicated as forest habitat in Town Plan Map #6 and would require crossing a wetland (indicated in the application as a Class 3 wetland). Therefore, a condition of any final approval should require that prior to the construction of this driveway or any development associated with the southern potential building area on Lot 1, a review by the Planning Commission will be required in the form of a Subdivision Amendment.
28. Lot 2 is proposed to be accessed off of Palmer Lane. This access is acceptable.
29. Lot 3 is proposed to be accessed off of Palmer Lane, with a driveway running along a strip to the north of the Kahn lot, which is to be part of Lot 3. This location is acceptable,

- however this driveway should be depicted on the Boyle plan.
30. Lot 4 has frontage on Route 7, and also is proposed have a right-of-way over Palmer Lane, Lot 5 and the Hinsdale “shop lot”. An executed access/utility easement should be provided from Clark Hinsdale III to the applicant with the Final Plat application. The Boyle plan shows a portion of the potential driveway to Lot 4, however unless the driveway is proposed to be constructed immediately it should be removed from the plan. The driveway/road will be reviewed in conjunction with an application for any future development for which it would be used.
 31. Lot 5 is proposed to be accessed off of Palmer Lane. This is acceptable.
 32. The septic areas for Lots 1-4 are proposed to be located on a privately-owned lot (ie: Lot 2) rather than a common lot. A document should be created and submitted that addresses the allowed uses in the vicinity of these systems, as well as the maintenance (including mowing) of the systems.
 33. Lots 1 and 3 will have individual systems; Lots 2 and 4 will share a septic system. Lot 5 will use the shared septic system approved for the Reynolds/Hinsdale subdivision (aka Kingsland) on the Crabbe and Aube parcels to the south. An executed septic easement(s) (for Lot 5) should be provided with the Final Plat application.
 34. The existing parcel owned by Peter and Susanna Kahn is currently under the jurisdiction of Town of Charlotte permit 03-03-S. This permit allows a primary system on the Kahn parcel and a replacement system located in the system permitted (not constructed) by the State in EC-4-1659. The application indicates that the lot is proposed to have rights to a new primary septic system located on Lot 2. Prior to the construction of such a system (following any final approval), the submission of a new septic permit application to the Town will be required.
 35. A State subdivision permit will be needed for all proposed septic systems; this may be an amendment of EC-4-1659 or a new permit. Because of the complicated nature of the project, this permit/amendment should be obtained prior to submission of the Final Plat application.
 36. There is an existing trail easement to the south of the subject parcel that is contingent upon a trail easement over this parcel. The subject parcel is also near other important trails in the community, for example the Melissa and Trevor Mack Trail, the Co-housing Trail, Williams Woods, etc. A trail on the subject parcel would be an important linkage within this trail system.
 37. At the public hearing Eric Farrell stated that the applicant is willing to provide a trail easement to the Town over Palmer Lane, and potentially other portions of the parcel if necessary to connect to other trail easements.
 38. A fire pond is proposed for use by Lots 1-5 of the Palmer subdivision, Lots 5, 6 and 7 of the Kingsland subdivision, the Demick lot, the Kahn lot and the two Hinsdale lots.

Decision

Based on these Findings, the Planning Commission approves the Preliminary Plat Application for the proposed five-lot subdivision with the following conditions:

1. All maps or plans submitted with the Final Plat Application that are revised from the Preliminary Plat Application will include a revision date.

2. The following amendments will be made to maps and plans submitted with the Final Plat Application:
 - A. Plat of Proposed Subdivision by Civil Engineering Associates:
 1. Move the southern building envelope for Lot 1 outside of wildlife corridor (as depicted on Town Plan Map #6).
 2. Move northern edge of the building envelope on Lot 2 100 feet to the south.
 3. Move the westerly setback for Lot 3 100 feet from the boundary with Lot 1 and the northerly setback 200 feet from the boundary with Lot 2.
 4. Provide the distance along eastern boundary of Lot 4.
 5. Adjust the building envelope on Lot 4 so that it provides a 50 foot setback on the Class III wetland and farm pond.
 6. Adjust the building envelope on Lot 5 so that it provides a 50' setback from the Class III wetland and the fire pond.
 7. Add a note referring to the Boyle plan for additional information and conditions on the subdivision.
 8. Add a signature block for the Planning Commission.
 9. All setback distances will be labeled.
 - B. Resource Plan by T. J. Boyle:
 1. Label "Commercial Lot" and "Shop Lot".
 2. Adjust the building envelopes for Lots 1, 2 and 3 as indicated for the plat in Condition 2.A. above.
 3. Label the southern area on Lot 1 as "Potential Building Area".
 4. Show the driveway for Lot 3.
 5. Add the lot-line between Lot 4 and Lot 5.
 6. Remove the road spur on Lot 5 if it's not proposed to be constructed as part of this project.
 7. Add a note referring to the Civil Engineering survey and the Heindel and Noyes wastewater design for additional information and conditions on the subdivision.
 8. Add a signature block for the Planning Commission.
 - C. Sheet 1 of Wastewater Design by Heindel and Noyes:
 1. Correct lot lines for Lot 1 (60' ROW not needed) & Lot 3 where Kahn force main crosses Lot 3.
 2. Adjust the building envelopes for Lots 1, 2 and 3 as indicated for the plat in Condition 2.A. above.
 3. Add a note referring to the Civil Engineering survey and the Boyle resource plan for additional information and conditions on the subdivision.
 4. Add a signature block for the Planning Commission.
3. The applicant will obtain a review by the Charlotte Trails Committee and the Charlotte Conservation Commission to determine the best location for linking trails to the Town network. If the applicant agrees to the recommendations of the Trails Committee, the Final Plat Application will include depictions of the recommended trails on the plat and resource plan, and an Irrevocable Offer of Dedication and Trail Easement will be included with the Final Plat Application. If a location is not decided upon, a floating trail easement will be provided to allow flexibility in siting the trail.
4. The applicant will obtain a State permit for wastewater disposal for all proposed lots prior

- to submitting the Final Plat Application.
5. The applicant will obtain an Access Permit from the Town for the driveway access to Lot 1 off of Thompson's Point Road prior to submission of the Final Plat Application.
 6. The Final Plat Application will include a written review from the Charlotte Fire and Rescue Department, addressing in particular the fire pond and dry hydrant system, and the vehicle turn-outs on the access road.
 7. A written acknowledgement from Peter Demick and Patrice DeMarco and Peter and Susanna Kahn will be submitted with the Final Plat Application which states that if the Final Plat Application is approved, and if Palmer Lane is constructed in accordance with the approved design, the existing driveway serving as access to their parcels will be abandoned.
 8. The Shared Roadway Agreement (to be included in Covenants) will allow for the future use of Palmer Lane to access new lots created out of Lot 5 and the Hinsdale lots.
 9. The Easement Summary will be amended as follows:
 - A. For Lot #4: "The lot has the benefit of a force main easement on the shop lot owned by Clark Hinsdale III and on Lot #2 and Lot #5," and "The lot has the benefit of well use on the "commercial lot" owned by Clark Hinsdale III."
 - B. For Lot #5 add: "The lot is burdened by an access easement to Lot 4 and to the "shop lot" owned by Clark Hinsdale III."
 - C. For Kahn house add: "The lot has the benefit of a water line and well easement over Lot 1."
 10. The Final Plat Application will include final drafts in paper and electronic formats (MS Word) of the following documents with amendments as noted above:
 - X Roadway Agreement and Waiver
 - X Sewage Service Agreement, Waiver and Easement
 - X Fire Pond Agreement, Waiver and Easement
 - X Trail Easement (as provided for in Condition 3 herein)
 - X Irrevocable Offer of Dedication for the Trail (as provided for in Condition 3 herein)
 - X Declaration of Covenants which will include a reference to the Easement Summary, the Shared Roadway and Fire Pond Agreement, a summary of maintenance procedures and responsibilities for the septic systems and area, the Shared Septic System Agreement for Lots 2 and 4, and a provision for density allocation.
 11. An executed access/utility easement in favor of the applicant (for Lot 4) over the "shop lot" owned by Clark Hinsdale III will be submitted with the Final Plat application.
 12. An executed wastewater disposal and force main easement in favor of the applicant (for Lot 5) to use the wastewater system associated with the Kingsland Subdivision will be submitted with the Final Plat Application.
 13. The proposed allocation of density will be provided with the Final Plat application.

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.

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 March 4th: Jeff McDonald, Al Moraska, Gordon Troy, and Linda Radimer

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:_____