

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**Old Town Trail Associates
c/o Don Welch
Final Plan Application
for a Two-Lot Subdivision
Application # PC-08-34**

Background

The current form of the parcel was created in 1978 by a conveyance recorded in volume 35 page 76 of the Charlotte Land Records. Sketch Plan Review for the current project was held on December 6, 2007.

Application

Materials submitted with the application are listed in Appendix A. Additional materials submitted after the original application was submitted are listed in Appendix B.

Public Hearing

A public hearing was opened for this application on January 15, 2009 and continued on March 5, May 7, June 4 and June 18, 2009.

The following persons were present and participated in the hearing on at least one of the hearing dates and/or submitted written comments:

Elizabeth Bluemle, Catherine Ferree, James Greenway, Sheila Greenway, Jim Keyes, Kim Keyes, Josie Leavitt, Constance Morrill, David Raymond, Howard Verman, Katherine Verman (all adjoining or nearby property owners) and Gary Pittman (representing the Conservation Commission)

Regulations in Effect

Land Use Regulations, amended March, 2009.

Town Plan, amended March, 2008.

Recommended Standards for Developments and Homes adopted September, 1997

Findings

1. The application proposes a two-lot subdivision of a 10.32 acre parcel; the parcel is located on the north side of Upper Old Town Trail in the Rural District.
2. The parcel currently hosts a single family dwelling, which is to be located on Lot 1. Lot 2 is proposed as a building lot.

Lot Area and Density—Table 2.5 of Land Use Regulations

3. Both Lot 1 and Lot 2 are to be larger than five acres, so therefore they meet the minimum

lot area and density requirements in the Rural District, as indicated in Table 2.5 of the Land Use Regulations

Right-of-Way Width—Section 3.2(A) of Land Use Regulations

4. Lot 2 is proposed to be accessed from Upper Old Town Trail at a shared entryway with Lot 1, approximately 1,100 feet west of the intersection of Upper Old Town Trail and Mount Philo Road.
5. Upper Old Town Trail is a private road which had been a town highway known as Crooked Hill Road; it was discontinued by the Selectboard in 1931.
6. Upper Old Town Trail has a right-of way width of 60 feet, which meets the access requirement for lots that don't have frontage on roads maintained by the state or town, or on public waters, as stated in Section 3.2(A) of the Land Use Regulations.

Road Standards—Sections 3.2(D) and 7.5 of Land Use Regulations

7. Upper Old Town Trail currently provides access to eight parcels, all of which have single family dwellings located on them. A ninth parcel (Machanic) has deeded access via Upper Old Town Trail; this parcel currently uses a direct access onto Mount Philo Road to serve the single family dwelling located on that parcel.
8. The use of Upper Old Town Trail is governed by documents recorded in volume 91, pages 426-427, and volume 91 pages 428-429 of the Charlotte Land Records. These documents are non-exclusive easements and rights of way granted by David Raymond and Constance Morrill, respectively.
9. The maintenance of Upper Old Town Trail is governed by a document recorded in volume 19 pages 430-431 of the Charlotte Land Records. This document is a non-exclusive easement and right-of-way with a maintenance provision.
10. For most of its length, Upper Old Town Trail has a travel width of approximately 12 feet.
11. Section 3.2(D) of the Land Use Regulations states (in part): "private roads, which serve three (3) or more lots, must be designed and constructed to meet the standards as set forth in the Town of Charlotte's 'Roadway and Driveway Standards' as most recently amended."
12. The Planning Commission adopted the "Charlotte Volunteer Fire and Rescue Service, Inc. Recommended Standards for Developments and Homes" (referenced herein as "Road Standards") on September 2, 1997.
13. The Road Standards state that access roads serving six or more house sites are to be a minimum of 18 feet wide with two foot wide shoulders, with a minimum of 18 inches of gravel with a 4 inch crusher run stone wearing surface. Additionally, the Road Standards state that all 18 foot wide access roads longer than 800 feet will have vehicle turn-outs (12' wide x 35' long) near the halfway point or every 800 feet.
14. The application proposes to widen the eastern-most 40 feet of Upper Old Town Trail (from the intersection with Mount Philo Road) to 18 feet with no shoulders. Forty feet west of the intersection with Mount Philo Road, the roadway will narrow over a 30 foot stretch from 18 feet wide to 14 feet wide, up to the driveway of Ms. Constance Morrill (approximately 185 feet west of the intersection with Mount Philo Road). The width of the road is not proposed to be changed to the west of the Morrill driveway, except at proposed vehicle turn-outs as described below.
15. The application proposes a vehicle turn-out on the north side of Upper Old Town Trail approximately 700 feet from Mount Philo Road. The turn-out, scaled from sheet C-5, is proposed to be 24 feet long and 7 feet wide.
16. The application also proposes a vehicle turn-out just west of the proposed shared driveway serving Lots 1 and 2. Scaled from sheet C-5, the turn-out is approximately 80

feet long and seven feet wide.

17. Section 7.5(B) of the Land Use Regulations states (in part) “The Planning Commission, in consultation with the Charlotte Volunteer Fire and Rescue Service, shall ensure that the applicant provide adequate access...in accordance with the Charlotte Fire and Safety Standards as most recently amended.”
18. In consideration of the Road Standards, the Planning Commission finds that the proposed improvements are not sufficient to address the existing significant deficiencies of the roadway’s width.
19. Section 3.2(D)(6) of the Land Use Regulations allows the Planning Commission to modify the application of one or more standards under Section 3.2 in cases of unusual topographic conditions or other circumstances which would make strict adherence to the standards a substantial hardship.
20. The Planning Commission finds that no topographic conditions or other circumstances exist which would make substantive adherence to the Road Standards a substantial hardship.

Development suitability—Section 7.2 of Land Use Regulations

Public Health

21. Section 7.2 of the Land Use Regulations states (in part) “all land to be subdivided shall be suitable for the intended use and proposed density of development, and shall not result in undue adverse impacts to public health and safety, public facilities and infrastructure, or the character of the surrounding area.”
22. Constance Morrill stated at the public hearing that the septic system on her property is located very close to Upper Old Town Trail. Ms. Morrill’s statement appears to be reasonably accurate, and is supported by a building permit of public record. However, Ms. Morrill did not allow the applicant to access her property in order to verify the location.
23. The proposed widening of Upper Old Town Trail and the associated drainage work in the vicinity of Ms. Morrill’s septic system has a reasonable potential for damaging the septic system and/or facilitating the surfacing of leachate from the septic system, with the potential for creating a public health hazard and/or requiring an expensive repair to the system by Ms. Morrill. Although the applicant stated that these problems would be addressed, no specific information was provided indicating how they would be addressed.

Public Facilities and Infrastructure

24. Plans submitted with the application propose a perforated pipe to be installed under a revised stone-lined ditch on the north side of the eastern end of Upper Old Town Trail; the perforated pipe is to tee with a new 18 inch culvert that is proposed to be placed under Upper Old Town Trail within the Mount Philo Road right-of-way.
25. The applicant’s engineer stated in the document entitled “Response (in bold) to Staff Notes for Meeting on May 7, 2009” that “one option is to redirect the east-west drain line to the south end of the new 18” culvert. This will eliminate the connection and will reduce the flows at the north end of the culvert (sic) running north-south under Upper Old Town Trail.” A similar statement was made at the public hearing. However, a plan has not been submitted for this revision to the proposed drainage work.
26. The Planning Commission has received no indication that either the original plan (perforated pipe to tee with new 18 inch culvert) or the revised proposal (redirection of perforated pipe to the south end of the proposed 18 inch culvert) has been reviewed with the Charlotte Road Commissioner.

Areas of High Public Value—Table 7.1, Sections 7.2 and 7.3 of Land Use Regulations

27. Section 7.2 of the Land Use Regulations states (in part): “to the extent feasible, land development should not have an undue adverse impact on Areas of High Public Value (see Table 7.1).”
28. Site visits to the parcel by the Planning Commission have provided evidence that much of the parcel is wet, at least seasonally. The application did not include a professionally conducted wetland delineation, despite a recommendation made in the letter to the applicant dated January 18, 2008 following the Sketch Plan Review.
29. Section 7.3 of the Land Use Regulations states (in part): “Building envelopes, to the extent feasible, shall be located, sited and configured so as not to create any undue adverse impact on Areas of High Public Value. In the event that no other land in the parcel to be subdivided is suitable for development, building envelopes shall be designed to minimize encroachments into these areas and to minimize undue adverse impacts.”
30. The application includes a letter from Susan C. Morse of Morse + Morse Forestry & Wildlife Consultants, which provides a Preliminary Wildlife Habitat Evaluation. The letter states “I felt that such a lot would be far less intrusive for wildlife uses of the forest as a whole if it could be relocated to another site nearer the existing road, ‘Upper Old Town Trail.’ Far fewer fragmenting effects would impact the habitat if the building envelope were to be placed on another more suitable site which I actually found and inspected with Don Welch. Wildlife could therefore continue to use the balance of the forested and field edge habitats, unimpeded by the disturbances and hazards posed by people and pets living there.”
31. The survey submitted with the application does not depict a building envelope. The plan submitted with the application by Define Space Architecture shows two possible building envelopes, and a “General Location for Proposed House (4 Bedrooms).” Neither the building envelopes nor the “general location” on the plan by Define Space Architecture seem to match the recommendation by Susan Morse.
32. The plans submitted by Civil Engineering Associates, Inc. also do not depict a building envelope; they do show a “General Location for Proposed House (3 Bedrooms),” however, it is not clear that this location matches the recommendation by Susan Morse. Further, the “General Location for Proposed House” does not appear to be located on the highest point on this portion of the lot, which is necessary to avoid wet areas.

Fire protection—Section 7.5 of Land Use Regulations

33. The application initially proposed a fire pond and dry hydrant, to be constructed on Lot 1. Since the original submission, the application was revised to remove the fire pond and dry hydrant and instead propose a residential sprinkler system be installed within the dwelling to be built on Lot 2.
34. Charlotte Volunteer Fire Department Chief Chris Davis provided comments to the applicant in an e-mail on October 28, 2008, and Chief Davis provided comments to Town staff on May 6, 2009. These comments appear to precede the removal of the fire pond and dry hydrant from the project. Town staff has not received comments from Chief Davis following the removal of the fire pond and dry hydrant from the project plans.

Water Supply—Section 7.6 of Land Use Regulations

35. The well data submitted with the application are difficult to interpret due to several factors, including the poor legibility of the submission, the considerable range of locations of the wells, the questionable accuracy of the ANR well locator database, and the widely varying yields of the wells included in the submission.
36. Two wells included in the submission have yields of one gallon per minute and well depths of 750 feet and 606 feet, respectively.

Sewage Disposal—Section 7.7 of Land Use Regulations

37. The applicant has applied for a Wastewater System and Potable Water Supply Permit for the proposed subdivision. The applicant has indicated that the application will be amended in order to address an incorrect well location. Except for the well location, the Town's septic consultant has reviewed the application and found it to be acceptable.

Erosion Control—Section 7.8 of Land Use Regulations

38. The proposed widening of the eastern end of Upper Old Town Trail and the associated drainage work will require cutting into the bank on the north side of Upper Old Town Trail in an area that has significant slope. The applicant's engineer indicated that an Erosion Prevention and Sediment Control Plan can be created for the project, however, such a plan has not been submitted.

Landscaping; and Character of the Surrounding Area—Sections 7.9 & 7.2 of Land Use Regulations

39. The proposed widening of the eastern end of Upper Old Town Trail and the associated drainage work has a strong likelihood of disrupting or damaging the root system of the 16 inch (dbh) maple tree located on the Morrill property. At the public hearing, the applicant's engineer described the potential for constructing a retaining wall that would reduce impacts to the tree. Plans depicting this retaining wall have not been submitted.

Legal Requirements—Section 7.12 of Land Use Regulations

40. A proposed access easement (document) for Lot 2 over Lot 1 was not included in the application.

41. The Planning Commission finds that the application lacks important information regarding several critical aspects of the proposal, including:

- a review by the Charlotte Fire Chief of the revised plans without the fire pond and dry hydrant;
- documentation of the location of Ms. Morrill's existing septic system;
- a plan depicting the alternative drainage improvements at the east end of Upper Old Town Trail;
- a review by the Charlotte Road Commissioner of either the original drainage plan or the revised drainage plan;
- depiction of a proposed building envelope on the plat;
- confirmation that the proposed building site is on a buildable (dry) area;
- confirmation from Susan Morse that the proposed building site matches her recommendation;
- well data that is legible, within an appropriate vicinity of the proposed building lot, is well documented, and provides consistent evidence of sufficient yields at reasonable depths;
- an Erosion Prevention and Sediment Control Plan;
- plans for constructing a retaining wall adjacent to the 16 inch (dbh) maple tree on the Morrill property; and
- all necessary draft easement documents.

Decision

Based on these Findings, the Planning Commission denies Application PC-08-34.

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.

The following is the vote for or against this Findings of Fact and Decision as written:

- 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:_____

Members Present at the Public Hearing on January 15: Jeff McDonald, Jim Donovan, John Owen, Linda Radimer, Peter Joslin and Eleanor Russell.

Members Present at the Public Hearing on March 5: Jeff McDonald, Linda Radimer, Peter Joslin, Eleanor Russell, and Paul Landler.

Members Present at the Public Hearing on May 7: Jim Donovan, Linda Radimer, Peter Joslin, John Owen, Eleanor Russell, Paul Landler.

Members Present at the Public Hearing on June 4: Jeff McDonald, John Owen, Linda Radimer, Peter Joslin, Eleanor Russell and Paul Landler.

Members Present at the Public Hearing on June 18: Jeff McDonald, Jim Donovan, John Owen, Peter Joslin, Eleanor Russell and Paul Landler

APPENDIX A

The application consists of the following:

- 1. An application form and appropriate fee.
- 2. A plan by Define Space Architecture entitled “214 Upper Old Town Trail, Charlotte, Vermont, Proposed Site Plan” dated 6/30/07, no revisions.
- 3. A survey by Stuart Morrow entitled “Boundary Survey Plat, Property of Old Town Trial (sic) Associates, LLC, Charlotte, Vermont” dated July, 2007, no revisions.
- 4. A memo from Don Welch to Dean Bloch dated November 21, 2008 regarding “214

Upper Old Town Trail”

5. A copy of an e-mail from Christopher W. Davis to Don Welch dated October 28, 2008 regarding “Proposed modifications to Upper Old Town Trail, Charlotte, Vt.”
6. A letter from Thomas Z. Carlson to Dean Bloch dated November 6, 2008 regarding “Subdivision Application of Old Town Trail Associates, LLC/Sketch Plan Application PC-07-21”
7. Three documents recorded in the Charlotte Land Records in volume 91, pages 426, 428 and 430.
8. A letter from Thomas Z. Carlson to Whom It May Concern dated December 18, 2007.
9. A memo from Susan C. Morse dated February 6, 2008
10. A map printed from the ANR Well Locator web-site.
11. Well details for the following wells:
 - a. Tag183/310/A; no E911 address indicated
 - b. Tag 18397; 253 Lower Old Town Trail
 - c. No tag; no E-911 address; well report number 232
 - d. No tag; no E-911 address; well report number 108
 - e. No tag; no E-911 address; well report number 127
 - f. No tag; no E-911 address; well report number 139
 - g. No tag; no E-911 address; well report number 130
 - h. No tag; no E-911 address; well report number 331
 - i. Tag 199-A; no E-911 address
 - j. Tag 512; no E-911 address
 - k. No tag, no E-911 address, well report number 120

APPENDIX B

Additional material submitted consists of the following:

1. A survey by Stuart J. Morrow entitled “Final Plat, Minor Subdivision, Property of Old Town Trial (sic) Associates, LLC, Charlotte, Vermont” dated July, 2007, revised 3/26/09.
2. A packet of plans by Civil Engineering Associates, Inc, all entitled “Old Town Trail Associates, LLC, Old Town Trail, Charlotte Vermont” and dated April, 2009, no revisions, with the following sheets:
 - A. Sheet C1 entitled “Overall Site Plan”
 - B. Sheet C2 entitled “Wastewater System Site Plan”
 - C. Sheet C2.1 entitled “Road Widening Plan & Details”
 - D. Sheet C3 entitled “Wastewater System Details”
 - E. Sheet C4 entitled “Wastewater System Details”
 - F. Sheet C5 entitled “Fire Pond Plan & Details”
3. A packet of revised plans by Civil Engineering Associates, Inc. all entitled “Old Town Trail Associates, LLC, Old Town Trail, Charlotte Vermont” and dated April, 2009, with the following sheets and revision dates:
 - A. Sheet C1 entitled “Overall Site Plan,” last revised 6/11/09
 - B. Sheet C2 entitled “Wastewater System Site Plan,” last revised 6/11/09
 - C. Sheet C3 entitled “Wastewater System Details,” last revised 6/11/09
 - D. Sheet C4 entitled “Wastewater System Details,” last revised 6/11/09
 - E. Sheet C5 entitled “Fire Truck Turn-Around Plan,” last revised 5/18/09
4. A letter from Don Welch to Dean Bloch dated June 11, 2009

5. A letter from Don Welch to Dean Bloch and the Charlotte Planning Commission dated June 11, 2009.
6. A Letter of Transmittal from Dave Marshall to Tom Mansfield dated April 30, 2009
7. A memo from Dave Marshall, Civil Engineering Associates entitled “Response to Staff Notes for Meeting on May 7, 2009”
8. A document entitled “Response to Staff Notes for June 18, 2009 Planning Commission hearing.”
9. A memo from David S. Marshall to Tom Mansfield dated June 12, 2009 regarding “Old Town Trail Associates Community Wastewater System, 214 Upper Old Town Trail, Charlotte, State Wastewater & Potable Water Supply Permit Application”
10. A document entitled “Shared Well Agreement” between Catherine H. Ferree (signed June 19, 2007), Chandler S. Murray and Heather M. Bellanca (both signed June 20, 2007)
11. A draft document entitled “Permanent Septic Easement Language for Old Town Trail Associates, Charlotte, VT”