

# CHARLOTTE PLANNING COMMISSION

## FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**Melvin and Ynez Kaplan**

**Final Plan Hearing  
For A  
Minor Subdivision  
Application # PC-08-02**

### **Background**

The parcel was previously subdivided in 1991, creating the 46.3 acre lot that is proposed to be subdivided in the current application as well as a ten acre lot that wraps around Morningside Cemetery. Sketch Plan Review for the current proposal (PC-07-05) was held on April 5, 2007 and April 19, 2007, and the project was classified as a Minor Subdivision.

### **Application**

Materials submitted with the application are listed in Appendix A.

### **Public Hearing**

A public hearing for this application was held on February 21, April 17, May 1 and June 19, 2008. Melvin Kaplan and James Spadaccini were present representing the applicant. David Nichols, an adjoining property owner, submitted a memo to the Planning Commission and Jonathan Fischer, an adjoining property owner, participated in the hearing. Linda Hamilton of the Conservation Commission also participated in the hearing.

### **Regulations in Effect**

Town Plan, amended March, 2008

Land Use Regulations adopted March, 2006.

Recommended Standards for Developments and Homes adopted September, 1997

### **Findings**

1. The application proposes to subdivide the 46.3 acre parcel into two lots: Lot 1 is 41.3 acres and Lot 2 is 5.0 acres.
2. The parcel includes or is adjacent to the following *areas of high public value*:
  - A. Agricultural use: The parcel is currently used as a horse farm, and the adjacent property to the south is an active hay farm.
  - B. Agricultural soils: There are three small patches of *prime* agricultural soils—one near Spear Street, one in the southwest corner (where the current building lot is proposed), and one in the northern spur. Much of the eastern area has *statewide* agricultural soils, and there are also some in the middle southern area, as well as the southwest corner.

- C. Wetlands: There are a few small wetlands as indicated by Map 7 in the Town Plan.
  - D. Wildlife habitat: the Town's wildlife habitat map (Map 6 in the Town Plan) indicates that forest habitat is located on much of the parcel.
  - E. Historic district: the State Historic Register indicates that the northern portion of the parcel is in the Baptist Corners District.
3. Considering the resources on the parcel, the Planning Commission finds that the following are the most important *areas of high public value* (not necessarily in order of priority): the existing agricultural use, agricultural soils and wildlife habitat. These are the resources that most strongly characterize the property, and which the Planning Commission feels are most important to protect.
  4. The proposed building lot (Lot 2) was purposefully located away from the agricultural use on the parcel, and at the edge of the forest habitat. Some agricultural soils will be impacted, however the agricultural soils are not currently involved with or adjacent to the existing agricultural operation, and they are situated in an area on the parcel that is not well sized or configured for agricultural use.
  5. Lot 2 is proposed to be accessed from Morningside Drive, and then by a private right of way over the 10 acre Kaplan parcel and Lot 1.
  6. Morningside Drive is currently a class 3 town highway which runs from Spear Street to Morningside Cemetery, a distance of 0.15 miles.
  7. A portion of Morningside Drive was discontinued in 1841, as indicated in volume 3 pages 109—110 of the Town Records.
  8. It appears that the applicant has legal access to their property located west of Morningside Cemetery via Morningside Drive, however the Planning Commission will require a statement to this effect to be included on the plat if the surveyor believes that it is accurate.
  9. The plat submitted with the application does not depict a right-of-way over the 10 acre Kaplan parcel or over Lot 1, to serve Lot 2. This will need to be added to the plat.
  10. The Town's wastewater consultant, Spencer Harris of Vermont Contours, Inc., has reviewed the wastewater disposal plans and issued a memo dated 4/9/07 which indicates the proposal complies with the current septic regulations.
  11. The applicant has obtained a Wastewater System and Potable Water Supply Permit (WW-4-1066-1) for the proposed building lot (Lot 2).
  12. The Planning Commission finds that the proposed development, with conditions as stated below, has minimized the impact on *areas of high public value* and will not create undue adverse impacts.

## Decision

Based on these Findings, the Planning Commission approves the Final Plan Application for the proposed two-lot with the following conditions:

1. The survey plat by Vaughn Button of Button Professional Land Surveyors entitled "Melvin I. & Ynez L. Kaplan, Spear Street Extension, Charlotte, Vermont" dated 8/23/96 will be revised as follows:
  - A. A statement will be added indicating that the applicant has legal access to their property on the west side of Morningside Cemetery via Morningside Drive.

- B. A 50 foot access wide right of way for a driveway serving Lot 2 will be depicted over the parcel labeled “Other Land of Kaplan” and also over Lot 1 in order to allow use of the existing “sugaring road” for the driveway.
  - C. A utility right-of-way will also be depicted—this may be located within the access right-of-way, or it may be located along the southern edge of the parcel.
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 herein 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 applicant will complete the following steps:
    - A. Obtain a Highway Access Permit from the Selectboard for the proposed driveway serving Lot 2.
    - B. Execute and record an access and utility easement serving Lot 2 (after obtaining administrative review of the documents).
    - C. Submit a letter from the surveyor indicating he has set the survey pins in the field as indicated on the survey.
  4. Prior to the submission of a Zoning Permit application for Lot 2, wooden stakes will be set at the corners of the building envelope on that lot.
  5. The Planning Commission will not require open space to be designated at this time, however any future subdivision or development on Lot 1 will require the designation of open space. The total current acreage (46.3 acres) will be considered when calculating the open space as provided for in Section 8.4 (C) of the Charlotte Land Use Regulations (or succeeding town regulations in effect).
  6. No pole-mounted light fixture will be taller than 8’ off the ground, and no building-mounted light fixture will be taller than 15’ off the ground. Fixtures will be shielded to direct light downward, and will not direct light onto adjacent properties or roads, and will not result in excessive lighting levels that are uncharacteristic of the neighborhood.
  7. All new utility lines will be underground.
  8. All new driveways shall be surfaced with non-white crushed stone.

**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 21:** Jeff McDonald, Peter Joslin, Linda Radimer, Ellie Russell, John Owen and Robin Pierce

**Members Present at the Public Hearing on April 17:** Jeff McDonald, Jim Donovan, Peter Joslin, Linda Radimer, Ellie Russell, John Owen and Robin Pierce

**Members Present at the Public Hearing on May 1:** Jeff McDonald, Jim Donovan, Peter Joslin, Linda Radimer, Ellie Russell, John Owen and Robin Pierce

**Members Present at the Public Hearing on June 19:** Jeff McDonald, Jim Donovan, Peter Joslin, Linda Radimer, Ellie Russell, John Owen 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:\_\_\_\_\_

**APPENDIX A**

The following items were submitted with the application:

- 1. An application form and appropriate fee.
- 2. A survey entitled “Melvin I. & Ynez L. Kaplan, Spear Street Extension, Charlotte, Vermont” by Vaughn Button of Button Professional Land Surveyors, PC dated 8/23/96, no revisions.
- 3. A wastewater plan by Lincoln Applied Geology, Inc.entitled “Kaplan Property, Spear Street Extension, Charlotte Vermont dated January, 2007, no revisions, with four sheets labeled as follows:
  - A. Sheet 1 of 4: “Overall 2 Lot Subdivision Site Plan with Existing and Proposed Wastewater and Water Systems and Proposed Water System Details”
  - B. Sheet 2 of 4: “Lot 2 Site Plan with Proposed Water and Wastewater Systems and Primary Wastewater System Details”
  - C. Sheet 3 of 4: “Lot 2 Wastewater Systems Details”
  - D. Sheet 4 of 4: “Lot 1 Site Plan with Existing and Proposed Wastewater System Plan”