

This 2nd day of March A.D. 20 18  
 at 10 o'clock 15 minutes A m and  
 recorded in vol. 237 on page 41-45  
 Attest: [Signature] Town Clerk

CHARLOTTE PLANNING COMMISSION  
 SUBDIVISION REVIEW  
 FINDINGS OF FACT AND DECISION

**In re: Eric & Liz Buttery / Clark Hinsdale request for a 3-lot Minor Subdivision at 1711 Hinesburg Rd. Permit Application No. PC-17-181-SD**

**Introduction and Procedural History**

This proceeding involves the review of an application for a 3-Lot Minor Subdivision submitted by Clark Hinsdale, III for approval under the Town of Charlotte Land Use Regulations (hereafter referred to as "the Regulations"). The application was received on November 29, 2017. A notice of public hearing was published in The Citizen newspaper on December 21, 2017. A hardcopy of the notice was mailed to all adjoining landowners, and posted at the following three locations: the Town Office Building, the Brick Store, and Spear's Corner Store on December 19, 2017.

A site visit to the property was undertaken at the 1711 Hinesburg Road property on October 5, 2017 prior to the initial attempted Sketch Plan Review (PC-17-112-SK) to be held that evening during the Planning Commission's regular meeting for which there was no quorum. A subsequent Planning Commission meeting with a quorum was successfully held for the application on October 19, 2017. In attendance at the site visit were; Planning Commissioners Peter Joslin and Charlie Pughe; applicants Clark Hinsdale, III, Eric Buttery, and Liz Phillip-Buttery; and (Town Planner) Daryl Benoit.

The final plan application was considered by the Planning Commission at a public hearing held on January 18, 2018 at approximately 7:00 PM. Present at the public hearing were the following members of the Planning Commission; Peter Joslin (Chair), Charlie Pughe (Vice Chair), Marty Illick, Gerald Bouchard, David Kenyon, Richard Eastman, and Shawn Coyle. Daryl Benoit, the applicant Clark Hinsdale, III, Suzanne Hinsdale, Eric Buttery, and an adjoining neighbor Bruce Bernier (of 1876 Hinesburg Road) participated in the hearing.

**Exhibits**

1. Application Exhibits for a Minor Subdivision, including;
  - A. PC-17-181-SD application form signed by Clark Hinsdale, III;
  - B. A preliminary plat of the proposed of 3-lot subdivision; "Final Plat - Minor Subdivision – Property of Nordic Holsteins, LLC – Hinesburg Road, Charlotte, Vermont" (dated November 2017) by Stuart J. Morrow, Consulting Land Surveyor, Shelburne, Vermont;
  - C. The following plans titled: "Bean Farm – 1824 Hinesburg Road, Charlotte, VT" (dated: Jan 2018) by Civil Engineering Associates, Inc., South Burlington, VT, including;
    1. Existing Conditions Overall Site Plan (Drawing # C1.0)
    2. Proposed Conditions Overall Site Plan (Drawing # C1.1)
    3. Proposed Conditions Site Plan – Lot 2 (Drawing # C2.0)
    4. Proposed Conditions Driveway Profile (Drawing # C2.1)
    5. Wastewater System Site Plan – Lot 2 (Drawing # C3.0)
    6. Wastewater System Site Plan Site Plan – Lot 3 (Drawing # C3.1)
    7. Lot 3 Wastewater System Replacement Area (Drawing # C3.2)

8. Wastewater Details (Drawing #'s C4.0 and C4.1)
9. Misc. Details (Drawing # 5.0)
2. Highway Access Permit (HAP-17-11) approved by the Charlotte Selectboard on *January 22, 2018*.
3. *Map Slide 175, Page 5*; Boundary Survey - "Conserved Land – Bean Farm – Property of Nordic Holsteins, LLC" (dated December 2010) by Stuart J. Morrow, Consulting Land Surveyor, Shelburne, Vermont.
4. Sketch Plan Review; Planning Commission Letter (PC-17-112-SK Buttery-Hinsdale), dated November 28, 2017.
5. Charlotte Land Records – Volume 192, Pages 673-91 (April 29, 2011) Conveyance of Development Rights to Vermont Land Trust; *Volume 183, Pages 700-708* (February 2, 2011) Mortgage and Description of Lots; *Volume 151, Pages 68-69* (July 30, 2004) Conveyance to Nordic Holsteins, LLC.
6. Planning Commission Minutes from meetings held on *January 18, 2018* and *October 19, 2017*.

### Regulations in Effect

Charlotte Town Plan, 2016

Charlotte Land Use Regulations, 2016

Recommended Standards for Developments and Homes, 1997

### Findings

#### Background

1. Clark Hinsdale, III owns a 96.85-acre property locally known as the "Bean Farm", located at 1711 Hinesburg Road (along the southern side) comprising 71.18 acres of "Conserved" land and 25.67 acres of "Excluded" land within the Rural Zoning district (RUR).
2. This application (based on the PC-17-112-SK Sketch Plan Review) proposes to subdivide the property into three lots. Where the "Conserved" land would become an exclusive 71.18 acre parcel (indicated as Lot 1), the "Excluded" land would be subdivided into a 17.35 acre parcel (Lot 2) with a 300'x300' (~2.066 acre) building envelope, and a 7.59 acre parcel (Lot 3) with a 200'x200' (~0.918 acre) building envelope.
3. 1824 Hinesburg Road is an existing ~5.1 acre parcel abutting to the north of Lot 3 that currently serves as the access point to proposed Lot 3 and Lot 2.

#### 7.2 General Standards - Areas of High Public Value

1. Land in Active Agricultural Use: About 13 acres of the 25.67 acres of "Excluded" land is in active agricultural use (i.e. "Current Use"), a portion of which would be need to be removed as part of the proposed subdivision. The "Conserved" land would remain in "Current Use".
2. Primary Agricultural Soils: An estimated 95% of the parcel comprises Statewide soils. However there are about 1.4 acres of Prime Agricultural Soils that exist within the southern portion of the "Excluded" land (i.e. Lot 2), which has been identified within the USDA Natural Resources Conservation Service GIS database.
3. Flood Hazard Areas: The property is within "*Area of Minimal Flood Hazard*" in the FEMA National Flood Hazard Layer (NFHL).
4. Surface Waters, Wetlands, and associated buffer areas: About 0.3 acres of Class II regulatory wetland has been identified within the southern portion of Lot 2 (according to the *Vermont Significant Wetlands Inventory – VSWI* data). The applicant's **Combined Wastewater Plan** (i.e.

Exhibit C above) does not depict the wetland and further indicates the driveway passing within 50' of the mapped polygon. The Sketch Plan Review letter of November 28, 2017 stated;

"About 0.3 acres of Class II regulatory wetland (*Vermont Significant Wetlands Inventory - VSWI*) exists within the southern portion of the 'Excluded' area. Your proposed building envelope, and associated construction efforts should maintain a minimum 50 foot setback from Class II wetlands (in accordance with the Vermont Wetland Rules)."

In rebuttal, the applicant's consultant Dave Marshall (of Civil Engineering Associates, Inc.) submitted the following statement regarding the wetland:

"Based on my times on the property, not during this winter but, back in 2014 for BlackRock Construction, I observed two locations that would qualify as Class II wetlands (the pond in the field) and the off-property wetland that extends onto this parcel. From our field notes, we drew in the polygon of what we understood to be the limits of the wetland which was closest to any of the proposed development areas. The mid-section (so called) polygon is a feature that I do not believe exists on the site as a Class II wetland. There are small seeps in this area which could qualify as a small Class III wetland, but much smaller than the polygon shown on the figure you included."

5. Wildlife Habitat: *Significant Forest Habitat* on the eastern wooded half of the "Excluded" land; this is the same area in Current Use. About 1.4 acres of *Significant Aquatic Habitat* has been identified on the eastern portion of the "Excluded" land (according to the "*Charlotte Significant Wildlife Habitat Map and Database*"). The Sketch Plan Review letter of November 28, 2017 stated:

"During the public hearing, you had expressed that the proposed building envelope for Lot 2 would be placed along the western edge of the forested area where thin maples and brush are located. For your forthcoming subdivision application, the Planning Commission requests that you would keep the building envelope for Lot 2 as close to the edge of the forested area as possible, to preserve the forest habitat."

Nevertheless, to preserve the identified *Significant Forest Habitat*, minimize forest fragmentation, and protect forest health and ecology, the wooded areas of Lot 3 and Lot 2 that are outside of the proposed building envelopes should be preserved and maintained as forest land.

6. Water Supply Source Protection Areas (SPAs):
  - a. Ground water: The parcel does not fall within a known ground water SPA.
  - b. Surface water: The entirety of parcel falls within the surface water SPA for the Champlain Water District.
7. Historic Districts, Sites, and Structures: According to the Vermont Division of Historic Preservation "*Historic Sites & Structures Survey*", Historic Site #0403-21 (The Bean Residence, built c.1830) exists on the abutting parcel to the north across Hinesburg Road. The site was listed on the State Historic Register on April 9, 1980. The property also abuts a property that partially falls within the "*Baptist Corners Historic District*" to the east.

8. Conserved Land on Adjacent Parcels: The "Conserved" land of the property comprises 71.18 acres. The Nordic Farms parcel to the north (on the northern side of Hinesburg Road) comprises 274.71 acres of conserved land. The adjoining Nichols property to the south comprises approximately 160 acres of conserved land with the Vermont Land Trust.

#### 7.2(E) General Standards – Building Envelopes

1. The applicant has stated that the proposed 200'x200' building envelope for Lot 3 shall be screened from Hinesburg Road by an existing ~0.6 acre tree island (indicated in Exhibit C above). This forested area should be preserved to maintain the screening of structures to be constructed within the building envelope.
2. The proposed 300'x300' building envelope for Lot 2 has been placed along the western edge of the forested area where thin maples and brush are located at the edge of the tree line, which partially extends westward past the tree line into the open field (indicated in Exhibit C above).

#### 7.6 Water Supply & 7.7 Sewage Disposal

1. The current application has been granted a water supply and wastewater permit for systems that are planned to be constructed upon Lot 3 and Lot 2 (permit # WW-138-1801). The application proposes the creation of an additional wastewater disposal system replacement area primarily upon Lot 2, to serve Lot 3.

#### 7.10 Roads, Driveways, & Pedestrian Access

1. Access to Lot 3 and Lot 2 will originate from a curb cut "*at the boundary of 1711 Hinesburg Road and 1824 Hinesburg Road*" (i.e. the boundary of Lot 1 and the 1824 Hinesburg Road parcel). The curb cut was approved by the Charlotte Selectboard on January 22, 2018 as Highway Access Permit HAP-17-11.
2. The associated shared-access driveway to the properties will traverse along the currently existing north-south oriented farm access road that runs along the western tree line of the forested area of the 1824 Hinesburg Road parcel and Lot 3, and continues into the wood line near the central northern boundary of Lot 2.

#### **Decision**

Based on the foregoing Findings of Fact and Conclusions, the Planning Commission approves the application for a 3-Lot Minor Subdivision subject to the following conditions:

1. Two paper copies (one full size and one 11"x 17"), an electronic copy, and a mylar (measuring 18" x 24", with a margin of 2" outside of the border line for binding on the left edge of the sheet with a 1" border on all remaining edges) of the plat 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, after being signed by the Chair or Vice-Chair of the Planning Commission. Approved plats not filed and recorded within this 180 day period shall expire.
2. Prior to the submission of the mylar to the Planning Commission, the applicant shall;
  - a. Submit a letter from the surveyor indicating that he or she has set the survey pins in the field as indicated on the survey.

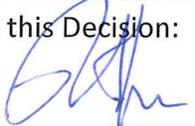
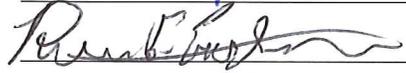
- 3. All forested area identified outside of the aforementioned building envelopes for Lot 3 and Lot 2 (including the tree island on Lot 3) shall remain preserved as forest land.

**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 the 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 the permit and would be subject to enforcement action by the Town. This approval shall expire if the mylar is not filed and recorded in the Charlotte land records within 180 days.

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 Hearing on January 18, 2017:** Peter Joslin (Chair), Charlie Pughe (Vice Chair), Marty Illick, Gerald Bouchard, David Kenyon, Richard Eastman, and Shawn Coyle.

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

- |            |   |  |              |               |
|------------|---|--|--------------|---------------|
| 1. Signed: |   | <input checked="" type="radio"/> For / Against | Date Signed: | <u>3/1/18</u> |
| 2. Signed: |  | <input checked="" type="radio"/> For / Against | Date Signed: | <u>3/1/18</u> |
| 3. Signed: |  | <input checked="" type="radio"/> For / Against | Date Signed: | <u>3/1/18</u> |
| 4. Signed: |  | <input checked="" type="radio"/> For / Against | Date Signed: | <u>3/1/18</u> |
| 5. Signed: |  | <input checked="" type="radio"/> For / Against | Date Signed: | <u>3/1/18</u> |
| 6. Signed: | _____   | For / Against                                  | Date Signed: | _____         |

