

This 28th day of December A.D. 2018
 at 11 o'clock 0 minutes 1 m and
 recorded in vol. 236 on page 217-223
 CHARLOTTE PLANNING COMMISSION
 SUBDIVISION REVIEW
 FINDINGS OF FACT AND DECISION

John R. and Carol K. Snow

**Final Plan Application for a 3-lot Minor Subdivision at 6069 Ethan Allen Highway
 Application # PC-18-172-SD**

Introduction and Procedural History

This proceeding involves the review of an application for a 3-Lot Minor Subdivision submitted by Anthony Stout from Lakeside Environmental Group, LLC on behalf of property owners John R. and Carol K. Snow for approval under the Town of Charlotte Land Use Regulations (hereafter referred to as "the Regulations"). The application was received on September 20, 2018. A notice of the public hearing for the proceedings was published in "*The Citizen*" newspaper on November 1, 2018. An electronic notice was posted on the Charlotte Town website calendar. Hardcopies of the notice were posted at the following three locations: the Town Offices at 159 Ferry Road, the Old Brick Store in the West Charlotte Village, and Spear's Corner Store in the East Charlotte Village on October 25, 2018; and were also mailed out to all adjoining landowners to the property on October 31, 2018.

This application proposes to subdivide the 93.14-acre parcel located at 6069 Ethan Allen Highway (i.e. the eastern side of US Route 7, between State Park Road and the Ferrisburgh town line) into three (3) lots.

A Sketch Plan Review letter (**PC-18-09-SK**) addressing the proposal was issued from the Planning Commission on May 17, 2018. A site visit to the property took place at 6:00 PM, prior to the public meeting for the aforementioned Sketch Plan Review held on April 5, 2018. Those Commissioners in attendance included Peter Joslin, Charlie Pughe, and Gerald Bouchard. Other attendees of the site visit included the applicants John and Carol Snow, applicant representative Anthony Stout, the Town Planner, and others.

This Subdivision application was considered by the Planning Commission at the public hearing held at their meeting on November 15, 2018 at approximately 8:05 PM. Present at the public hearing were the following members of the Planning Commission: Peter Joslin (Planning Commission Chair), Charlie Pughe (Vice-Chair), Gerald Bouchard, and Richard Eastman. Additional participants and attendees included: the Town Planner; the applicants John Snow and Carol Snow; applicant representative Anthony Stout; neighbors Stephen Pintario, David Diaz, Mary Holmes, and Katherine Ranallo; and others.

Exhibits

The following exhibits were submitted for the application:

1. Completed application form signed by applicant John R. and Carol K. Snow, and applicant representative Anthony Stout, Sr. of Lakeside Environmental Group, LLC;
2. Narrative: "Project Summary & Statement of Compliance: John & Carol Snow, Proposed 3-Lot Subdivision";

3. Draft deed language for Lots 1, 2, and 3: "Draft for Final Plat Review: John and Carol Snow, 3 Lot Subdivision";
4. Worksheet of Wastewater Design Flows & Sizing;
5. Viewshed Image: "View from Mt. Philo, Proposed 3 Lot Subdivision";
6. Viewshed Image: "View from Mt. Philo Future Vision";
7. Proposed map: "Plat of Three Lot Subdivision: Lands of John R. and Carol K. Snow, 6069 U.S. Route 7, Charlotte, Vermont", based on *Volume 82, Page 118* and *Map Slides 94 and 102* (dated 18 Sep 2018) by Christopher A. Haggerty (No. 741), Button Professional Land Surveyors, PC, Burlington & St. Albans, VT;
8. *Map Slide 102, Clip 1, Page 19*; Survey – "Final Plan Proposed Subdivision of N.V.V. Clafin, Option Piece – Survey for Nelson V.V. Clafin, Charlotte, Vermont" (dated October 21, 1993) by G.E. Bedard, Inc., Hinesburg, Vermont;
9. Site Plan: "John & Carol Snow: U.S. Route 7/Charlotte, Vermont", by Lakeside Environmental Group, LLC (dated 19 Sep 2018) – Map of lot configuration;
10. Future Vision Plan: "John & Carol Snow: U.S. Route 7/Charlotte, Vermont", by Lakeside Environmental Group, LLC (dated 19 Sep 2018);
11. Future Vision Plan: "John & Carol Snow: U.S. Route 7/Charlotte, Vermont", by Lakeside Environmental Group, LLC (dated 19 Sep 2018) - Areas of High Public Value, Current Farmland, Federal Prime Ag Land, Water Resources, Mt. Philo Views, Historic Structures, Conserved Lands;
12. Charlotte Land Records – Volume 90, Page 397-400 (August 12, 1996) Conveyance to John R. & Carol K. Snow from Nelson V.V. Clafin / Act 250 Disclosure Statement; Volume 82, Pages 118-121 (July 8, 1994) Warranty Deed; Volume 78, Page 177 (December 7, 1993) Boundary Line Adjustment between Clafin & Hinsdale;
13. Sketch Plan Review; Planning Commission Letter (**PC-18-09-SK** Snow-LEG, Inc.), dated May 17, 2018;
14. Planning Commission Minutes from meetings held on April 5 and November 15, 2018;

Regulations in Effect

Charlotte Town Plan, 2018

Charlotte Land Use Regulations, 2016

Recommended Standards for Developments and Homes, 1997

Findings

Background

1. John R. and Carol K. Snow own a 93.14 acre parcel located at 6069 Ethan Allen Highway (US Route 7) within the Rural Zoning district (RUR) that was created on July 8, 1994.
2. This application proposes to subdivide the property into: **Lot #1**: a 10.32 acre parcel located on the central western portion on the property, containing an existing 5 bedroom home and barn without a building envelope; **Lot #2**: a 6.04 acre parcel with building envelope (with unlabeled acreage) located on the southwesterly side of the property, abutting Ethan Allen Highway; and **Lot #3**: a 76.0 acre parcel without a building envelope comprising the remainder of the property, which includes the pre-existing garage (with a non-conforming front setback), access to US Route 7, and 46.3 acres proposed for possible Conservation/Open Space land.

3. During the Sketch Plan Review (**PC-18-09-SK**) for the proposed subdivision, the Planning Commission classified the project as a “3-Lot Minor Subdivision” (in accordance with Section 6.1(C)(1) of the Regulations). The Sketch Plan Review letter (**PC-18-09-SK**) requested for this Subdivision application, that the applicant submit a long range master plan for proposed **Lot #3**, and further recommended that the proposed 10.3 acre **Lot #1** and the 11.6 acre **Lot #2** be reduced closer to five (5) acres in size to allow for the identified agricultural quality soils to remain contiguous within proposed **Lot #3**.

The applicant proposed a reduced size for **Lot #2**, but did not propose a reduction for **Lot #1**. Although future development options are discussed in the application and the narrative (see Exhibits 1 and 2 above), a long range plan was not submitted for the application. As was discussed by the Planning Commission during their November 15, 2018 meeting (see Exhibit 14):

“Historically, it is a large parcel and if the subdivision is approved the Planning Commission would stipulate that no further subdivision would occur without a master plan. A parcel that size is significant”

2.3 Application of District Standards – Table 2.5 Rural District (RUR) – (E) Dimensional Standards

1. The dimensional standards for the Rural District indicate the *Minimum Setback/Side* to be fifty-feet (50’).
2. The Site Plan indicates that a non-conforming parking area is proposed within the 50’ setback and outside of the building envelope for **Lot #2** (see Exhibit 9 above). See **Finding 3.6(B)(1)** below for further discussion.
3. The Site Plan indicates that the silo and possibly a portion of the barn exist within the 50’ setback of **Lot #1** (see Exhibit 9 above). However, the applicant has stated in the application (Exhibit 1), that:

“...the newer portion of the barn will be removed and the sheds will be relocated. Lot 2 contains an existing silo which will be removed. . .”

See **Finding 3.6(B)(1)** below for further discussion.

3.2 Road, Driveway and Pedestrian Access Requirements

(D) “**Roads and Driveways**. Driveways, which may serve up to two (2) lots, and 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 “Road and Driveway Standards” as most recently amended.”

1. Access to the proposed lots will originate with the pre-existing curb cut on US Route 7. The application proposes an eleven-percent (11%) grade to the driveway for the subdivision, which exceeds the maximum eight-percent (8%) requirement for driveways covered in the “Recommended Standards for Developments and Homes, 1997”. The applicant has requested a waiver for the requirement. This may only be accomplished with a letter of approval from the Charlotte Volunteer Fire & Rescue Services (CVFRS) as a condition for approval of the subdivision application.

3.6(B)(1) Lot, Yard, & Setback Requirements

(B) **“Dimensional Standards.** The following requirements apply to lots within all zoning districts, with the exception of existing nonconforming lots in accordance with Section 3.7 (i.e. Nonconforming Lots (Existing Small Lots)). . .”

(1) No lot shall be so reduced in area that it cannot meet area, yard, setback, frontage, coverage and other dimensional requirements for the district in which it is located, except as approved by the Planning Commission for a planned residential or planned unit development under Chapter VIII.

1. With regard to the proposed non-conforming parking area for **Lot #2**, and remaining structures within the setback for **Lot #1** (discussed in **Finding 2.3** above), the Town attorney has stated that the approval of such non-conforming aspects is inconsistent with the general principles of municipal land use regulations in Vermont, where the municipal regulatory authority does not create non-conformance, it eliminates it.

The Subdivision Regulations only allow for the modification of district dimensional standards (see **Finding 2.3** above) when a subdivision is approved as a Planned Residential Development (PRD) as per Section 8.4 of the Regulations. As this application has not been submitted as a PRD, all proposed structures, as well as the proposed parking area should be removed outside of their respective 50' sideyard setbacks. The parking area should remain within the building envelope.

7.2 General Standards - Areas of High Public Value

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

1. Land in Active Agricultural Use: The property has 89.34 acres enrolled in the State's Use Value Appraisal (UVA) Program (i.e. "Current Use", or current active agricultural use).
2. Primary Agricultural Soils (Primary and Statewide - PAS) – Except for about 3 to 4 acres, all of the property has been identified as consisting of Primary Agricultural soils, with about 24 acres comprising Prime Agricultural Soils and the remainder as Statewide Agricultural Soils (according to the USDA-NRCS data).
3. Steep slopes (equal to or greater than 15%): About 0.2 acres of 15%-25% slopes exist close to the southwestern property boundary (according to VCGI elevation data).
4. Flood Hazard Areas: The property is within "Area of Minimal Flood Hazard" in the FEMA National Flood Hazard Layer (NFHL).
5. Surface Waters, Wetlands, and Associated Setback and Buffer Areas: About 5.6 acres of wetland has been identified in the center of the property. The applicants have informally delineated the wetland in the *Future Vision Plan* maps (see Exhibits 10 and 11 above), which runs to proposed **Lot #3** from **Lot #2**. There are two (2) ANR Small Stream (50') Setback areas identified on the property; One traverses through the center of the wetland area, and the other roughly runs along the northern property line of **Lot #3** (according to the VCGI/ANR *Vermont Hydrography Dataset - VHD*).
6. Special Natural Areas (SNA): Mt. Philo State Park (identified as a SNA within the Town Plan) is two parcels away. Future subdivision applications would impact the southwestern viewshed from the State Park summit overlook. The applicant's stated short-term plan for **Lot #3** is to

continue utilizing it in an agricultural practice, where the long-term plan is to further subdivide the lot, or conserve it pending funding opportunities.

7. Wildlife Habitat: About 2.6 acres of *Significant Forest Habitat* has been identified along the tributary that runs along the northern portion of the property. *Significant Aquatic Habitat* has been identified along the two tributaries (e.g. the ANR Small Stream Setback areas) on the property.
8. Historic Districts, Sites, and Structures: According to the Vermont Division of Historic Preservation "*Historic Sites & Structures Survey*", the historic site #0403-29 (The Claflin House) exists as the current homestead (primary house) on **Lot #1**. The site was listed on the State Historic Register on 9 Apr 1980.
9. Scenic Views and Vistas: Abutting to the west of the property is US Route 7, a "Scenic Highway" according to VTrans and serves as part of the *Lake Champlain Byway*. From the primary summit overlook of Mt. Philo State Park, any future subdivision applications will impact the viewshed facing to the southwest (see Exhibits 5 and 6 above).

To further protect the western viewshed from Mt. Philo State Park, the applicant should follow the guidance from the *Dark Night Sky* section of Chapter 2.2 of the 2018 Town Plan, and **Section 3.9** of the Regulations, which addresses "Outdoor Lighting".

10. Conserved Land on Adjacent Parcels: An approximate 40-acre easement with the Charlotte Land Trust (CLT) adjoins the property to the northeast, which abuts Mt. Philo State Park.

7.2(E) General Standards – Building Envelopes

"...The size and shape of each building envelope shall be established in accordance with these regulations, including all applicable standards under this chapter and the district. The Commission also may require the identification of specific building footprints if such information is needed to determine conformance with these regulations. . ."

1. The proposed survey (see Exhibit 7 above) should indicate regular-shaped and appropriately sized (approximately 1.0 to 1.5 acre) building envelopes for **Lots #1** and **#2** that include their surveyed acreage and are dimensioned from the corner pins of the property boundaries.
2. **Lot #2** is proposed to have a non-conforming parking area constructed within the northern fifty-foot (50') sideyard setback, and outside of the proposed building envelope. The parking area should be removed, or redesigned to exist outside of the setback, as per **Finding 3.6(B)(1)**.
3. **Lot #3** does not have a proposed building envelope, as it is intended by the applicant for further subdivision at an undisclosed date. Nevertheless, to protect the contiguity of the Primary Agricultural Soils (discussed in **Finding 7.2**) and the regular-shape of the agricultural field, the required building envelope(s) for this lot will be designed within a future subdivision and the designation of 50% open space.

7.3(D)(1) Rural, Shoreland, & Conservation Districts

1. *"Within the Rural, Shoreland and Conservation Districts, all subdivisions and associated site development shall be designed and reviewed according to the following standards:*

- (1) *Building envelopes, to the extent feasible, shall be located, sited and configured so as not to create any undue adverse impacts 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.*"

7.6 Water Supply & 7.7 Sewage Disposal

1. The applicant has undertaken all of the necessary preparation to submit a water supply and wastewater permit for **Lots #1 and #2** (see **Exhibits 7, 9, and 10** above).

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. A letter of approval from the Charlotte Volunteer Fire and Rescue Services (CVFRS) will be required for the design of the driveway serving the subdivision, as per **Finding 3.2** above.
2. Any future subdivision of the property (including **Lots #1, #2, or #3**) will require a master plan to be reviewed as a PRD (in accordance with **Section 8.2(B)(3)** of the Regulations), which will include the designation of 50% open space to protect the regular shape of the agricultural field discussed in **Finding 7.2(E)(3)** and the contiguity of the *Primary Agricultural Soils (PAS)* identified in **Finding 7.2(2)**, an Area of High Public Value.
3. The survey plat will be revised to reflect the following, the applicant shall:
 - a. Update the building envelope information for **Lot #1** and **Lot #2** with their added dimensional lines and acreage labels, as per **Finding 7.2(E)** above.
 - b. The labels on the main map and the inset map of the survey that are titled "Remaining Lands of Snow" will be changed to "**Lot #3**".
 - c. Add the full footprint of any proposed driveway and associated infrastructure as per the design recommendations of *Charlotte Volunteer Fire and Rescue Services* discussed in **Finding 3.2**, and redesign/remove the proposed non-conforming parking area from the setback in **Lot #2**, as per **Finding 3.6(B)(1)**.
 - d. Add a note to the survey stating that a master plan and the designation of 50% open space will be required for any development on **Lot #3**, or for any future subdivision, as per Planning Commission decision PC-18-172-SD.
4. All structures within the fifty-foot (50') sideyard setback of **Lot #1** shall have been removed within a year of the date of approval of this decision, as per **Finding 3.6(B)(1)**, above.

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 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 November 15, 2018: Charlie Pughe (Acting Chair), Gerald Bouchard, Marty Illick, and Dick 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: | <u>Gerald A. Bouchard</u> | <input checked="" type="radio"/> For / Against | Date Signed: | <u>12/27/2018</u> |
| 2. Signed: | <u>[Signature]</u> | <input checked="" type="radio"/> For / Against | Date Signed: | <u>27 DEC 2018</u> |
| 3. Signed: | <u>[Signature]</u> | <input checked="" type="radio"/> For / Against | Date Signed: | <u>12/27/18</u> |
| 4. Signed: | <u>[Signature]</u> | <input checked="" type="radio"/> For / Against | Date Signed: | <u>12/28/18</u> |
| 5. Signed: | <u>Matthew Illick</u> | <input checked="" type="radio"/> For / Against | Date Signed: | <u>12.28.18</u> |
| 6. Signed: | _____ | For / Against | Date Signed: | _____ |
| 7. Signed: | _____ | For / Against | Date Signed: | _____ |