

# CHARLOTTE PLANNING COMMISSION

## FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**Peter and Jill Knox  
And  
Drew and Dianne Chace**

**Final Plan Hearing  
For A  
Minor Subdivision and  
Planned Residential Development  
Application # PC-08-08**

### **Background**

Sketch Plan Review (PC-07-03) was held on March 15 and April 5, 2007, and an Amended Sketch Plan Review was held on November 1 and 15, 2007. The project was classified as a Minor Subdivision and Planned Residential Development.

### **Application**

Materials submitted with the application are listed in Appendix A.

### **Public Hearing**

A public hearing for this application was held on May 1, 2008. Peter Knox, Jill Knox and Liam Murphy were present representing the applicant. Paul Unger, an adjoining property owner, and Linda Hamilton of the Conservation Commission were present and 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 property involved with this application consists of two parcels—a 9.42 acre parcel owned by Peter and Jill Knox, which includes a single family dwelling and mobile home; and a 40 acre parcel owned by Drew and Dianne Chace, which includes a two family dwelling.
2. The application is to create a two-lot subdivision from the Knox parcel (Lot 1 and Lot 2) using five acres of density (and simultaneously conserving those five acres) from the Chace parcel. Additional portions of Knox and Chace parcels are proposed to be designated as “open space,” as discussed in more detail below.
3. The Chace parcel is labeled “Lot 3” for identification purposes on the plat. This lot currently exists, and is not being changed except for the designation of the conserved

- area and open space.
4. The Knox parcel includes or is adjacent to the following *areas of high public value*:
    - A. Agricultural soils: statewide soils are located on the parcel.
    - B. Steep slopes (15%-25%) are located along the ridgeline north of the Knox's dwelling and east of the mobile home.
    - C. Surface water: there is a stream and wetland (as indicated by Town and State wetland maps) along the easterly lot line; a portion of this area is within the Conservation Zoning District. There is also a small wetland in the vicinity the driveway to the mobile home. Buffers may be associated with the wetland and stream.
    - D. Wildlife habitat: the Town's wildlife habitat map (Map 6 in the Town Plan) indicates that the wooded portion of the parcel is forest habitat.
    - E. Scenic roads: Prindle Road is depicted as a most scenic" road on Map 13 in the Town Plan.
    - F. Conserved land: a 20 acre portion of the parcel to the east is conserved.
  5. The Chace parcel includes or is adjacent to the following *areas of high public value*:
    - A. Agricultural use: a portion of the parcel is regularly mowed for hay.
    - B. Agricultural soils: statewide agricultural soils cover the entire parcel.
    - C. Surface water: Two streams run along the western portion of the parcel. Wetland (as indicated by Town and State wetland maps) is located on the western portion of the parcel in the vicinity of the streams. The Conservation Zoning District includes some but not all of the wetland. Buffers may be associated with the wetland and stream.
    - D. Wildlife habitat: The Town's wildlife habitat map (Map 6 in the Town Plan) indicates that much of the western portion of the parcel is associated support habitat.
    - E. Scenic roads: Prindle Road is depicted as a most scenic" road on Map 13 in the Town Plan.
  6. Considering the resources on the Knox parcel, the Planning Commission finds that the following are the most important *areas of high public value* (not necessarily in order of priority): the steep slopes, forest habitat, the stream and wetland and associated buffer along the easterly property line, and scenic qualities of Prindle road. These are the resources that most strongly characterize the property, and which the Planning Commission feels are most important to protect.
  7. Considering the resources on the Chace parcel, the Planning Commission finds that the following are the most important *areas of high public value* (not necessarily in order of priority): the area used for agriculture, the wetland and buffer, the streams and buffers, and the wildlife habitat. These are the resources that most strongly characterize the property, and which the Planning Commission feels are most important to protect.
  8. The application proposes to create two lots from the Knox parcel: Lot 1 is to be 8.21 acres and includes the wood-frame house and garage; and Lot 2 is to be 1.21 acres and includes the mobile home (which may be replaced). Because the applicant's parcel is less than ten acres, the applicant is also proposing to conserve five acres of the Chace property through a Conservation Agreement and Grant of Development and Density Rights ("Conservation Agreement") with the Town, under Section 8.4(F) of the Charlotte Land Use Regulations.
  9. The proposed building envelopes on Lot 1 and Lot 2 do not include the *areas of high public value* that the Planning Commission has found to be most important on the parcel.
  10. The proposed five acre "conserved area" is in the northwest corner of the Chace parcel,

- and includes wetland and associated buffer, one of the streams and its associated buffer, statewide soils, and associated support (wildlife) habitat on the parcel.
11. The existing Conservation Zoning District does not include the entire northwest corner of the parcel (i.e. the proposed conservation area). Although Vermont Wetland Rules may restrict some uses in the proposed conservation area, these rules do not provide permanent protection.
  12. The proposed conserved area is appropriately located to protect a sensitive area that is not already permanently protected, and it may serve as an “anchor” for future conservation areas. However, to effectively protect this area the Conservation Agreement will need to be revised to restrict roads from the conservation area.
  13. The applicant has proposed two “open space areas”: 7.2 acres on the Knox parcel and 12.5 acres on the Chace parcel. The open space on both parcels will be subject to an Open Space Agreement, Grant of Conservation Restrictions and Covenants (“Open Space Agreement”) with the Town. Combined, the proposed open space and conserved area constitutes 50% of the combined acreage of both parcels.
  14. The proposed open space on the Knox parcel is designated as the area outside of the building envelope on Lot 1. This area includes the steep slopes and forest habitat.
  15. The proposed open space on the Chace parcel is “floating” until such time as that parcel is further developed, and then it will be specifically designated at that time.
  16. Open space areas are designated as “no build” areas. The proposed subdivision will use (or eliminate) the density of the open space area on the Knox parcel. The open space on the Chace parcel will retain its density since no additional development is proposed on that parcel at this time. Considering there is currently a two-family dwelling on the parcel (which uses 10 acres of density), and five acres of the parcel will be conserved as a result of the Conservation Agreement, the parcel will have 25 acres of density remaining, which could be used for five additional dwelling units. If one of the existing dwelling units were to be removed from the existing structure, the property will have 30 acres of density, which could be used for six additional dwelling units.
  17. 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.
  18. The plat includes a proposed density allocation chart. Although some clarification of the chart and accompanying notes is needed, the Planning Commission finds that the proposed density allocation is acceptable.
  19. Findings 20 through 25 address standards for PRDs involving two or more parcels, which are found in Section 8.4(F) of the Charlotte Land Use Regulations.
  20. Section 8.4(F)(1)—the proposed density does not exceed what could be permitted if the land were subdivided in a standard configuration in conformance with the regulations.
  21. Section 8.4(F)(2)—the application will result in a settlement pattern that is very similar to what currently exists, the main difference being that Lot 2 may be redeveloped with a permanent rather than a mobile home. The application will also result in the conservation of wetland and buffer, stream and buffer, wildlife habitat, and statewide soil, which are resources listed in Table 7.1 of the Regulations.
  22. Section 8.4(F)(3)—the area to be developed (Lot 1 and Lot 2) is already developed.
  23. Section 8.4(F)(4)—both parcels have portions in the Rural District and in the Conservation District. The proposed building envelopes on the Knox parcel are in the Rural District. A sufficient portion of the proposed conservation area on the Chace

- parcel is within the Rural District that would allow that area to be developed if it were not conserved.
24. Section 8.4(F)(5)—the area to be conserved is five acres, allowing for the creation of an additional lot with a single family dwelling on the Knox parcel. The Chace parcel will have thirty-five acres of density remaining, of which ten acres is currently committed for a two-family dwelling on that parcel.
  25. Section 8.4(F)(6)—the five acre conservation area on the Chace parcel will be conserved via a Conservation Agreement with the Town. The subdivision plat includes the boundaries of the parcel, the boundaries of the conservation area, a table that describes the allocation of density, and a deed reference for the parcel of which a portion is to be conserved.
  26. Section 8.4(F)(7)—the density that is being conserved from the Chace parcel is not allocated for any other use.
  27. The previous owner of the Knox parcel obtained a state Wastewater System and Potable Water Supply Permit (WW-4-2746) for the wastewater system and water supply that currently serves the mobile home and which is proposed to serve Lot 2. A “best fix” wastewater disposal system has been installed in accordance with the permit. The system and a replacement area are located on Lot 1; appropriate easements are depicted on the plat and the applicant has submitted a draft easement document.
  28. The Town’s wastewater consultant, Spencer Harris of Vermont Contours, Inc., has reviewed the wastewater disposal plans and issued two memos dated 3/19/07 and 4/7/08. The 4/7/08 memo indicates that a replacement area will need to be designated for Lot 2, or the system will need to be redesigned to comply with the state rules. A replacement area is indicated on the wastewater plan by Lincoln Applied Geology and on the plat by Morrow. The state wastewater and water supply permit will need to be amended to address the creation of the new lot (Lot 2).
  29. The two dwellings on proposed Lot 1 and Lot 2 currently share a well, and this is proposed to continue. An easement is depicted on the plat, and an easement document has been submitted.
  30. No change of access is proposed.
  31. The mobile home on Lot 2 is currently within the northern setback. Any re-development of Lot 2 will need to comply with Section 3.8(B) of the Land Use Regulations, which will increase the likelihood of future compliance with setbacks.
  32. The *area of high public value* that will not specifically be protected is the “most scenic road” status of Prindle Road. However, there are two dwellings (the Knox’s residence and the mobile home) currently located within the proposed building envelopes for Lot 1 and Lot 2. Additionally, Lot 2, at 1.21 acres, is considerably smaller than the minimum lot size in the Rural District (which is five acres), and so it is more likely to be re-developed with a more modest-sized dwelling than if Lot 2 were to be a larger lot—and such a dwelling would approximate or possibly improve what is currently on the site. Therefore, the impact of the project on the status of Prindle Road as a “most scenic road” has been minimized.
  33. 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 Planned Residential Development with the following conditions:

1. The survey plat by Stuart J. Morrow entitled “Final Plat, A Planned Residential Development, Between Properties of Peter and Jill Knox and Drew and Dianne Chace, Charlotte, Vermont” dated March, 2008, revised 4/2/08 will be revised to clarify the Density Allocation Chart for administrative approval by the Town Attorney and Town Planner.
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. Submit a letter from the surveyor indicating he has set the survey pins in the field as indicated on the survey.
  - B. Revise the Conservation Agreement to restrict roads other than farm roads from the conservation area.
  - C. Revise the Open Space Agreement to remove “establish, construct” from Section C paragraph 5, and add “After review and approval by the Planning Commission” at the beginning of Section C paragraph 7.
  - D. Revise the Conservation Agreement and Open Space Agreement as requested by the Town’s Attorney, and execute the documents and submit them to the Selectboard for execution.
  - E. Execute the Septic Easement Deed and the Water Well Easement Deed.
  - F. Obtain an amendment to WW-4-2746 for the subdivision.
4. The applicant will simultaneously record in the Charlotte land records the mylar identified in Condition 2 above and the Conservation Agreement, the Open Space Agreement, the Septic Easement Deed and the Water Well Easement Deed after adding the appropriate map slide number into the documents.
5. 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.
6. Any further subdivision of Lot 3 or the creation of additional dwelling units on Lot 3 will require the delineation of the 12.5 acres of open space on Lot 3.
7. 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.
8. All new utility lines will be underground.
9. 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 May 1:** 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:\_\_\_\_\_
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- 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 by Stuart J. Morrow entitled “Final Plat, A Planned Residential Development, Between Properties of Peter and Jill Knox and Drew and Dianne Chace, Charlotte, Vermont” dated March, 2008, revised 4/2/08.
- 3. A wastewater disposal plan by Lincoln Applied Geology, Inc. entitled “Knox Property, 1055 Prindle Road, Charlotte Vermont, Site Plan, Proposed Lot 31 and Lot #2 with Replacement Disposal Systems and Shared Water Supply” dated February, 2007, no revisions.
- 4. A draft document entitled “Conservation Agreement and Grant of Development and Density Rights.”
- 5. A draft document entitled “Open Space Agreement, Grant of Conservation Restrictions and Covenants.”
- 6. A draft document entitled “Septic Easement Deed.”
- 7. A draft document entitled “Water Well Easement Deed.”
- 8. A letter dated October 9, 2007 from Drew and Dianne Chace indicating their willful participation in the PRD application.