

Town of Charlotte Staff Report

PLANNING COMMISSION scheduled for 5 April 2017 at 7:30 pm

Last Update: 30 Mar 2018

General Information	
Applicant:	Susan Ballek & Imanol Echeverria (Four Meadows Farm)
Application No.: PC-18-21-SD	Parcel ID: 00027-5222
Status of Applicant:	Landowner(s)
Requested Action:	3-Lot Minor Subdivision
Purpose:	Application for a 3-Lot Subdivision for the undeveloped property located at 5222 (<i>confirmed with Lister</i>) Mt. Philo Road (across from Mt. Philo State Park).
Existing Zoning:	Rural District / Conservation District traverses through the northwestern quarter of the parcel along Kimball Brook bisecting the property.
Location:	5222 Mt. Philo Road; at the northwest corner of the intersection of Mt. Philo Road & State Park Road.
Size:	Total Property: ~52 to 53 acres proposed to be subdivided into: Lot #1: ~5.0 acres to the Northwest Lot #2: ~5.0 acres to the Northeast Lot #3: ~42.0 acres remainder for the estate / horse barn property Lot #3 is proposed to have a 50' wide access easement from Mt. Philo Road to Lot #1 & one more curb-cut from State Park Road. Lot #2 is proposed to have its own curb-cut on Mt. Philo Road.
Existing Land Use:	Agricultural
Surrounding Land Use and Zoning:	Residential / Agriculture / Conserved Open Space / Mt. Philo State Park:
Permitting / Subdivision History:	
Deed(s):	Volume 183, Page 517 (December 10, 2009) Allmon Charles W. & Gwen D., Warranty Deed;
Plat(s):	

View Application: <https://is.gd/Z9KIPU>

Subdivision Review Standards – Chapter VII

Section 7.2 General Standards - Development Suitability.

All land to be subdivided shall be suitable for the intended use and proposed density of development, and shall not result in undue adverse impacts to public health and safety, public facilities and infrastructure, or the character of the surrounding area. Moreover, to the extent feasible, ***land development should not have an undue adverse impact on Areas of High Public Value*** (see Table 7.1). During the review process, the Planning Commission will identify specific characteristics of each subject parcel which may be of concern, and will prioritize those resources the Planning Commission considers most important to be addressed in the application. The Areas of High Public Value area discussed below...

Section 7.2 General Standards - Areas of High Public Value (Table 7.1):

In answer to the information discussed within the Planning Commission's [Sketch Plan Review letter dated 18 Jan 2018](#) (← click link), the applicant's consultant responded to the following items within their [narrative letter dated 16 Feb 2018](#) (← click link). The **red text outlines the applicant consultant responses** to the sketch letter. The **green text outlines staff preliminary findings**, in rebuttal.

Please Note: On [Page 2](#) of the [applicant's narrative](#), it is stated that Lot 3 shares a driveway with Lot 2. The shared driveway on Lot 3, according to the [site plan maps](#), actually accesses Lot 1 (to the northwest of the property). Lot 2 (to the northeast) has its own proposed access from Mt. Philo Rd.

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- Agricultural use: The property is **Not enrolled** in the State's Use Value Appraisal (UVA) Program (i.e. "Current Use", or current active agricultural use), but is eligible for enrollment. The proposed equestrian facility has been determined by the *Agency of Agriculture Food & Markets* as an accepted agricultural practice ([>> click link to Agency of Agriculture letter - 1 Dec 2017](#)) with the removal of the caretaker's residence from the proposed barn design as stated within the applicant's original proposal ([>> click link to Agency of Agriculture letter – 29 Sep 2017](#)). The Agency of Agriculture also confirmed non-agricultural uses in the applicant's original proposal, including the construction of the indoor or outdoor arenas proposed to be used for group and private riding lessons for clients boarding their horses on the property.

Applicant Response: The applicant has stated that they will likely apply for the UVA program.

Staff Preliminary Findings: If the applicant intends to undertake horse shows (which not considered an agricultural use, as stated within the [1 Dec 2017 - Agency of Agriculture letter](#)), then it would constitute a change of use where Site Plan Review (which may be combined as part of the Subdivision application – see **Section 5.5** of the Regulations) and Conditional Use Review would be brought into consideration of the application.

- Primary Agricultural Soils (Primary and Statewide - PAS): Except for the identified Class II wetland area buffering Kimball Brook and some area buffering its tributaries, most of the parent parcel consists of Statewide Agricultural soils. Approximately 2 acres along the southeastern portion of the property (on proposed Lot 3) along the Mt. Philo Road comprise Prime Agricultural soils (according to the USDA-NRCS data).

Applicant Response: The applicant acknowledges the amount of PAS soil on the property, and indicates these are not under the provisions of Act 250 to protect them with this application, as their proposed 'use' will fall under agricultural use with the full-time boarding of at least four (4) horses. The applicant further states;

"The proposed 3-lot subdivision with three proposed single-family homes has very minimal impact on the agricultural potential of the property and impacts to these soils are unavoidable for any residential use. Additionally, this project proposes that a large portion of the site remain in agricultural use through the proposed equestrian farm. Small building envelopes have been proposed to further limit impacts to PAS."

Staff Preliminary Findings: Where the project may meet the State's criteria of an agricultural use, the proposal does not adequately address preservation of the property's agricultural soil, when considering the un-clustered housing placement for all three proposed lots, the auxiliary driveway on Lot 3 traversing the pasture from the estate house to the barn/arena, the septic mound cluster at the southeast corner of Lot 3, and associated septic line installations proposed through the pastures and wetland. [>> Click here to see the plans](#).

- Steep slopes (>=15%): N/A
- Flood hazard areas: The property is within "Area of Minimal Flood Hazard" in the FEMA National Flood Hazard Layer (NFHL).
- Surface waters, wetlands and associated setback and buffer areas: Kimball Brook (VT04-01) and two tributaries cross through the center and northeast corner of the property. Class II wetland has been identified along Kimball Brook. The applicant had additional wetlands delineated that are [mapped and confirmed by the State](#) (← see pages C1-02, C2-01, & C3-01 at this link).

Applicant Response: The proposal states that; *"avoiding impacts to wetlands and streams have been a main priority and driving force for the site design."*

Staff Preliminary Findings: The plans propose the construction of a gravel driveway across Lot 3 and through Kimball Brook and the adjacent Class II wetland, in order to serve Lot 1. The driveway traverses the Conservation District (CON). The district standard, **Table 2.8(F)(5)** states the following;

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“Uses shall not adversely affect fragile soils or vegetation, impair the quality or quantity of surface and ground water or cause soil erosion.”

All of the subdivided lots would be served by the cluster of four (4) wastewater mounds to be constructed on Lot 3 at the southeast of the property, adjacent to the intersection of Mt. Philo Rd. and State Park Rd. The connecting septic lines are proposed to be dug through the wetland and tributary directly between Lot 3 and Lot 2, and also across the entire pasture on Lot 3 to the estate house on the western side of the property (see [pages C2-01 through C3-01 at this link](#)).

If Lot 2 were to be approved, the lines should be required to follow the edge of Mt. Philo Road to the driveway of Lot 2, not via the wetland. If the building envelope on Lot 3 were to be approved, the lines should follow the edge of State Park Road to the driveway of the estate house, not via the wetland.

- Shoreland setback and buffer areas: N/A
- Special Natural Areas (SNA): Mt. Philo State Park (identified as an SNA within the Town Plan) abuts the property, across Mt. Philo Road to the east. The proposed subdivision would impact its western viewshed.

Applicant Response: *“At the base of Mt Philo, the proposed project will be highly visible to locals and visitors traveling to one of the most heavily visited Vermont State Parks. This project aims to preserve the natural features of the land and will be highly aesthetically appealing. This project meets the character of the surrounding area through low-density residential development and agricultural use. Furthermore, this project is not visible from the primary scenic vistas at the top of Mount Philo.”*

Staff Preliminary Findings: The proposal admits that from the lower elevations (i.e. the parking lot and the road), the project would be highly visible. However, the project would also be visible from the upper elevations, including; the House Rock and Devil’s Chair trails from the overlook points that traverse the western face of the park, and the northerly & southerly portion of State Park Road (within the park). Staff undertook a site visit on Saturday 24 March 2018 to confirm this.

It is questionable that the septic mound cluster on the Southeast corner of Lot 3, viewed from the primary intersection of Mt. Philo Road & State Park Road, near the entrance of the State Park would serve as an “aesthetically appealing” aspect of the project.

The project does not meet the character of the surrounding area, as it is adjoined to the south by a 40-acre Charlotte Land Trust (CLT) easement, across State Park Road. To allow the southern pasture of Lot 3 to be developed would create an imbalance in the westerly viewshed from Mt. Philo State Park when comparing the properties on either side of State Park Road.

In the Town Plan, [Chapter 2.1, page 2-17](#), Mount Philo is cited as a Special Natural Area and is considered a “geological feature (Champlain Overthrust), **exceptional views**, aquifer recharge area, location of rare plants and natural communities, deer wintering area”

- Wildlife Habitat: There are about 5 acres of *Significant Forest Habitat* on the western wooded portion of the property. About 1/4 of the parcel consists of *Significant Aquatic Habitat* that exists along the tributary streams and in a small area along the southern portion of the property. About 3.5 acres of *Linkage Habitat* to Mt. Philo State Park exists along the northeast of the property (in proximity to where the driveway is proposed from Mt. Philo Road). About 2 acres of *Significant Shrubland Habitat* exists along the north-central area of the parcel, along the stream tributary. [>> Click here to view the Charlotte Wildlife Habitat Map.](#)

Applicant Response: The proposal states that *“the project proposes to preserve as many of the natural features of the existing site as feasible”*, and further claims that the project will not impact

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the Significant Forest Habitat and improve the conditions for the Significant Aquatic Habitat.

Staff Preliminary Findings: The proposed building envelope for the estate house proposes 0.8 acres of potential future impervious surface that closely abuts the only forested area on the property.

The proposed driveway fragments the southern portion of the identified *Significant Shrubland Habitat* along Kimball Brook ([>> Click here to view the Charlotte Wildlife Habitat Map](#)). This is not addressed within the proposal.

The statement regarding the improvement to the *Significant Aquatic Habitat* is questionable, where the proposal calls for the replacement of an undersized concrete culvert near the access to proposed Lot 2, it does not adequately address how the gravel driveway proposed to cross Kimball Brook (and the wetland) in order to access Lot 1 would impact the Brook with respect to narrowing the width of the ravine downstream; how it would impact the current meandering course of the Brook; nor does it address the associated runoff and erosion into the brook during extreme storm events (in the event the proposed stormwater treatment reservoirs prove inadequate). These potential impacts to water quality may require further review from an independent consultant.

The applicant further states;

“Additionally, Lot 2 will have minimal impacts to the Linkage Habitat near Mount Philo State Park. It should be noted that all proposed development is within areas that are currently hayed and preserves the naturally vegetated sections of mapped Linkage Habitat.”

This statement is not in accordance with the data presented within the [Charlotte Significant Wildlife Habitat Map](#). Lot 2 is proposed to have a house built in the middle of the primary identified *Linkage Habitat* polygon where wildlife crosses Mt. Philo Road to access the ravines on the property, as well as Kimball Brook.

Please Note: On Page 2 of the [applicant’s narrative](#), it is stated that Lot 3 shares a driveway with Lot 2. The shared driveway on Lot 3, according to the [site plan maps](#), actually accesses Lot 1 (to the northwest of the property). Lot 2 (to the northeast) has its own proposed access from Mt. Philo Rd.

- Water supply source protection areas (SPAs):
 - Ground water: N/A
 - Surface water: N/A
- Historic Districts, Sites, and Structures: Historic Site #0403-23 (The Mt. Philo Inn Complex) exists to the southeast of the property.
- Scenic views and vistas: Mt. Philo Road is a ‘*most scenic public road*’. Mt. Philo State Park has a clear overview of the entire project area, particularly from the entrance, the lower parking area, at least two areas along State Park Road (within the park), and the House Rock and Devil’s Chair trails.

To address scenic impacts, a report was developed by the applicant’s consultant, titled “[Four Meadows Farms – Visual Analysis](#)”, by Trudell Consulting Engineers, dated 16 Feb 2018.

On pages 8 and 9 of the report, the applicant displays two images of the southern field abutting State Park Road where the proposed estate house and wastewater mound cluster on Lot 3 would clearly and significantly impact the viewshed from Mt. Philo at the lower elevations (see **View V2B** and **V2C**). Below these images, the report states;

“Section 7.2 General Standards of Charlotte’s Land Use Plan, includes provisions for development suitability which include protection and limits on projects that result in undue adverse impacts on the character of the surrounding area or on Areas of High Public Value

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*defined as, among other things: Land in active agricultural use, prime agricultural soils, and scenic views or vistas. **Although the Project will have an adverse visual impact, the horse farm and its accessory buildings will enhance the agricultural and residential character of the surrounding area, not an undue adverse visual impact.***

Staff Preliminary Findings: The proposal is presenting a clear case that the viewshed of the southern pasture of Lot 3 would be adversely impacted from the entrance of Mt. Philo State Park; and its states as much in the above quote. However, the '[visual analysis](#)' attempts to caveat this point with a questionable notion that the proposed agricultural-style buildings to north will distract the viewer from noticing the impacted viewshed. The proposed home, septic mound cluster, auxiliary driveway, and the bridge on Lot 3 would further present a conflict with the scenic pastoral setting of the conserved property along the southern side of State Park Road (see **View V2A** on page 8.).

The visual analysis then undertakes the "[Quechee Lakes Test](#)" (a two-step test used in Act 250 proceedings to determine undue adverse aesthetic impacts, under Criterion 8) to support its assertion that the development will not have an undue adverse impact.

Applicant Response: *"In conclusion, we believe the Project meets the Quechee Analysis test in that its impact on aesthetics will NOT be UNDULY ADVERSE."*

The following outlines the steps of the Quechee Lakes test:

Step 1: There are 5 questions to ask:

1. the nature of the project's surroundings;
2. whether the project's design is compatible with its surroundings;
3. whether the colors and materials selected for the project are suitable to the surroundings;
4. from where is the project visible?;
5. what are the impacts on open space?

Staff Preliminary Findings: A basic disagreement between staff preliminary findings and the proposal's assertions are in the nuance of 'agricultural use'. Where, the proposal states that the project is in "*harmony with existing agricultural and residential uses of the surrounding properties*", two of the abutting properties are in conserved open space. The proposal does not outline any clustered development, where the project as proposed would consume a significant amount of un-fragmented open space, implementing a site plan design that sprawls to all four corners of the 53-acre property.

Step 2: There are 3 questions to ask:

1. Does the project violate a clear, written community standard intended to preserve the aesthetic, scenic or natural beauty of the area?;

Staff Preliminary Findings: The State Park is perhaps the premier scenic asset of the Town of Charlotte. The amount of impact the southern pasture of Lot 3 (e.g. the estate house, auxiliary driveway, bridge, and septic mound cluster) would be incompatible with its surroundings and a substantial scenic loss to the Town and the State Park (see above comments).

2. Is the project offensive or shocking to the average person?
3. Has the applicant failed to take generally available mitigating steps to improve the harmony of the proposed project with its surroundings? The type of evidence the Board uses to answer this question include community standards for local and regional plans, Board site visits, and testimony from neighbors

Staff Preliminary Findings: The encroachment upon the pasture of Lot 3 with an estate house with a tree-lined driveway, auxiliary driveway, bridge, and septic mound cluster would adversely impact the viewshed and fragment the functions of the pasture. The auxiliary

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driveway bisects the field and proposes an additional crossing of the wetland and stream. The curb-cut from State Park Road (already issued as a Highway Access Permit **HAP-03** on 22 Mar 2018 by the Selectboard) should not be allowed to be developed as a driveway, in accordance with the Regulations **Section 3.2(D)(2)(c)**, which state; “Roads and driveways should be located to avoid fragmentation of and/or adverse impacts to areas of high public value listed in Table 7.1.”

This regulation may also be applied to the shared-driveway proposed to cross Kimball Brook from Lot 3 to Lot 1.

Conclusions for Step 2:

Applicant Response: (pages 14-15 of [Four Meadows Farms – Visual Analysis](#)) After consideration of the local planning, design bylaws and regional planning documents, The Consultant has determined that the Project does not violate the Town of Charlotte’s written community standard intended to preserve the aesthetic or scenic beauty of the area. Beyond RUR zone setbacks and building heights there no standards in Charlotte to follow for the preservation of a scenic view. The Land Use and Town Plans only speak of goals to preserve the scenic views, no dimensional requirements.

Staff Preliminary Findings: The Consultant seems to emphasize the Rural (RUR) zoning district dimensional standards of **Section 2.3** of the regulations as the only means to preserve scenic views, while omitting those related to the Planning Commission’s authority to prevent undue adverse impact to Areas of High Public Value (AHPV) covered in the General Standards of **Section 7.2 (see top of staff report – above)**. In addition to their ability to protect AHPVs, the Planning Commission may further choose to review the project as a Planned Residential Development (PRD), which would potentially conserve 50% of the property as Open Space (see citations below), or to limit the subdivision to less than the three (3) proposed lots.

- Conserved land on adjacent parcels: ~13 acres of OSA land abuts on the property to the west. ~40 acres of easement exists on the property to the south, across State Park Rd. Mt. Philo State Park to the east comprises about 130 acres.

Staff Preliminary Findings: This application proposes no conserved area.

The following citations further address the Planning Commission’s possible review of the project.

Planned Residential & Planned Unit Development – Chapter VIII

Section 8.2(B) Planned Residential Development (PRD):

The Planning Commission may modify applicable area and dimensional requirements required elsewhere in the regulations simultaneously with the approval of a subdivision plan and associated plat. Such modifications shall be made in accordance with the following provisions:

(3) **Minor subdivisions** in the Rural District or Shoreland Districts in which the applicant or the Planning Commission determine that the modification of dimensional standards that allow the clustering of development, such as a reduction in the minimum lot size or building setbacks, is desirable or necessary to meet the standards set forth in Chapter 7 (**See top of Staff Report on Page 1 – above**)...

Section 8.4(C) Planned Residential Developments [PRDs] - Rural District and Shoreland District Standards.

PRDs within the Rural District and Shoreland District shall be designed to blend new development into the historic, agricultural landscape and to maintain important natural, scenic and cultural resources as described in the *Charlotte Town Plan*. To this end, PRDs shall be designed in accordance with the standards for either conservation projects or hamlets, as described below:

(1) **Conservation Projects.** At the request of the applicant, or as otherwise required under Section 8.2(B), the proposed PRD shall be designed in a manner that maximizes the reduction of

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lot sizes and modification of setbacks and other dimensional standards to minimize undue adverse impacts to, and fragmentation of, Areas with High Public Value. The conservation subdivision design process described in Table 6.3 shall be followed by the applicant, and modifications to standards shall be allowed by the Commission to the extent that such modifications better achieve the standards set forth under Chapter 7. A minimum of 50% of the lot(s) shall be designated as open space in accordance with Section 8.6.

Observations / Recommendations:

The Planning Commission could consider reviewing this application as a PRD, in accordance with **Section 8.2(B)(3)** and **Section 8.4(C)(1)** – above. With 50% of the property in conservation, a significant portion of the southern pasture of Lot 3 could be conserved in an Open Space Agreement, and perhaps all of the wetland area along Kimball Brook could be conserved and allowed to be reforested. A PRD would allow for clustering of the proposed lots.

The Planning Commission should consider continuing the hearing for this proposal as a PRD, and/or limit the subdivision to less than three (3) proposed lots to maintain the functions and values of the Areas of High Public Value. Continuation of the hearing would allow the consultant time to reconfigure the application to meet the associated requirements for either option.

Any approval of the proposed stream crossings for Lot 1 and Lot 3, and the adjoining wetland should complement the efforts to preserve the Kimball Brook with the recently approved [KR Properties, LLC 9-Lot subdivision](#) located upstream from this proposal's project area. If the Planning Commission is inclined to allow these crossings, it should require the applicant to follow the recommended designs for those crossings by an engineer approved by the Planning Commission.

If the applicant intends to undertake horse shows (not considered an agricultural use), then this would constitute a change of use where Site Plan Review (which may be combined as part of the Subdivision application – see **Section 5.5** of the Regulations) and Conditional Use Review would be brought into consideration of the proposal.

The [VT Agency of Agriculture letter from September 2017](#) states that the construction of indoor or outdoor arenas to be used for riding lessons are not farm structures, and in being mindful of the brook and (adjacent wetland), the impervious surface of the outdoor arena and the adjacent retention ponds should be moved further away from the bank of the Kimball Brook. If the retention ponds are to remain, they should be designed to accommodate the anticipated runoff from future storm events to protect Kimball Brook.

In conclusion, the project proposes an un-clustered, sprawling development pattern that could generate significant runoff into the Kimball Brook, and compromise the one of the State's most notable viewsheds, and noteworthy scenic assets of the community, identified with multiple Areas of High Public Value.

Water Supply & Wastewater Supply Note: The Town Sewage Control Officer has six (6) unanswered questions concerning the current Water Supply & Wastewater permit for the proposed site. The Planning Commission should continue the hearing until these issues are resolved.