

**CHARLOTTE PLANNING COMMISSION  
FINDINGS OF FACT AND DECISION IN RE APPLICATION OF**

**Scott Hardy  
for a property located on Mount Philo Road (M02B02L04-1)**

**Final Plan Application for a Subdivision / Planned Residential Development  
Application #PC-14-25**

**Background**

The subject 10 acre parcel was created through a Subdivision that was approved in 2004 (PC-04-06). The Commission at that time did not require the designation of open space but deferred it to the future subdivision of either Lot 1 or Lot 2. The purpose of the current application is to subdivide Lot 1 (a 10 acre lot) into new Lots 2 and 3 each of which will be 5 acres in size. The wastewater disposal system for Lots 2 and 3 will be located within an easement on the property at 768 Mount Philo Road. Sketch Plan Review for the current project was held on March 20 and April 17, 2014 and a site visit preceded the April 17th meeting. The project was classified as a Minor Subdivision / Planned Residential Development in accordance with Section 6.1(C)(1) and Section 7.7(A)(3) of the Charlotte Land Use Regulations (“Regulations”).

**Exhibits**

1. Application form.
2. Site plan entitled “Overall Site Plan Showing Subdivision of Lands of Scott Hardy” which included potable water supply and wastewater system details, prepared by Kevin LaRose and dated March 26, 2014.
3. Draft survey plat entitled “Plat Showing a Survey and Subdivision of Lands of Scott Hardy” prepared by LaRose Surveys, dated March 26, 2014 and revised on May 23, 2014.
4. Sketch letter from Commission dated May 19, 2014.
5. Staff report dated November 14, 2014.
6. Areas of High Public Value (AHPV) map dated April 12, 2014.
7. Septic and Force Main Easement Agreement (easement on 768 Mount Philo Road) to benefit proposed Lots 2 and 3.
8. Email from Clark Hinsdale, III dated November 20, 2014.
9. Communication with Preservation Trust Vermont and Division of Historic Preservation regarding historic barn.

**Public Hearing**

A public hearing for this application was held on November 20, 2014 and December 4, 2014. Scott Hardy, the applicant, was present. Hayes and Bonnie Sogoloff, abutting landowners, and Chris Von Trapp were present on November 20<sup>th</sup> and participated in the hearing. Clark Hinsdale, III submitted written comments on the application in an email dated November 20, 2014.

**Regulations in Effect**

Town Plan, amended March, 2013

Land Use Regulations adopted November, 2010

Recommended Standards for Developments and Homes adopted September, 1997

## **Findings**

1. Scott Hardy, the applicant, owns a 10 acre parcel with an existing historic barn located at 783 Mount Philo Road. Mr. Hardy also has a septic and force main easement on the property located at 768 Mount Philo Road.
2. The applicant proposes to subdivide the 10 acre parcel at 783 Mount Philo Road into 2-5 acre parcels (Lots 2 and 3). The wastewater disposal system for Lots 2 and 3 will be located within the easement on the property at 768 Mount Philo Road.
3. The proposed Lot 3 is improved with an existing historic barn.
4. The subject parcels are located in the Rural Zoning District.
5. The applicant is proposing a Planned Residential Development (PRD) in which portions of the wastewater disposal system for Lots 2 and 3 will cross a town highway right-of-way. Additionally, the applicant is proposing modifications to setback standards to accommodate the historic barn – southern side setback of 14 feet and front setback of 42 feet -- and is proposing an open space area on the eastern portions of both lots which includes a small stream and a presumed Class 2 wetland (ANR Atlas, April 2014).

*Relevant standards in Chapter VII of the Charlotte Land Use Regulations are reviewed below in Findings 6-24.*

### 7.2 General Standards

6. The following Areas of High Public Value (AHPV) were identified on the subject parcels:
  - a. Land in agricultural use (orthophoto and site visit)
  - b. Agricultural soils (NRCS data)
  - c. Surface waters, wetlands and associated setback and buffer areas (Town Plan Map 7 and ANR Atlas)
  - d. Wildlife habitat (mapped aquatic)
  - e. Water supply source protection area for Champlain Water District (ANR Atlas) and
  - f. Historic Structure (communication with Devin Coleman, VT Division for Historic Preservation)
7. The Planning Commission determined the agricultural use and the historic barn to be the AHPVs of greatest importance on the property (see sketch letter to applicant dated May 19, 2014). In determining an appropriate open space area, the riparian area along the tributary to the Laplatte River (surface water, wetlands, and associated setback and buffer areas) was also discussed and determined to be important. The applicant indicated he had not been contacted regarding the ongoing use of the property for agriculture.
8. The Town Plan encourages the use of PRDs to cluster development and preserve important resource areas. With the dedication of open space and the clustering of proposed dwellings around the historic barn, the subdivision effectively meets this goal.
9. The proposed lots will be 5 acres in size and follow the existing settlement pattern along Mount Philo Road.
10. The total land area involved in this project is 10 acres. Five acres of land is required for each dwelling unit in the Rural Zoning District. Two dwelling units are proposed and thus, no density remains on either lot.
11. Building envelopes within which all structures and parking areas shall be located were not included on the plat submitted with the application. A revised plat showing proposed envelopes

was presented and discussed at the hearing on December 4, 2014. With further revisions as discussed at the hearing, the Commission finds that building envelopes can be established in accordance with the regulations and applicable standards.

12. A draft subdivision plat submitted with the application identifies proposed locations for permanent surveying monuments and lot corner markers.

### 7.3 District Standards

13. The existing settlement pattern along Mount Philo Road will be maintained and contiguous open space east of the building envelopes will be conserved through an open space agreement. The Commission finds that the building envelopes as revised will not create an undue adverse impact and will minimize adverse impacts to AHPVs on the property. This is supported by the recommendation of the Vermont Division of Historic Preservation that new houses be placed to the sides of the barn (flank the barn).
14. Access points to the new lots were presented on the site plan but were not included on the survey plat submitted with the application. Access to Lot 2 is proposed to be via an existing field drive that serves the barn and access to Lot 3 is proposed to be located approximately 190 feet north of the access to Lot 2 and the barn. The Commission discussed a preference for a shared driveway but agreed that a shared access could limit the effective use of the barn. A Highway Access Permit will be required for both lots.
15. Wastewater infrastructure for the proposed development will be located in primary agricultural soils (NRCS data) on the property at 768 Mount Philo Road. There are no suitable soils on the applicant's property, and the applicant has retained an easement for septic on the abutting property. The Commission finds this to be an adverse impact to the continued agricultural use of the property at 768 Mount Philo Road but does not consider it to be an undue adverse impact.

### 7.4 Compatibility with Agricultural Operations

16. The building envelopes and wells are located nearly 200 feet from lot lines shared with agricultural operations. The area east of the proposed building envelopes will be conserved as open space and will thus buffer potential conflicts between residential and agricultural uses.

### 7.6 Water Supply and 7.7 Sewage Disposal

17. The applicant has submitted design plans for water supply and sewage disposal and will need to obtain a state Wastewater System and Potable Water Supply permit.

### 7.8 Stormwater Management & Erosion Control

18. The applicant did not provide information as relates to this standard. The conservation and maintenance of open space in its natural state will result in improved infiltration and treatment of stormwater and will help to minimize surface water runoff.

### 7.9 Landscaping & Screening

19. No landscaping or screening was proposed as part of this project. In an email dated November 20, 2014, Mr. Hinsdale recommended the addition of roadside trees and trees to screen the residential properties from surrounding agricultural properties (livestock). The Commission concurs with this recommendation and will require the submittal and administrative approval of a landscaping plan prior to the issuance of a building permit for either lot.

#### 7.10 Roads, Driveways, Pedestrian Access

20. Access points to the new lots were presented on the site plan but were not included on the survey plat submitted with the application. Access to Lot 2 is proposed to be via an existing field drive that serves the barn and access to Lot 3 is proposed to be located approximately 190 feet north of the access to Lot 2 and the barn. The Commission discussed a preference for a shared driveway but agreed that a shared access could limit the effective use of the barn. A Highway Access Permit will be required for both lots.

#### 7.11 Common Facilities, Common Land and Land to be Conserved

21. The Planning Commission believes that an open space agreement is the appropriate means of protection of the AHPVs associated with this project. The revised draft subdivision plat identified an area as 'Open Space'; however, the extent of this designation is unclear. The Commission will require a minimum of 5 acres of open space (50% of 10 acres) per the Regulations that shall include the tributary to the Laplatte River and a minimum 50 foot buffer on said tributary, and any Class 2 wetlands.

#### 7.12 Legal Requirements

22. With the approval of this subdivision, portions of a driveway and forcemain serving Lot 2 will be located on Lot 3. Documentation of this easement agreement was not provided with the application.
23. A license agreement with the Town of Charlotte is required for work within the Town right-of-way. The applicant has not obtained a license for this work.
24. Open space will be conserved along the eastern portions of both lots. Draft agreement language will be provided to the applicant; however, final language will be subject to review and approval by the Selectboard and / or Town Attorney.

*Relevant standards in Chapter VIII of the Charlotte Land Use Regulations are reviewed below in Findings 25-29.*

#### 8.2 Applicability

25. A Planned Residential Development is required per Section 7.7(A)(3) and is preferred to accommodate practical lot line placement around the historic barn and to preserve open space along those portions of the property that are adjacent to active agricultural operations.

#### 8.4(B) General Standards

26. The project will minimize adverse effects to AHPV and is appropriate for the proposed density in terms of existing settlement patterns, the zoning district, and the standards in Chapter VII of the Charlotte Land Use Regulations.

#### 8.4(C) Rural District Standards

27. The project will result in the designation of at least 50 percent of the project area as open space. This area will be along a small tributary to the Laplatte River and will aid in the protection of aquatic wildlife habitat, streams and wetlands. The open space area will also serve to improve water quality by enhancing infiltration and reducing surface water runoff.

### 8.6 Open Space & Common Land

28. Approval of the project will result in the designation of at least 50 percent of the project area as open space. This area will be along a small tributary to the Laplatte River and will aid in the protection of aquatic wildlife habitat, streams and wetlands. The open space area will also serve to improve water quality by enhancing infiltration and reducing surface water runoff.
29. The Planning Commission finds the area to be worthy of preservation and will thus require that it be 'maintained' in its natural state.

### **Conclusions**

Based on the foregoing Findings of Fact, it is the conclusion of the Commission that the project described in the application and supporting materials, if completed and maintained in conformance with all of the terms and conditions of that application and as required below, will meet the development standards of the Charlotte Land Use Regulations.

### **Decision**

Based on the foregoing Findings of Fact and Conclusions, the Planning Commission approves the application for a Minor Subdivision / Planned Residential Development subject to the following conditions:

1. The survey plat will be revised as follows:
  - A. Driveway access points from Mount Philo Road to building envelopes will be added.
  - B. The Open Space Area will be clearly delineated and labelled as such. The acreage of the Open Space Area will also be denoted as will the recording reference. This area shall include any Class 2 wetlands and associated buffers.
  - C. Building envelopes will be revised as discussed at the hearing on December 4, 2014. More specifically, the envelopes will be clustered around the barn and will not extend into the open space area.
2. One digital copy (pdf), two paper copies (one 11"x 17" and one full size) and a mylar (18" x 24") of the survey as amended by Condition #1 will be submitted to the Planning Commission for review and signature (of the mylar) within 160 days. The applicant will record the signed mylar 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 submit a letter from the surveyor indicating he has set the survey markers or pipes in the field as indicated on the plat.
4. Prior to the issuance of a building permit for either lot, the applicant will complete the following:
  - a. Wetlands along the tributary shall be delineated by a qualified environmental consultant. Should the delineation indicate that wetlands or requisite buffer areas are not within the previously defined open space area, the plat will be revised to incorporate the wetlands into the open space area and will also be rerecorded.
  - b. An Open Space Agreement shall be executed and recorded after review and approval by the Selectboard and Town Attorney. The Agreement shall clearly reflect the primary function of the open space area to protect the riparian area along the tributary including any identified wetlands.

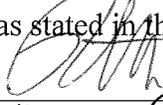
- c. The applicant shall obtain a Wastewater System and Potable Water Supply permit, a Highway Access permit and any other required permits. The applicant shall also obtain approval from the Selectboard for work within the town right-of-way.
  - d. The applicant will provide a copy of the deed for the involved lot which shall include easement language pertaining to the wastewater system forcemain and driveway (Lot 2 only) and reference to the Open Space Agreement.
5. New driveways shall be surfaced with non-white crushed stone.
  6. The bottom of no pole-mounted light fixture will be taller than 8' off the ground, and the bottom of no building-mounted light fixture will be taller than 20' off the ground. Fixtures will be shielded to direct light downward.

**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 latest date of 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 Hearings on November 20, 2014 and / or December 4, 2014:** Marty Illick, Jeff McDonald, Linda Radimer, Peter Joslin, and Gerald Bouchard.

**Vote of Members after Deliberations:** The following is the vote for or against the application, with conditions as stated in this Decision:

- |   |  |                            |
|---|--|----------------------------|
| 1. Signed: <u></u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: <u>1/8/15</u> |
| 2. Signed: <u></u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: <u>1-8-15</u> |
| 3. Signed: <u></u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: <u>1-8-15</u> |
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