CHARLOTTE ~~TOWN CLERK'S~~ OFFICE
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This 16th day of June A.D. 2017
at 11 o'clock 00 minutes A m and
recorded in vol. 229 on page 78-81
Attest Mary A Mead Town Clerk

**CHARLOTTE PLANNING COMMISSION**
**SUBDIVISION REVIEW**
**FINDINGS OF FACT AND DECISION**

**In re: Jeffrey and Tammy Hall request for a Minor Subdivision/PRD for 993 Hinesburg Road**
**Permit Application No. PC-17-34-SD**

**Introduction and Procedural History**

This proceeding involves the review of an application for a 3-Lot Minor Subdivision/PRD submitted by Jeffrey and Tammy Hall (the property owners) for approval under the Town of Charlotte Land Use Regulations (hereafter referred to as "the Regulations"). The application was received on March 27, 2017. A notice of public hearing was published in The Citizen on April 20, 2017 and was posted at the following three locations: The Town Office Building, The Brick Store, and Spear's Corner Store. A copy of the notice was also mailed to all adjoining landowners on March 30, 2017.

A site visit to the property was conducted at 993 Hinesburg Road on May 4, 2017 at 6:00 PM. Present at the visit were Gerald Bouchard and the applicants Jeff and Tammy Hall. Neighbor Diana McCargo was also present during the visit.

The application was considered by the Planning Commission at a public hearing on May 4, 2017 at approximately 7:00 PM. Present at the public hearing were the following members of the Planning Commission; Gerald Bouchard (Acting Chair), Marty Illick, David Kenyon, Charlie Pughe, and Richard Eastman. Daryl Benoit (Town Planner), Jeff Hall, Tammy Hall, and Diana McCargo also participated in the hearing.

**Exhibits**

1. Application form for Minor Subdivision
2. Survey (submitted with the application): "2-Lot Subdivision & Boundary Line Adjustment Plat Showing Lands of Jeffrey & Tammy Hall 993 Hinesburg Road, Charlotte, Vermont" (dated January 2, 2014) by Christopher A. Haggerty of Button Professional Land Surveyors, PC, South Burlington / St. Albans, VT.
3. Survey (submitted with the application): "Jeffrey R. and Tammy L. Hall Two-Lot Subdivision and Boundary Line Adjustment 875 and 993 Hinesburg Road, Charlotte, Vermont" (dated January 14, 2014) by Jason Barnard Consulting, LLC, Starksboro, VT.
4. Planning Commission Decision (PC-14-03 Jeff and Tammy Hall); 3-Lot Planned Residential Subdivision at 875 and 993 Hinesburg Road (signed April 11, 2014)
5. Sketch Plan Review; Planning Commission Letter (PC-13-13-SK Hall), dated June 7, 2013.
6. Charlotte Land Records – *Volume 132, Pages 228-230* (November 21, 2002); *Volume 79, Pages 424-425* (February 17, 1994); *Volume 65, Pages 379-380* (April 24, 1991); *Volume 35, Pages 81-82* (April 3, 1978).
7. *Map Slide 129, Page 4*; Survey for 30 ft. Right-of-Way adjusting its easterly sideline to follow the westerly edge of the existing gravel drive of the Weld Property; "Plat Survey for Bernard & Ila Hall in the Town of Charlotte, VT." (C-857, dated March 8, 1991) by John A. Marsh, Essex Jct., VT.

8. *Map Slide 79, Volume 10, Page 25*; Survey for 60 ft. Right-of-Way; "Plat Survey for Bernard Hall & Ila Hall in the Town of Charlotte" (DWG C-905, dated March 1, 1991) by John A. Marsh, Essex Jct., VT.
9. *Map Slide 51, Volume 7, Page 18;* Boundary Adjustment Survey; "Boundary Line Adjustment for Bernard & Ila Hall in the Town of Charlotte, VT." (DWG-785, revised December 29, 1986) by John A. Marsh, Essex Jct., VT.
10. *Map Slide 51, Volume 7, Page 14;* Boundary Adjustment Survey "Plat Survey for Bernard Hall & Ila Hall in the Town of Charlotte, VT." (DWG-785, dated September 15, 1986 by John A. Marsh, Essex Jct., VT.
11. Planning Commission Minutes from meetings held on May 4, 2017; March 20, 2014; and May 16, 2013.
12. Letter from Jeannine McCrumb, Town Planner / Zoning Administrator to Jeff & Tammy Hall; Re: "Returning mylar" (dated March 1, 2016).

**Regulations in Effect**
Charlotte Town Plan, 2016
Charlotte Land Use Regulations, 2016

**Findings**
Background

1. Jeffrey and Tammy Hall own a 159.74 acre lot located at 875 Hinesburg Road (M05B04L19) and an abutting 10.12 acre parcel at 993 Hinesburg Road within the Rural zoning district.
2. This application is a resubmission of a previous application to subdivide and undertake a boundary adjustment between the properties to create 3 lots. The application was approved by the Planning Commission on April 11, 2014. However the Planning Commission's decision expired in October 2014 because the applicant did not submit the final mylar as per requirement of the subdivision approval (in accordance with Section 6.7 of the Charlotte Land Use Regulations and *24 V.S.A. Chapter 117, Section 4463 Subdivision review*).
3. Both the current and former applications propose the creation of three lots;
   a. Lot 1, a parcel that was surveyed at 159.74 acres that would be adjusted to 148.46 acres;
   b. Lot 2, a proposed lot to be subdivided on the west side of Lot 1 that has been surveyed at 2.84 acres; and
   c. Lot 3, located between Lots 1 and 2 that has been surveyed at 10.12 acres and is proposed to be adjusted to 11.28 acres, after the sixty-foot wide 1.17-acre parcel strand on the western side of Lot 3 is transferred from Lot 1.
4. The current application proposes to change a sixty-foot (60') wide access Right-of-Way originating from the northern side of the Hinesburg Road and Guinea Road intersection into a thirty-foot (30') agricultural Right-of-Way that would provide access from the same origin and traverse across Lot 2 into Lot 3.
5. During the Sketch Plan Review on May 16, 2013, a barn was identified that would be too close to a proposed lot line, potentially creating a non-conforming structure within Lot 2 (see Section 2.3 - Table 2.5(E)). The minutes from the meeting state; *"An existing red steel barn that was close to the lot line would be deconstructed and rebuilt elsewhere on another 140 acre farm he owned. That building would be used for hay and machinery storage. . ."*

a. The applicant specified a location on Lot 1 to reinstall the barn;
b. During the subsequent Final Subdivision Review, no mention was made of the non-conforming barn structure within the March 20, 2014 minutes, and the hearing was closed.
c. The Planning Commission decision (PC-14-03) of April 11, 2014 approved the project. Although the survey submitted for the Final Plan application reflected the removal of the non-conforming barn away from the property line with the annotation "Barn to be relocated", the decision did not stipulate a condition to move the barn, thereby allowing for the creation of a non-conforming structure within the property setback.

6. During the Sketch Plan Review of May 16, 2013, the applicant had proposed to create a 2.84 acre lot (i.e. Lot 2) via the transfer of density from Lot 1. The proposed project was then classified as a Minor Subdivision and a Planned Residential Development (PRD).
   a. In the June 2013 Sketch Letter sent to the applicant, the Planning Commission recommended that the survey to be submitted for the Final Subdivision Review *"should include a table that accounts for the density associated with each lot."*
   b. During the subsequent Final Subdivision Review, the submitted survey (dated January 14, 2014) did not include a table that accounted for the density with each lot.
   c. The Planning Commission decision (PC-14-03) of April 11, 2014 approved the project without a condition to update the survey with this information.

7.2 General Standards - Areas of High Public Value

1. Land in active agricultural use: Both existing parcels (i.e. Lots 1 and 3) are currently used for a single family dwelling and for agricultural purposes by the applicant.
2. Primary agricultural soils: Statewide agricultural soils exist on a majority of both parcels.
3. Steep slopes (equal to or greater than 15%): There are no areas with slopes of 15-25%.
4. Surface Waters, Wetlands, and associated buffer areas: Mud Hollow Brook and two tributaries course through the center of the property. There are wetlands that have been identified on the western portions of the property along the brook and tributaries.
5. Wildlife Habitat: Eastern areas of Lot 1 along the brook have been identified as *Significant Shrubland Habitat*. There is *Significant Aquatic Habitat* along the entirety of the brook and tributaries on the parcel. *Significant Forest* and *Linkage Habitats* exist on the adjacent parcels to the north and east of Lot 1. Wildlife Habitat have not been identified on either Lots 2 or 3.
6. Water Supply Source Protection Areas (SPAs): The entirety of both parcels fall within the Champlain Water District Surface Water Protection Area.
7. Scenic Views and Vistas: Hinesburg Road has not been identified as a scenic roadway.
8. Conserved Land on Adjacent Parcels: The Philo Ridge Farm (née Foote Farm), abutting to the west and north has two parcels in conservation with the Vermont Land Trust (VLT) that total 137.66 acres. Nordic Holsteins, LLC have 236.58 acres of land to the east that is in conservation with the VLT. The adjoining Lockhart property (on 1030 Hinesburg Road) to the south has two easements with the VLT comprising 22.92 acres.

7.6 Water Supply & 7.7 Sewage Disposal

1. A Wastewater System and Potable Water Supply Permit (permit # WW-138-1403) was granted on March 4, 2014.

7.10 Roads, Driveways, & Pedestrian Access

1. A sixty-foot (60') wide Right-of-Way (surveyed in 1991) originates due north of the intersection of Hinesburg Road and Guinea Road and courses toward the northeast, providing ingress and egress between the three proposed lots.
2. An additional thirty-foot (30') wide access and utilities Right-of-Way (also surveyed in 1991) exists on Lot 1 originates on Hinesburg Road (located about 1,200 feet east of the intersection of Hinesburg Road and Guinea Road) and courses in a northwesterly direction along the eastern boundary of the Weld property (at 1149 Hinesburg Road) to the Adamson property (at 1151 Hinesburg Road).

8.2 Applicability of Planned Residential & Planned Unit Development

1. Subsection 8.2(B)(3) stipulate that Planned Residential Development (PRD) provisions shall be applied to Minor Subdivisions within the Rural District where modification of dimensional standards create clustered development, which include reduction of lot size or building setbacks that are required to meet the Subdivision Review Standards of Chapter 7. A PRD Conservation Project will;
   a. Allow for the reduction of the setback requirement for the non-conforming barn on proposed Lot 2.
   b. Allow for a reduction of the 5-acre minimum lot requirement that is proposed for Lot 2.

8.4 Planned Residential Developments (PRDs)

1. Subsection 8.4(C): The applicant has elected to undertake a PRD as a conservation project and therefore a minimum of 50% of the lot(s) shall be designated as Open Space.
   a. 79.87 acres of Lot 1 would be required to be designated as Open Space.
   b. For projects that create only one lot, the Planning Commission has deferred this requirement until applications propose future development.
2. Subsection 8.4(F)(6)(a) of the Regulations stipulate that for PRDs involving two or more parcels; *"Density from one parcel may be aggregated onto another parcel only in whole increments of one (1) dwelling unit per five (5) acres. The number of units removed from the parcel to be protected as open space shall be added to the maximum number of units allowed on the parcel to be developed by applicable district standards."*
   a. Five (5) acres of developable density will be transferred to Lot 2 from Lot 1.

**Decision**

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

1. Any future subdivision of Lot 1 will designate a minimum of 79.87 acres as Open Space.
2. 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 with the updated building envelope, 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.

3. Prior to the submission of the mylar to the Planning Commission, the applicant shall update the survey plat with;
   a. A table that accounts for conveyance of density from Lot 1 to Lot 2, and the total density allowable for each lot.
   b. The thirty-foot (30') wide access and utilities Right-of-Way on Lot 1 along the eastern side of the Weld and Adamson properties.
4. The adjusted 11.28-acre lot between Lots 1 and 2 will retain the label of "Lot 3" with the reference to decision PC-14-03 removed.
5. The note with the statement *"Lot 1 has not been approved for sewage disposal. Any future development on Lot 1, other than agricultural structures that are determined to be exempt from local land use regulations, will require prior approval by the Planning Commission."* will be retained with the reference to decision PC-14-03 removed.
6. Prior to the submission of the mylar to the Planning Commission, the applicant shall submit a letter from the surveyor indicating that he or she has set the survey pins in the field as indicated on the survey.

**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. Approved plats not filed and recorded within the aforementioned 180 day period shall expire.

**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 May 4, 2017:** Gerald Bouchard (Acting Chair), Marty Illick, David Kenyon, Charlie Pughe, and Richard Eastman.

**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: 6.15.2017
2. Signed: _____ For / Against Date Signed: 6/15/2017
3. Signed: _____ For / Against Date Signed: 6/15/2017
4. Signed: _____ For / Against Date Signed: 6/16/17
5. Signed: _____ For / Against Date Signed: 6.16.17
6. Signed: _____ For / Against Date Signed: _____
7. Signed: _____ For / Against Date Signed: _____