

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

Clark Hinsdale, III and Margaret Berlin

Final Plan Application For A Subdivision Amendment Application # PC-08-12

Background

The parcel owned by Hinsdale was created by a subdivision in 2007 (by Hinsdale); the parcel owned by Berlin was created by a subdivision in 1994 (by Giebink) and modified in 1996 (by Murat and Berlin). Sketch Plan Review for the current proposal was held on April 17, 2008.

Application

Materials submitted with the applications are listed in Appendix A.

Public Hearing

A public hearing for this application was held on June 5 and June 12, 2007. Clark Hinsdale, III and David Miskell were present representing the applicant. There were no other interested parties present.

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 Hinsdale parcel was Lot 2 of the subdivision by Clark Hinsdale, III (PC-06-37) approved on July 12, 2007.
2. The Berlin parcel includes all of the land that was subdivided into three lots by Barbara Giebink in 1994, which was effectively unsubdivided via the subdivision modification by Didier Murat and Margaret Berlin in 1996.
3. The proposed Subdivision Amendment will allow the conveyance of 15 acres from Hinsdale to Berlin.
4. The Hinsdale parcel includes or is adjacent to the following *areas of high public value*:
 - A. Agricultural Use: the parcel has been used as a horse farm and includes a barn.
 - B. Agricultural soils: prime and statewide soils are located on most of the parcel (as indicated by SCS Soil Survey of Chittenden County).
 - C. Surface water: there is a small stream and wetland (as indicated by Town maps) adjacent to the railroad tracks.

- D. Scenic roads: Lake Road is depicted as a “most scenic road” on Map 13 in the Town Plan. There are also scenic views and vistas within the neighboring Charlotte Park and Wildlife Refuge.
 - E. Conserved land: The Charlotte Park and Wildlife Refuge has been conserved by the Vermont Land Trust; the parcel across Greenbush Road has also been conserved by the Vermont Land Trust; and the town has conserved a portion of the Ready parcel, just north of the Charlotte Park and Wildlife Refuge.
5. The Berlin parcel includes or is adjacent to the following *areas of high public value*:
 - A. Agricultural soils: statewide agricultural are located on much of the entire parcel (as indicated by SCS Soil Survey of Chittenden County).
 - B. Surface water: A small stream and wetland (as indicated by Town wetland maps) crosses the railroad track, and a second wetland area is adjacent to the driveway.
 - C. Scenic roads: Lake Road is depicted as a “most scenic road” on Map 13 in the Town Plan. There are also scenic views and vistas within the neighboring Charlotte Park and Wildlife Refuge.
 - D. Conserved land: The Charlotte Park and Wildlife Refuge has been conserved by the Vermont Land Trust; the parcel across Greenbush Road has also been conserved by the Vermont Land Trust; and the town has conserved a portion of the Ready parcel, just north of the Charlotte Park and Wildlife Refuge.
 6. The proposed Subdivision Amendment will result in the conveyance of land with prime agricultural soils from Hinsdale to Berlin, however this area also has a significant slope. Therefore, the land to be conveyed is not particularly well suited for agricultural use; but to the extent that it is suited for such use, incorporating it into the Berlin parcel will not significantly reduce its agricultural potential.
 7. Except as noted in the preceding finding, the proposed conveyance of 15 acres from Hinsdale to Berlin will not have any undue adverse impacts on *areas of high public value* on or adjacent to either parcel.
 8. The proposed configuration of the lots is irregular, in that Hinsdale proposes to retain a 50 foot wide strip north of the land that is to be conveyed to Berlin. Fifty feet is the minimum width for an access right-of-way as per Section 3.2(A) of the Charlotte Land Use Regulations. Mr. Hinsdale stated at the hearing that the purpose of retaining this strip is to simplify the conveyance of a trail easement to the Town in the future (to allow recreational access to the Charlotte Park and Wildlife Refuge from Greenbush Road), since only one (rather than two) property owners will need to be in agreement with such a conveyance. He also stated that a condition limiting vehicular use within the 50 foot wide strip would be acceptable, to allow only agricultural and recreational use.
 9. The decision issued for the Hinsdale subdivision in 2007 (PC-06-37) included conditions that are still applicable and should be carried over to the current application.

Decision

Based on these Findings, the Planning Commission approves the Final Plan Application for the proposed Subdivision Amendment with the following conditions:

1. The survey plat by Stuart J. Morrow entitled “Final Plat Boundary Line Adjustment Between Properties of Clark W. Hinsdale, III and Margaret M. Berlin” dated April, 2008, no revisions, will be revised as follows:

- A. The title block will indicate “Subdivision Amendment” rather than “Boundary Line Adjustment.”
 - B. The acreage of the Hinsdale parcel will indicate a density reduction of 3.91 acres (because Lot 1 of PC-06-37 was allowed to be 1.09 acres).
 - C. Adjoining property owners will be updated.
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 Conditions #1 above, 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 shall submit a letter from the surveyor indicating that he has set the survey pins in the field as indicated on the survey.
 4. The property associated with the Subdivision Amendment (15 acres) will be conveyed from Hinsdale to Berlin within 365 days.
 5. The warranty deed for the conveyance from Hinsdale to Berlin will include appropriate references to the wastewater easement to Pierce (Lot 1 of PC-06-37) and other easements of record.
 6. Once the 15 acres is conveyed from Hinsdale to Berlin, it will merge with the remainder of the Berlin parcel and cannot be conveyed separately unless an application for subdivision is submitted and approved.
 7. An apartment in the barn on the Hinsdale parcel shall not be occupied for residential purposes prior to the owner obtaining a wastewater permit from the Town with a design that fully complies with the Vermont Environmental Protection Rules. A Subdivision Amendment is not needed for the apartment to be occupied for residential purposes provided the barn is not being enlarged for the apartment.
 8. Prior to any new development on Lot 2 not located within the existing structure, a Subdivision Amendment will be required for which, at a minimum, wastewater disposal, a building envelope and designated open space will be required. A resource management plan may also be required.
 9. The Planning Commission will not require open space to be designated at this time, however any future subdivision or development on Lot 2 will require the designation of open space. The acreage of the original Hinsdale parcel prior to the 2007 subdivision (46.8 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).
 10. The use of motor vehicles within the 50 foot wide strip on the Hinsdale parcel to the north of the 15 acres to be conveyed to Berlin will be restricted to those supporting agricultural and recreational uses.
 11. No right-of-way allowing vehicular access or utility easements shall be granted over either parcel in favor of any adjacent parcel without such right-of-way first being approved by the Planning Commission.
 12. No pole-mounted light fixture will be taller than eight feet off the ground, and no building-mounted light fixture will be taller than 15 feet 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.
 13. All new utility lines, including those needed to reach the project site, will be

underground. No additional utility poles or overhead lines will be installed.

14. All new driveways shall be surfaced with non-white crushed stone.

15. The Planning Commission will not require open space to be designated at this time, however any future subdivision or development on Lot 2 will require the designation of open space. The total original acreage of the Hinsdale parcel prior to subdivision (47.24 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).

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 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 June 5: Peter Joslin, Eleanor Russell, Jim Donovan (by phone), Robin Pierce (by phone)

Members Present at the Public Hearing on June 12: Jeff McDonald, Jim Donovan, John Owen, Peter Joslin and Eleanor Russell

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 in association with the application:

1. An application form for a Subdivision Amendment and appropriate fee.
2. A memo to Tom and Dean from Margaret (Meg) Berlin dated April 21, 2008 authorizing Clark Hinsdale, III and David Miskell to represent her at hearings for this application. An additional memo (on the same sheet) to Tom and Dean from Clark W. Hinsdale, III authorizes David Miskell to represent him at hearings for this application.
3. A survey by Stuart Morrow entitled "Final Plat Boundary Line Adjustment Between Properties of Clark W. Hinsdale III and Margaret M. Berlin, Charlotte, Vermont" dated April, 2008, no revisions.
4. A document entitled "Subdivision Application Requirements and Waiver Requests" dated April 22, 2008.
5. A draft document entitled "Septic Easement For Approved Replacement Septic System For Lot 1 Located on New Meg Berlin Land (To Be Included In Warranty Deed)."
6. A draft document entitled "Conservation/Open Space Agreement."
7. A memo to the Charlotte Planning Commission from Clark W. Hinsdale, III regarding "Boundary Adjustment with Meg Berlin and sale to Steve and Laura Mack" dated June 12, 2008.