

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

**Peter Schneider and Jessica Donovan  
Preliminary Plan Application for a 2-Lot Major Subdivision  
for 124 Elfin Lane  
Application # PC-18-08-SD**

**Introduction and Procedural History**

This proceeding involves review of the preliminary application for a Major Subdivision submitted by Peter Schneider (the property owner) for approval by the Charlotte Planning Commission under the Town of Charlotte Land Use Regulations.

The Preliminary Plan Application was received by the Charlotte Planning & Zoning Office on February 6, 2018. A notice of public hearing was published in The Citizen newspaper on April 12, 2018 and electronically posted on the Town website calendar. A hardcopy of the notice was mailed out to all adjoining landowners and posted at the following three locations: the Town Office bulletin board, the Old Brick Store in West Charlotte Village, and Spear's Corner Store in East Charlotte Village on April 18, 2018.

A Sketch Plan Review (**PC-17-159-SK**) for the proposed Subdivision of the 42.83-acre property (located at 124 Elfin Lane within the Rural (RUR) District) was undertaken by the Planning Commission at their regularly scheduled public meeting held on December 7, 2017 where the project was classified as a "2-Lot Major Subdivision" in accordance with Section 6.1(C)(2) of the Charlotte Land Use Regulations (hereafter referred to as "the Regulations"), which proposes to subdivide the 42.83 acre Lot #1 to create a 1.2-acre residential lot and a 41.63 acre conserved lot; thereby adding an additional lot within a ten-year (10) period of the original 2008 eight-lot (8) subdivision (i.e. **PC-07-08**).

A site visit was conducted at the property on Saturday, December 2, 2017 at 9:00 AM attended by Planning Commissioners; Peter Joslin (Acting Chair); Charlie Pughe, Dick Eastman, Marty Illick, and Gerald Bouchard; applicant Peter Schneider, and neighbors Bill and Emily Kallock, Zechariah Gardner, Russell Womer, Robert Wildey, and Charles Blackmore.

The Preliminary Plan Application was considered by the Planning Commission at a public hearing scheduled during their regular meeting held on May 3, 2018 at 7:00 PM. Present at the hearing were the following members of the Planning Commission: Peter Joslin (Chair), Charlie Pughe (Vice Chair), Marty Illick, Gerald Bouchard, and Dick Eastman. Additional attendees and participants of the hearing included: applicant Peter Schneider; neighboring property owners Russell Womer, Genna Durante, Zechariah Gardner, Robert Wildey, and Charles Blackmore; the Town Planner; and others. The Planning Commission closed the hearing that evening.

**Exhibits**

The following exhibits were submitted for, or are pertinent to the Preliminary Plan Application:

1. Application Exhibits for a Major Subdivision, including: **A.** PC-18-08-SD application form signed by Peter Schneider, **B.** Map of the lot line to be created, **C.** Letter from Bill Kallock (representative of the Williams Hill Homeowners), dated February 2, 2018;
2. Site Plan; “Donovan / Schneider Property – Charlotte, Vermont – Overall Illustrative Site Plan”, by H. Keith Wagner | Partnership Landscape Architects, Burlington, VT (dated June 12, 2008);
3. Open Space Agreement; “Conservation and Agricultural/Forestry Easement and Restrictions” between Jessica Donovan and Peter Schneider (dated June 2007);
4. Forest Management Plan for the property of Peter Schneider & Jessica Donovan, Charlotte, Vermont (dated August 2006) – prepared by Harris Roen, Long Meadow Resource Management;
5. Charlotte Land Records – Volume 215, Pages 403-407 (25 Oct 2014) Warranty Deed; Volume 192, Pages 52-59 (8 Mar 2011) Williams Hill Subdivision Declaration of Covenants; Volume 183, Pages 468-470 (8 Oct 2009) Easements and Rights-of-Way deed for wastewater infrastructure; Volume 181, Pages 369-376 (28 Jul 2009) Amended Shared Septic System Easement – Maintenance and Operations Agreement – Williams Hill Subdivision; Volume 175, Pages 45-51 (14 Aug 2008) Shared Septic System Easement – Maintenance and Operations Agreement – Williams Hill Subdivision;
6. Map Slide 190, Page 5; Survey – updated version from survey listed below with note added 10 Jun 2015: “Lot 5 & 6 boundary” [adjusted]. (date filed: 6 Jul 2015);
7. Map Slide 165, Page 1; Survey - “Final Plat Subdivision Modification – Williams Hill Subdivision, Property of Jessica Donovan and Peter Schneider” (dated Jan 2009), Stuart J. Morrow (No. 565), Consulting Land Surveyor, Shelburne, Vermont (date filed: 22 Aug 2008);
8. Map Slide 161, Page 1; Survey - “Final Plat – Major Subdivision – Property of Jessica Donovan and Peter Schneider” (dated Feb 2006), Stuart J. Morrow (No. 565), Consulting Land Surveyor, Shelburne, Vermont (date signed by PC Chair: 19 Jul 2007);
9. Map Slide 147, Page 1; Survey of wastewater easements - “Final Plat – Major Subdivision – Property of Clark W. III & Suzanne Hinsdale, Peter Schneider & Jessica Donovan” (dated Sep 2005), Stuart J. Morrow (No. 565), Consulting Land Surveyor, Shelburne, Vermont;
10. Letter from Town Attorney, Amanda S.E. Lafferty (Re: Docket No. 167-8-07 Vtec from 2008) to the Town Planner, dated January 3, 2018;
11. Sketch Plan Review; Planning Commission Letter (**Application # PC-17-159-SK**), dated Jan 18, 2018;
12. Planning Commission Decision; Findings of Fact and Decision In re Peter Schneider and Jessica Donovan – Final Plan Application For A Subdivision Amendment – Application # PC-08-35, recorded on 22 Aug 2008;
13. Planning Commission Decision; Findings of Fact and Decision Revised in Accordance with The Stipulation and Order of the State of Vermont Environmental Court dated March 13, 2008 DOCKET NO. 167-8-07 Vtec – Final Plan Application For A Major Subdivision Creating Eight Lots As a Planned Residential Development – Application # PC-07-08, signed on 19 Jul 2007;
14. Planning Commission Decision; Findings of Fact and Decision In re Peter Schneider and Jessica Donovan – Preliminary Plan Application For an Eight-Lot Subdivision – Application # PC-06-29, signed on 1 Dec 2006;
15. Planning Commission Minutes from meetings held on: May 3, 2018 and December 7, 2017;

### **Regulations in Effect**

Town Plan, 2018

Land Use Regulations, 2016

Recommended Standards for Developments and Homes adopted September, 1997

**Findings**

1. Peter Schneider and Jessica Donovan own a 42.83 acre property located at 124 Elfin Lane located along the southern side of Hinesburg Road within the Rural Zoning district (RUR), known as Lot #1, which comprises:
  - A. 1.2 acres developable area for residential use (650 Elfin Lane), and
  - B. 41.63 acres of land that exists within an Open Space Agreement (OSA) with the Town of Charlotte (referenced in the Charlotte Land Records, *Volume 175, Pages 35-44*).
2. The current application proposes to subdivide the residential portion of Lot #1 from the OSA portion of the property, thereby re-creating Lot #1 as a 1.2 acre residential lot. The remaining 41.63 acres of conserved Open Space would become Lot #9, which will be subsequently deeded as common land to the Williams Hill Homeowners' Association.
3. As an additional lot (i.e. Lot #9) has been proposed to be added the original eight-lot (8) subdivision (i.e. **PC-07-08**, see Exhibit 11, above) approved in 2008 and because four or more lots would be created within a ten-year period, the current application was classified by the Planning Commission as a "2-Lot Major Subdivision" during the Sketch Plan Review (**PC-17-159-SK**, see Exhibit 9 above).
4. A major subdivision must be reviewed under the provisions of a Planned Residential Development (PRD) according to Section 8.2(B)(1) of the Regulations. However, the density of the development within this application would not be modified as a result of the proposed subdivision (as per Section 8.2(A) of the Regulations) because Lot #1 had already been approved for the development of a residential unit, in accordance with Planning Commission decision **PC-07-08**. The proposed subdivision of Lot #1 would not approve any additional residential units. Furthermore, according to Section 8.1(B) of the Regulations:

*"PRD provisions are intended to allow clustering of residential development and innovative design to promote the most appropriate use of land and the preservation of Areas of High Public Value identified in Table 7.1;"*

As the Open Space Agreement would remain in force in tandem with the Forest Management Plan, the identified Areas of High Public Value listed in Finding 7.2 below (e.g. *Significant Forest, Aquatic, and Shrubland Habitats, and Class II Wetland, et al.*) would be protected.
5. Section 6.2 of the Regulations (in accordance with 24 VSA §4418(2)(A)) states:

*"The Planning Commission may waive or modify subdivision application and/or review standards set forth in Chapter VII (except density requirement) pertaining to a particular application, subject to appropriate conditions, which in its judgment:*

  - (1) are not necessary to protect public health, safety and general welfare; or*
  - (2) are inappropriate due to the extraordinary or unnecessary hardship that may result from strict compliance with these regulations; or*
  - (3) are inappropriate because of an inadequacy or lack of connecting facilities adjacent to or within proximity of the subdivision."*

As there would be no change in the resulting density for this application, and where the proposed subdivision would further meet all three of the above criteria for waiving application standards, the Planning Commission will waive the requirement for additional open space to be designated for this subdivision application.

6. Condition 17 of the Planning Commission decision **PC-07-08** states:

*“No further subdivision is permitted. All lots will only be used for single-family dwellings and allowed accessory uses and structures. No density remains on any of the land other than that retained on each lot for one single-family dwelling.”*

However, a legal opinion of the Town Attorney (see Exhibit 8, above) speaks to the nullification of the condition:

*“Condition 17 of the 2008 approval restricts any further subdivision, although the purpose of it was to prevent any increase in density, which would be the result with the most recent amendment. . . It doesn't seem as though the proposed changes violate any condition that was important to the Town.”*

Whether or not this application were to be approved, development of one (1) housing unit is allowable within the non-conserved area of Lot #1. Otherwise, no further development on the property may be allowed.

7. According to the letter in Exhibit 1C (listed above), the Williams Hill Homeowners' Association has agreed to purchase and steward the conserved land (e.g. Lot #9) according to the current Open Space Agreement. Receipt of this letter was stated as a requirement within the Sketch Plan Review letter (**PC-17-159-SK**, see Exhibit 9 above) for the approval of this subdivision application. Furthermore, the Sketch Plan Review letter had advised that if the Homeowners' Association determines that it does not wish to purchase the Open Space land, then this subdivision application would not be approved by the Planning Commission.
8. During the May 3, 2018 public hearing the applicant had stated that the agreement with the Homeowners' Association over stewardship and ownership of the Open Space land had not been finalized. According to the May 3, 2018 minutes:

*“Mr. Schneider said he wanted to wait to submit a Letter of Intent before the Final hearing. There is recreation access in the deeded rights of the properties. He didn't have an agreement yet with the Homeowners' Association. UVM Pease Mountain management area abuts the conserved land. UVM, or CCS might be interested in managing and stewardship. The Homeowners' Association is meeting in two weeks and he will find out their interest. If UVM takes over the management then UVM would not own the land, just manage it. Ownership will be deeded to the Homeowner's Association, explained Mr. Schneider.”*

The Planning Commission had expressed that the Homeowners' Association should own the land. However, the organization that would steward the land (e.g. the Charlotte Central School, University of Vermont, the Charlotte Land Trust, or the Homeowners' Association) is optional.

## 7.2 General Standards - Areas of High Public Value

The following Areas of High Public Value (AHPV) have been identified on the property:

- a. Land in active agricultural use – The property is not currently enrolled in an agricultural or forestry state tax abatement program (i.e. Use Value Appraisal “Current Use” Program). It was withdrawn from the current use program in 2006.
- b. Primary Agricultural Soils (Primary and Statewide) – The northern portion (e.g. the meadow) of the parcel along the Hinesburg Road comprises Statewide Agricultural soils (according to the USDA-NRCS data).
- c. Steep slopes (>=15%) – The property to be subdivided is within the >=15% slope area (according to VCGI elevation data).
- d. Surface waters, wetlands and associated setback and buffer areas – About 10 acres of Class II wetland has been identified within the meadow along the northwestern area of the property. Abutting the eastern side (on the Charlotte Central School parcel) there are about 3 acres of identified Class II wetland.
- e. Special Natural Areas – *Pease Mountain Natural Area* abuts the property to the south.
- f. Wildlife habitat – All of the woodland of the property (comprising the southern 2/3 of the parcel) has been identified as *Significant Forest Habitat*. Most of the meadow along the northern side of the property has been identified as *Significant Aquatic Habitat* and *Persistent Shrubland Habitat*. *Linkage Habitat* exists along the eastern abutting property of CCS (Charlotte Wildlife Habitat Map).
- g. Water supply source protection areas (SPAs) –
  - a. Ground water – The property is within the CCS active Groundwater Source Protection Area.
  - b. Surface water – The property is within the Champlain Valley Water District Surface Water SPA.
- h. Historic Districts, Sites, and Structures – Historic Site #0403-03 (the “*Charlotte Center Historic District*”) abutting the western property line was entered in the National Register of Historic Places on July 19, 1984 (NRHP Reference ID# 84003460).
- i. Scenic views and vistas – Mt. Philo Road to the east is a ‘*most scenic public road*’ according to the Charlotte Town Plan.
- j. Conserved Land on adjacent parcels - 41.83 acres of OSA land with the Town exists on the property surrounding Lot #1. 184.79 acres of the UVM Pease Mountain Natural Area exists on the abutting property to the south. About 34 acres of OSA land with the Town exists on the adjoining property to the west (at 602 Church Hill Road).

## Decision

Based on the foregoing Findings of Fact and Conclusions, the Planning Commission approves the application for a 2-Lot Major Subdivision subject to the following conditions:

1. The survey plat will be revised to reflect the following, the applicant shall;
  - a. Update the proposed boundary lines for Lot #1 and Lot #9, and add a label for the newly created Lot #9.
  - b. Update the current property information, including references to adjoining properties.

- 2. A signed agreement from the prospective steward of the Open Space land will be included as part of the Final Plan Application.
- 3. A signed agreement from the Homeowners' Association to purchase the Open Space land (including a proposed schedule for organizing the purchase/conveyance of the property) will be included as part of the Final Plan Application.

**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 for the applicant to submit a Final Subdivision Plan application to the Planning Commission for a Major Subdivision. The Application shall be submitted in accordance with such approved plans and conditions

**This decision may be appealed to the Environmental Division of the Vermont Superior 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 3, 2018:** Peter Joslin (Chair), Charlie Pughe (Vice Chair), Marty Illick, Gerald Bouchard, 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: | <u>Charles W. Tughe</u>   | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>June 14, 2018</u> |
| 2. Signed: | <u>Martha Slide</u>       | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>14 JUNE 2018</u>  |
| 3. Signed: | <u>S. Coyle</u>           | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>14 JUNE 2018</u>  |
| 4. Signed: | <u>Richard Eastman</u>    | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>6/14/18</u>       |
| 5. Signed: | <u>Shawn Coyle</u>        | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>6/15/18</u>       |
| 6. Signed: | <u>Gerald A. Bouchard</u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>6/15/2018</u>     |
| 7. Signed: | _____                     | For / Against  | Date Signed: | _____                |