

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

David Schermerhorn Trust Preliminary Plan Application For A Four-Lot Planned Residential Development Subdivision Application # PC-07-11

Background

Sketch Plan Review was held on June 15, 2006, at which time the project was classified as a major subdivision. The Planning Commission approved an extension for the submission of the Preliminary Plan Application on June 8, 2007.

Application

Materials submitted with the application are listed in Appendix A.

Public Hearing

A public hearing was opened for this application on July 19, 2007 and continued to August 2, 2007. David Schermerhorn and Susan Schermerhorn were present at both meetings. Peter DeGraff of Otter Creek Engineering, Inc. was present and represented the applicant at the meeting on July 19, and William Norland of Otter Creek Engineering, Inc. was present and represented the applicant at the meeting on August 2. No adjoining property owners were present at either meeting. Gary Pittman of the Charlotte Conservation Commission was present and participated in the meeting on August 2.

Regulations in Effect

Land Use Regulations adopted March, 2006.

Sewage Ordinance as amended December, 2004.

Recommended Standards for Developments and Homes adopted September, 1997

Findings

1. The applicants have proposed to create four lots from their 69 acre parcel. The applicant previously conserved 11.5 acres, so the parcel currently has 57.5 acres of density. Lot 1 is to be 26.9 acres and is to include the existing dwelling and adjacent structures which are used for a horse boarding stable; Lot 2 is to be a building lot of 35.3 acres; Lot 3 is to be a building lot of 3.3 acres; and Lot 4 is to be a building lot of 3.8 acres.
2. Prior to the meeting on August 2, the applicant submitted the following items:
 - A. A letter dated August 1, 2007 from Peter DeGraff to Dean Bloch re: "David Schermerhorn Trust, Church Hill Road Subdivision, Charlotte, Vermont;" and
 - B. A plan by Otter Creek Engineering, Inc. entitled "David Schermerhorn, Church Hill Road Subdivision, Charlotte, Vermont, Presentation Plan" dated 7/19/07,

revised 7/31/07.

3. The subject parcel includes or is adjacent to the following *areas of high public value*:
 - A. Land in active agricultural use: The property is operated by the owner as a horse farm. The adjoining property to the northeast is operated as a dairy farm.
 - B. Prime and statewide soils: There is a small pocket of prime agricultural soil near Church Hill Road and statewide agricultural soils on much of the rest of the parcel (from VCGI data);
 - C. Steep slopes (equal to or in excess of 15%) are located on the parcel near Church Hill Road, and along the west side of proposed Lot 1 (from the applicant's and VCGI data);
 - D. Surface water: The applicant has field delineated the wetland in the northwest portion of the parcel, where Lots 3 and 4 are proposed. The Town and State wetland maps also indicate wetland is likely to be located in the central meadow; this appears to be associated with the seasonal stream which is the headwater of McCabe Brook (from application and VCGI data). The Town's Conservation District (a zoning district) is a 200 foot-wide strip that runs along the McCabe Brook headwater stream. Additionally, there are three ponds located on the parcel, one near Church Hill Road, and two right on Hinesburg Road. The two ponds on Hinesburg Road have dry hydrants for fire protection.
 - E. Water supply source projection area for the Charlotte Central School's drilled well is 1,000 feet from the well, and includes a portion of the applicant's parcel (from the application and Town records);
 - F. Historic District—the "Charlotte Center Historic District," which is located at the intersection of Church Hill Road and Hinesburg Road, is in the State Historic Register, and also may be in the National Register of Historic Places (from Town and State data);
 - G. Conserved Land— 11.5 acres on the east side of the applicant's parcel (adjacent to the Foote farm) is conserved with the Vermont Land Trust—this was not conserved as part of a subdivision. The Foote farm (to the east of the applicant's parcel) is also conserved with the Vermont Land Trust. (from Town records and the applicant's testimony). Open space on the Schneider/Donavan project (not finalized) is to be located on the south side of Hinesburg Road, across from the subject parcel (from Town records).
4. Considering the resources on the parcel, the Planning Commission finds that the following are the **primary** *areas of high public value* on the parcel: the agricultural operation, primary agricultural soils, wetland, McCabe's Brook headwater stream, and the water supply source protection area. These are the resources that most strongly characterize the property, and which the Planning Commission feels are most important to protect.
5. As proposed, the project will impact the following *areas of high public value*:
 - A. Lot 2 will impact the agricultural operation (although there is a potential that Lot 2 itself could become an agricultural operation), statewide agricultural soils and possibly wetland (see Finding 16 below).
 - B. Lots 3 and 4 will impact prime agricultural soils, wetland and buffer (where the force-mains run from the dwellings to the disposal fields) and possibly steep slopes.

6. It is noted that any development on the parcel would impact some *area of high public value*. However it is further noted that the Charlotte Land Use Regulations [see in particular Section 7.3 (D)(1), (2) and (3)] do not prohibit impacting *areas of high public value*, but it indicates that building envelopes, lot lines, infrastructure, roads, driveways and utility corridors should not create any undue adverse impacts on *areas of high public value*, and that building envelopes shall be designed to minimize undue adverse impacts.
7. The design of the project has minimized impacts by clustering Lots 3 and 4 in the northwest corner of the parcel, where they will have the least impact on the agricultural operation.
8. The applicant has also proposed two “open space areas,” which will be designated as “no build areas:”
 - A 7.4 acre area which encompasses the northwest portion of Lot 2 and the easterly portions of Lots 3 and 4. This designation will protect the hayfield on Lot 2 and 3, and the pond and wetland on Lots 3 and 4.
 - A 16 acre area, which includes the western portion of Lot 1 and the eastern portion of Lot 2. The purpose of this open space is to keep undeveloped an area that is used for the agricultural operation and is also an important wildlife corridor associated with McCabe’s Brook. This area also borders the conserved area on the Foote farm. Therefore, the project will result in 23.4 acres of new open space, which is 34% of the parcel. An additional 11.5 acres have already been conserved—so the total area designated as open space will be 50% of the parcel.
9. The Planning Commission finds the proposed open space to be appropriately sized and configured to protect *areas of high public value* to a degree that is commensurate with the intensity of the proposed development. The use of “no build” designation rather than a conservation easement is acceptable, again considering the application proposes considerably less than the zoning density allows. The “no build” areas will retain their density, but no structures will be allowed within these areas.
10. Lots 3 and 4 are both proposed to be less than five acres (the difference totaling 2.9 acres). Therefore 2.9 acres of density will need to be removed from either Lot 1 or Lot 2.
11. The Planning Commission finds that, considering the primary *areas of high public value*—including agricultural and wildlife resources—are primarily located on Lot 2, any additional development (beyond what is proposed in this application) would best be located on Lot 1.
12. It may be desirable to slightly increase the size of Lot 1 to at least 27 acres so that it is eligible for the “current use” property tax program.
13. The project proposes three access points—the Lot 1 driveway (which is existing and serves the existing dwelling), the proposed driveway for Lot 2, and the proposed shared driveway for Lots 3 and 4.
14. The Land Use Regulations supports minimizing the number of curb-cuts. The fact that the application proposes three access points is a result of the hilly topography and also the relatively dispersed configuration of the lots. The topography makes the sharing of a driveway between Lot 1 and Lot 2 virtually impossible, and similarly, sharing a driveway between Lots 1, 3 and 4 is equally impossible. There is a potential that the driveway to Lots 3 and 4 could also serve Lot 2; however, it appears that such a driveway would need to cross a wetland, and it would also impact the steep slope. However, it appears there is also a possibility that the proposed driveway for Lot 2 (from Hinesburg Road) will cross a

Class II wetland or buffer. However, this proposed driveway is currently used as a farm road. The design of the driveway to Lot 2 will need to be further reviewed at the Final Plan Review.

15. The applicant has obtained Highway Access Permits for the two proposed curb-cuts (HAP-07-01 & HAP-07-02).
16. It is preferable to locate the force mains for Lots 3 and 4 through the field to the south of Lot 4, rather than through the woods along the northern border of Lot 4. If it is determined that the driveway for Lot 2 is to be in this location, the driveway and force mains should be co-located as much as possible.
17. The Town's wastewater consultant has reviewed the wastewater disposal plans, and issued a memo dated 7/16/07 which indicates that the plans are acceptable.
18. The applicant has applied to the State for a wastewater disposal permit.
19. The Planning Commission finds that the proposed development, as revised in the plan dated July 31, 2007, has minimized the impact on areas of high public value and will not create undue adverse impacts. Notwithstanding this determination, the Planning Commission finds that instead of requiring a master plan for future development, the allocation of the density remaining for future development is appropriate and should be explored with the Final Plan Review.

Decision

Based on these Findings, the Planning Commission approves Application PC-07-11 with the following conditions:

1. All plans submitted with the Final Plan Application that are revised from the Preliminary Plat Application will include a revision date.
2. The survey submitted with the Final Plan Application will depict the Conservation District and the proposed open space areas, and it will also include a chart indicating allocation of density.
3. The applicant will explore the following adjustments:
 - A. Increasing the size of Lot 1 to at least 27 acres so that it will be eligible for the "current use" tax program.
 - B. Allocating all remaining density to Lot 1.
4. Prior to the submission of the Final Plan Application, the applicant will obtain a Conditional Use Determination Permit for the crossing of wetland by the force mains serving Lots 3 and 4. The force mains would preferably be located to the south of Lot 4.
5. Prior to the submission of the Final Plan Application, the applicant will obtain a wetland delineation from a wetland ecologist in the vicinity of the proposed driveway for Lot 2; if the delineation indicates that the driveway will cross a Class II wetland, a Conditional Use Determination Permit will be obtained prior to the submission of the Final Plan Application.
6. Prior to the submission of the Final Plan Application, the applicant will obtain a wastewater permit from the State of Vermont.
7. The Final Plan Application will include a proposed utility plan, depicting how power, telephone and cable will be brought to each dwelling. This may be a sketch which has been created by or reviewed by the appropriate utility companies.

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 July 19: Jeff McDonald, Jim Donovan, Linda Radimer, John Owen, Robin Pierce, Peter Joslin and Andrew Thurber.

Members Present at the Public Hearing on August 2: Jeff McDonald, Jim Donovan, Linda Radimer, John Owen, Robin Pierce, Peter Joslin and Andrew Thurber.

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 application consists of:

- 1. An application form and appropriate fee.
- 2. A nine page document entitled “Subdivision Application Information.”
- 3. A letter dated June 15, 2007 from William Norland to Dean Bloch re: “David Schermerhorn Trust, Church Hill Road Subdivision, Charlotte, Vermont.”
- 4. A plan by Otter Creek Engineering, Inc. entitled “David Schermerhorn, Church Hill Road Subdivision, Charlotte, Vermont, Overall Subdivision Sketch” dated 3/2/07, no revisions.
- 5. A wastewater disposal plan by Otter Creek Engineering, Inc. entitled “David Schermerhorn, Church Hill Road Subdivision, Charlotte, Vermont” consisting of the following sheets:
 - Sheet 1 entitled “Overall Subdivision Plan and Index Sheet” dated 1/23/07, revised 3/2/07.
 - Sheet 2 entitled “Site Plan” dated 1/23/07, last revised 6/13/07.
 - Sheet 3 entitled “Site Plan” dated 1/23/07, no revisions.
 - Sheet 4 entitled “Site Plan” dated 1/23/07, no revisions.
 - Sheet 5 entitled “Site Plan and Profile” dated 1/23/07, no revisions.
 - Sheet 6 entitled “Sanitary Sewer Profile” dated 1/23/07, no revisions.

- Sheet 7 entitled “Sanitary Sewer Profile” dated 1/23/07, no revisions.
 - Sheet 8 entitled “Notes and Details” dated 1/23/07, no revisions.
 - Sheet 9 entitled “Notes and Details” dated 1/23/07, no revisions.
6. A sheet by Otter Creek Engineering, Inc. entitled “David Schermerhorn-Charlotte, Vermont, Lot 3 Drive Profile” dated 2/28/07.
 7. A sheet by Otter Creek Engineering, Inc. entitled “David Schermerhorn-Charlotte, Vermont, Lot 4 Drive Profile” dated 2/28/07.
 8. A copy of an application for a Wastewater System and Potable Water Supply Permit Application to the State of Vermont.
 9. Draft Warranty Deeds for Lot 2, Lot 3 and Lot 4 dated 5/24/07.
 10. A draft Conservation Easement dated 5/24/07.