

CHARLOTTE TOWN CLERK'S OFFICE

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This 29<sup>th</sup> day of June A.D. 20 18  
at 9 o'clock 0 minutes 9 m and  
recorded in vol. 133 on page 545 - 576  
Attest Christina Town Clerk

CHARLOTTE PLANNING COMMISSION  
SUBDIVISION REVIEW  
FINDINGS OF FACT AND DECISION

Susan Ballek and Imanol Echeverria  
Final Plan Application for a 3-Lot Minor Subdivision  
for 5222 Mount Philo Road (across from Mt. Philo State Park)  
Application # PC-18-21-SD

**Introduction and Procedural History**

This proceeding involves review of an application for a 3-Lot Minor Subdivision of the 52.66-acre property located at 5222 Mount Philo Road (within the Rural (RUR) District, and partially within the Conservation (CON) District where Kimball Brook crosses the property) that was submitted by Susan Ballek and Imanol Echeverria (the property owners) in consultation with Trudell Consulting Engineers for approval by the Charlotte Planning Commission under the Town of Charlotte Land Use Regulations, hereafter referred to as the Regulations.

The Application was received by the Charlotte Planning & Zoning Office on February 16, 2018. A notice of public hearing was published in The Citizen newspaper on March 8, 2018 and electronically posted on the Town website calendar. A hardcopy of the notice was mailed out to all adjoining landowners on March 22, 2018 and posted at the following three locations on March 9, 2018: the Town Office bulletin board, the Old Brick Store in the West Charlotte Village, and Spear's Corner Store in the East Charlotte Village. Although it was not required under Section 9.9 of the Regulations, the continuation hearing was also warned within the The Citizen newspaper on May 3, 2018.

A Sketch Plan Review (**PC-17-145-SK**) for the proposed Subdivision was undertaken by the Planning Commission at public meetings held on November 2, 2017 and December 7, 2018 where the project was classified as a "3-Lot Minor Subdivision" in accordance with Section 6.1(C)(2) of the Charlotte Land Use Regulations, which proposed to subdivide the property into two 5.1-acre lots (Lots #1 and #2) and a 42.4-acre lot (Lot #3).

The Planning commission undertook two site visits with respect to the property: **1.** At the property location on Saturday, October 28, 2017 at 9:30 AM (prior to the November 2<sup>nd</sup> Sketch Plan Review meeting) attended by Commissioners Peter Joslin, Charlie Pughe, Marty Illick, and Gerald Bouchard; and consultants Jeremy Matosky and Andrea Dotolo; **2.** At the summit of Mount Philo on Saturday, November 11, 2017 at 9:00 AM attended by Commissioners Peter Joslin, Charlie Pughe, Dick Eastman, Marty Illick, and Gerald Bouchard; consultants Jeremy Matosky and Andrea Dotolo.

The Preliminary Plan Application was considered by the Planning Commission at two public hearings during their regular meetings scheduled for April 5, 2018 and May 17, 2018. Present at the April 5<sup>th</sup> hearing were the following members of the Planning Commission: Peter Joslin (Chair), Charlie Pughe (Vice Chair), Marty Illick, Gerald Bouchard, and Shawn Coyle. Attendees and participants appearing on behalf of the application included: applicant Susan Ballek (property owner); consultants Jeremy Matosky, Andrea Dotolo, Jeff Goller, and Colen Johnson of Trudell Consulting Engineers; and realtors

Mary Pat Palmer and Diane Armstrong of Four Seasons Sotheby's International Realty. Additional participants included: the Town Planner; Jane Lawlis of the Charlotte Land Trust; Amos Baehr of the Charlotte Conservation Commission; Margaret Russell of the Charlotte Trails Committee; neighboring property owner Joshua Golek; and Clark Hinsdale, III and Suzanne Hinsdale; and others.

Present at the May 17<sup>th</sup> hearing were the following members of the Planning Commission: Peter Joslin (Chair), Charlie Pughe (Vice Chair), Marty Illick, Gerald Bouchard, Shawn Coyle, Richard Eastman, and David Kenyon. Attendees and participants appearing on behalf of the application included: applicant Imanol Echeverria (property owner); consultant Jeremy Matosky of Trudell Consulting Engineers; and attorney David Sterrett. Additional participants and attendees included: the Town Planner; Jane Lawlis and Kate Lampton of the Charlotte Land Trust; Amos Baehr and Susan Blood of the Charlotte Conservation Commission; neighboring property owners Joshua Golek, Wendy Hendrickson, and Sarah Wannop; Charlotte resident Richard Howson; and Charlotte property owners Clark Hinsdale, III and Suzanne Hinsdale; and others. The Planning Commission closed the hearing that evening.

### Exhibits

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

1. Application Exhibits for a 3-Lot Subdivision, including: **A.** PC-18-21-SD application form signed by Susan Ballek and Imanol Echeverria, **B.** Narrative – RE: Final Site Plan Review – Application Number PC-17-145-SK – Four Meadows Farm 3-Lot Minor Subdivision, from Jeremy M. Motosky, P.E. President of Trudell Consulting Engineers (dated February 16, 2018);
2. Visual Analysis Drawings – Four Meadows Farm – 5222 Mount Philo Rd., Charlotte, VT (dated October 23, 2017), including: **A.** Context Map, **B.** Existing Conditions Photo Locations (Figure 2), **C.** Overall Site Plan (Figure 3), **D.** Views for Analysis – Visual Simulations Vantage Points for the project area (Figure 4);
3. “Four Meadows Farms – Visual Analysis” (41 page report) Trudell Consulting Engineers (February 16, 2018);
4. GIS Maps – Four Meadows Farm – 5222 Mount Philo Rd., Charlotte, VT, including: **A.** Environmental Constraints Map (dated February 13, 2018), **B.** Significant Wildlife & Conservation Map (dated February 15, 2018);
5. “Four Meadows Farm 3 Lot Subdivision” – Permit Submission Set (Not for Construction), Last Revised February 14, 2018, including: **A.** Legend and Notes (C1-00), dated 02/14/2018, **B.** Subdivision Plat – Imanol Echeverria & Susan Ballek (C1-01) dated 08/04/2017, by Mark A. Day, L.S. No. 732, Trudell Consulting Engineers, **C.** Existing Conditions Plan (C1-02), **D.** Overall Site Plan (C2-01), **E.** Conceptual Farm Site Plan (C2-02), **F.** Overall Sanitary Plan (C3-01), **G.** Sanitary Plan (C3-02), **H.** Sanitary Plans (C3-03), **I.** Entrance Plan & Profile (C6-01), **J.** Plan & Profile Lot 1 (C6-02), **K.** Plan & Profile Lots 2 & 3 (C6-03), **L.** Arch Culvert Cross Section (C6-04), **M.** Cross Sections (C6-05), **N.** Site Details (C8-01), **O.** Sanitary Details (C8-02) dated 01-2-2018, **P.** Sanitary Details (C8-03), **Q.** Water Details (C8-04), **R.** Erosion Details (C8-05), **S.** Stormwater Details (C8-06), **T.** Stormwater Details (C8-07), **U.** Retaining Wall Details (C8-08), **V.** Wetland Impact Plan (C10-01), **W.** Landscape Plan (L1-01);
6. “Four Meadows Farm Residential Development” (Project Summary / Slideshow), by Trudell Consulting Engineers (dated April 5, 2018);

7. Vermont Agency of Agriculture, Food, & Markets: Letters sent from Stephanie Ann Smith (Chief Policy Enforcement Officer) to: **A.** Imanol Echeverria (dated September 29, 2017), **B.** Jeffery O. Polubinsky, Esq. (dated December 1, 2017);
8. Response letter (dated March 28, 2018) from Trudell Consulting Engineers to Brian Tremback, Charlotte Town Engineer (of Lamoureux & Dickinson Consulting Engineers, Inc.) regarding wastewater review comments made on 03/09/18;
9. Letter from the Charlotte Conservation Commission regarding the proposed project (dated April 5, 2018): The letter discusses the following themes: Aquatic Habitat, Wildlife Corridors, Viewscape, Agricultural designation, and “Inconsistent with adjoining properties”;
10. Letter from the Charlotte Land Trust regarding the proposed project (dated March 30, 2018): The letter discusses the following themes: Views, Agriculture, and Wildlife Habitat;
11. Public Comment Letter from the Clark Hinsdale regarding the proposed project (dated March 25, 2018);
12. Legal Opinion for PC-18-21-SD Ballek-Echeverria from the Town Attorney, Joe McClean (dated May 17, 2018);
13. Charlotte Land Records – Volume 183, Page 517 (10 Dec 2009) Allmon, Charles W. & Gwen D., Warranty Deed;
14. Sketch Plan Review; Planning Commission Letter (Application # PC-17-145-SK), dated Jan 18, 2018;
15. Planning Commission Minutes from meetings held on: May 17, 2018 and April 5, 2018;

### **Regulations in Effect**

Charlotte Town Plan, 2018

Charlotte Land Use Regulations, 2016

Recommended Standards for Developments and Homes adopted September, 1997

Vermont Agency of Natural Resources, Wastewater System & Potable Water Supply Rules, 2007

### **Findings**

1. Susan Ballek and Imanol Echeverria own a 52.66 acre property located at 5222 Mt. Philo Road located along the northwest of the intersection of Mount Philo Road and State Park Road within the Rural Zoning district (RUR), which is proposed to be subdivided into three lots, including:
  - A. Lot #1, a 5.1 acre parcel located along the northwestern side of the property,
  - B. Lot #2, a 5.1 acre parcel located along the northeastern side of the property, abutting Mount Philo Road, and
  - C. Lot #3, a 42.4 acre parcel comprising the remainder of the property, which would function as a horse farm to be called “Four Meadows Farm”.

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

The Rural district standard for the minimum setback from a town highway is 50 feet from its right-of-way.

This proposal plans for a number of structures to be constructed within, or partially within the 50’ setback of the Town Highway right-of-way, including: a retaining wall, horse barn, tractor shed along Mt. Philo Road; and a cluster of four wastewater mounds near the intersection of Mt. Philo Road and State Park Road, all of which do not conform to the Regulations.

3.2(D)(2) Road, Driveway and Pedestrian Standards – Roads and Driveways – Design

All roads, driveways and intersections shall be designed and constructed in accordance with the Town of Charlotte “Road and Driveway Standards” as most recently amended, and the following:

*“(c) 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. Additionally, to the extent feasible, roads should follow existing linear features such as utility corridors, tree lines, hedgerows and fence lines.”*

*“(d) Techniques for the preservation of scenic views and cultural features should be employed for the construction and maintenance of roads, including but not limited to the selection of visually compatible materials, the preservation of existing features, and appropriate management of vegetation within the road corridor. The use of surfacing material that minimizes driveway visibility and enhances surface permeability is encouraged, and may be required by the Commission or Board for development subject to subdivision, site plan, or conditional use review. A crushed stone or gravel surface is recommended.”*

3.9(B) Outdoor Lighting; General Standards require the following:

- a. *“All outdoor lighting shall be kept to the minimum required for safety, security, and intended use, consistent with the character of the neighborhood in which it is located.”*
- b. *“Permanent outdoor lighting fixtures shall be designed to minimize glare, and shall not direct light upward or onto adjacent properties, roads, or public waters, or result in excessive lighting levels that are uncharacteristic of the surrounding neighborhood or area.”*

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 the State agricultural or forestry state tax abatement program (i.e. the Use Value Appraisal [UVA] “Current Use” Program). However, the applicant has stated that they will enroll in the “Current Use” program.

The proposed equestrian facility has been determined by the *Agency of Agriculture Food & Markets* as an accepted agricultural practice (refer to the December 1, 2017 Vermont AAFM letter, **Exhibit 7B** above) with the removal of the caretaker’s residence from the proposed barn design as stated within the applicant’s original proposal (refer to the September 29, 2017 Vermont AAFM letter, **Exhibit 7A** above). The Agency of Agriculture had 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 only for clients boarding their horses on the property.

If the applicant intends to undertake horse shows (which are not considered an agricultural use, as stated within the December 1, 2017 Vermont AAFM letter), then it would constitute a change of use where a Site Plan Review (as per Section 5.5 of the Regulations) and Conditional Use Review (as per Section 5.4 of the Regulations) would be required.

- b. Primary Agricultural Soils (PAS - Prime and Statewide) – 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 two acres along the southeastern portion of the property (on Lot #3) along the Mt. Philo Road consist of Prime Agricultural soils (according to the USDA-NRCS data).

The un-clustered housing placement proposed for the three lots does not address preservation of the agricultural soil on the property.

- c. Flood hazard areas – The property exists in an "Area of Minimal Flood Hazard" within the FEMA National Flood Hazard Layer (NFHL).
- d. 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 wetland delineated that are now mapped and confirmed by the Vermont DEC Wetlands Program.

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

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

Furthermore, **Section 3.2(D)(2)(C)** of the Regulations 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."*

All of the proposed lots in the subdivision would be served by the cluster of four (4) wastewater mounds to be constructed on Lot #3 at the southeastern corner of the property, adjacent to the intersection of Mt. Philo Rd. and State Park Rd. The connecting septic lines are proposed to be directionally-bored underneath the wetland and the tributary directly between Lot #3 and Lot #2, and also across the wetland and pasture on Lot #3 to the proposed house near the western edge of the property (see **Exhibit 5D** and **5F** above).

- e. Special Natural Areas (SNA) – *Mount Philo State Park* (which is 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.

The applicants' proposal states that from the lower elevations of Mt. Philo State Park (i.e. the parking lot and the road), the project would be highly visible. However, the proposed development would also be highly visible from 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 and southerly portion of State Park Road (within the park).

In **Chapter 2.1, page 2-17** of the **2018 Charlotte Town Plan**, 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."

- f. 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. Where the proposal calls for the replacement of an undersized concrete culvert underneath the gravel driveway intended to access Lot #1 (which would cross Kimball Brook and the adjacent wetland), it does not thoroughly address possible impacts of associated runoff and erosion of the driveway into the brook during extreme storm events.

About 3.5 acres of *Significant Linkage Habitat* linked to Mt. Philo State Park exists along the northeast portion of the property (in proximity to where the driveway is proposed to be constructed from Mt. Philo Road). Lot #2 is proposed to have a house constructed in the middle of the identified *Significant Linkage Habitat* where wildlife crosses between Mt. Philo Road and the ravines upon the property, and Kimball Brook. This issue is discussed in detail within the Charlotte Conservation Commission's letter (see **Exhibit 9** above).

About 2 acres of *Persistent Shrubland Habitat* had been identified along the northern-central area of the parcel, along Kimball Brook (according to the Charlotte Wildlife Habitat Map). The proposed driveway accessing Lot #1 from Mt. Philo Road would fragment the southern portion of this identified Habitat.

In addition to the construction of a gravel driveway across Lot #3 and the Kimball Brook to serve Lot #1. The plans propose the replacement of an existing culvert with a larger culvert (detailed in **Exhibit 5L** above). To protect the aquatic organisms within the identified habitat, the replacement culvert should follow the design and practices outlined in the Vermont Department of Fish and Wildlife, "*Guidelines for the Design of Stream/Road Crossings for Passage of Aquatic Organisms in Vermont*" (March 2009).

- g. Historic Districts, Sites, and Structures – Historic Site #0403-23 (The Mt. Philo Inn Complex) exists to the southeast of the property.
- h. Scenic views and vistas – Mt. Philo Road is a '*most scenic public road*' according to the Charlotte Town Plan. Mt. Philo State Park has a clear overview of the entire project area, particularly from the park 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*" (see **Exhibit 3** above), which attempts the "*Quechee Analysis*" (a two-step test used in Act 250 proceedings to determine undue adverse aesthetic impacts, under Criterion 8 – "*Aesthetics, Scenic, and Natural Beauty*") to support its assertion that the development will not have an undue adverse impact. Due to a number of misleading statements and omitted "Views and Vistas" (e.g. House Rock Trail, Devil's Chair Trail from the overlook points that traverse the western face of the park, and the northerly and southerly portion of State Park Road within the park) that should have been considered, the Planning Commission does not accept the findings of the applicant-submitted Visual Analysis report. Where this decision is not intended as a comprehensive critique of the report, the Planning Commission disputes the assertion discussed on pages 14-15 of report, where it is stated:

*"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 zoning zone setbacks and building heights there no [sic] 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."*

The Consultant emphasizes the rural district dimensional standards of **Section 2.3** of the regulations as the only means to preserve scenic views while omitting the Regulations 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 above). To protect the AHPVs, the Planning Commission does have broad authority to limit the subdivision to less than the three (3) proposed lots. According to the Town Attorney (see **Exhibit 12** above):

*"It is our sense that the Planning Commission has ample authority to require conservation/preservation of Areas of High Public Value -- including through the imposition of conditions requiring an open space or conservation agreement -- through the subdivision standards in the Town's regulations and without resorting to PRD review. The Planning Commission may also modify lot sizes and other dimensional requirements, relocate proposed infrastructure, or deny aspects of the subdivision altogether to ensure compliance with applicable subdivision standards."*

Furthermore, as Mt. Philo State Park is a premier scenic asset of the Town of Charlotte, and where the amount of proposed impact the southern pasture of Lot #3 (e.g. the estate house, auxiliary driveway, bridge, and wastewater mound cluster) and Lot #1 and Lot #2 would be a substantial scenic loss to the Town as well as the State Park, the Planning Commission may impose conditions upon the proposed development to serve as mitigating steps to improve the harmony of the proposed project with its surroundings.

To mitigate the scenic impact of the wastewater mounds from the main entrance of Mt. Philo State Park, Brian Tremback, a Licensed Class BW Designer from Lamoureux & Dickinson Consulting Engineers, Inc., and serving as the wastewater and water supply engineer for the Town has stated the following:

"The ability of a viewer to discern the vegetated mound systems would mostly be due to their height and rectangular shape and possibly because the grass covering was mowed in a way that differentiated it from the rest of the field. If the Planning Commission feels that the impact is significant, a few possibilities for softening their appearance come to mind:

1. Groupings of shrubs could be planted (not on the mounds) so that the mound systems aren't the highest features in that corner of the property. Possible locations for this might be between the mounds and the roads and in the open area between the northeastern and southeastern mound systems, and south of the southwestern mound.

2. Place additional fill around the sides of the mounds to lessen the steepness of the slopes. This can be done using native fill and topsoil and needn't affect the extent of the mound sand. Fill can also be placed to change the shape of the mounds to something more curvilinear and less box-like.
  3. Because mowing of the mound systems is mostly done to suppress woody vegetation, mowing no more frequently than the rest of the field would achieve that goal and would produce a similar vegetation texture.”
- i. Conserved Land on adjacent parcels – About 13 acres of OSA land abuts on the property to the west. About 40 acres of an easement with the Charlotte Land Trust exists on the property to the south, across State Park Rd. Mt. Philo State Park to the east comprises about 232 acres (according to the Vermont Department of Forests, Parks, and Recreation).

#### 7.3(D) District Standards – Rural, Shoreland & Conservation Districts

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

*“(2) Lot lines, infrastructure, and roads, driveways and utility corridors shall be located so as to not create any undue adverse impacts on Areas of High Public Value by the parcelization, fragmentation, isolation, or destruction of such areas.”*

*“(4) Areas of High Public Value should be identified and considered for inclusion as designated open space on the subdivision plat. Buffer areas, management plans, conservation easements, restrictions on further subdivision or comparable site protection mechanisms and mitigation measures may be required to ensure the long-term conservation of these areas.”*

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

1. Access to Lot #1 would be served by a proposed driveway originating from Mount Philo Road and traverses across Lot #3 and the Kimball Brook to the proposed building envelope on Lot #1. The development of the driveway includes a 50' access and utility right-of-way for any future property owner of Lot #1, as stated on page 2 of the applicants' narrative (see **Exhibit 1B** above). According to the survey, the proposed driveway would run approximately 1,200' in length. The *“Recommended Standards for Developments and Homes”* (adopted September, 1997) state;
  - A. *“All driveways 500' or more in traveled length shall have a turnaround at the house site large enough to accommodate 3 emergency vehicles at one time (Approx. 1,600 sq. ft.)”*
  - B. *“All Driveways longer than 800' will have vehicle turn-outs (12' wide x 35' long) near the halfway point or every 800'.”*
2. The proposed access to Lot #3 would originate from State Park Road and would run about 480' in length.
3. The proposed access to Lot #2 would originate from Mount Philo Road and would run less than 500 feet in length.

4. Highway Access Permits for all three proposed driveways have been approved by the Charlotte Selectboard.

#### 9.2(A)(10) Exemptions

The proposal to construct the retaining wall, the horse barn, and the tractor shed within the 50' setback of the Town Highway right-of-way is a violation of the Regulations. An exemption from the Rural (RUR) district dimensional standard (cited in **Finding 2.3** above) may be obtained for a Required Agricultural Practice (RAP) and Best Management Practice (BMP), including farm structures, as defined by the Secretary of Agriculture, Food, and Markets in accordance with the **24 VSA § 4413(d)**.

However, pursuant to associated state rules:

- a) Prior to the construction of farm structures, the farmer must notify the administrative officer in writing of the proposed construction activity. The notification must include a sketch of the proposed structure, including setbacks from road rights-of-way, property lines, and surface waters.
- b) The proposed structure shall comply with all setback requirements for the district in which it is located unless written approval granting a reduced setback is received from the Secretary of the Agency of Agriculture, Food, and Markets. Such approval shall be attached to the notification filed with the Administrative Officer.

Additionally, guidance obtained from the **Vermont Agency of Agriculture Food and Markets (VAAFMM)** website covering "Limitations on Municipal Land Use Bylaws", under "Getting a Determination of Applicability of the Required Agricultural Practices Rule" states:

1. For the purposes of "farming," fences are not considered "farm structures," however their installation may be considered an agricultural practice. This does not give a property owner the right to install a fence within a highway right of way.
2. The Secretary cannot grant an alternative setback for the construction of farm structures in a highway right of way. Either the Town or the State of Vermont must grant approval. You may need to check with the Town or Vermont Agency of Transportation to ensure you know the exact location of a highway right of way.
3. If the property is currently covered by an Act 250 permit, you will need to contact your Act 250 district commission office to obtain a Jurisdictional Opinion on whether written permission from the District Commission is required before proposed work or any change in the current land use.
4. A building that is mixed use (Ex: residential storage and sugar house) will not be considered a farm structure nor its construction an agricultural practice.

Furthermore, the Town does retain the authority to regulate the setbacks of the proposed wastewater system:

**§ 1-501(a)** of the Statewide Uniform Technical Standards from the State of Vermont, Agency of Natural Resources, Environmental Protection Rules, Chapter 1, Wastewater System and Potable Water Supply Rules state:

*“After June 30, 2007, those provisions of existing municipal ordinances and zoning bylaws that establish technical standards and criteria for the design, construction, operation, and maintenance of potable water supplies and wastewater systems are superseded (i.e. no longer in effect) by the technical standards and criteria of these Rules and the Vermont Water Supply Rules. Municipalities may continue to have ordinances and/or bylaws that:*

*(1) are not specifically regulating potable water supplies and/or wastewater systems, but rather regulating development in general, (ex: setbacks);”*

## **Decision**

Based on the foregoing Findings of Fact and Conclusions, the Planning Commission approves the application for the 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. An emergency vehicle turnaround has been proposed for the driveway serving Lot #1 as per Finding 7.10 above. However, the design is subject to the approval of Charlotte Volunteer Fire and Rescue Services.
3. All proposed structures, including the entirety of the retaining wall, the horse barn, the tractor shed, the wastewater mounds (indicated in **Exhibits 5D** and **5E**), and any other structures shall adhere to the fifty foot (50') setback from the right-of-way for both Mount Philo Road and State Park Road.
4. All driveways and parking areas shall be surfaced with non-white crushed stone.
5. The houses to be constructed on Lots #1, #2, and #3 shall be colored utilizing earth tones.
6. The house to be constructed for Lot #2 shall not exceed a maximum height to the roof peak greater than fifteen-feet (15') above the two-hundred and ninety-five foot (295') elevation (indicated in **Exhibit 5D**).
7. Exterior lighting shall be kept to a minimum and permanent outdoor lighting fixtures shall be downward-shielded and will not direct light upward, onto adjacent properties, or be visible from Mount Philo Road and *Mt. Philo State Park*, as per **Section 3.9** of the Regulations and Chapter 2.2 (page 2-22) of the 2018 Town Plan.
8. For both Lot #1 and Lot #2, a minimum of ten (10) trees (on each lot) will be planted (and maintained) on the southern and eastern elevations of each house to effectively screen them from the scenic viewsheds of Mt. Philo Road. The tree plantings shall be installed as three-inch (3") minimum caliper native species. The new tree installations shall be planted and verified by

the Zoning Administrator in consultation with the Charlotte Tree Warden prior to the issuance of the Certificate of Occupancy.

9. All treelines intended to screen structures on Lot #1 and Lot #2 from Mt. Philo Road shall be maintained.
10. Submit an Open Space Agreement (OSA) to be approved by the Planning Commission and the Selectboard. The OSA shall articulate that the primary purpose of the open space area is to protect the *scenic viewsheds of Mt. Philo State Park*, the adjacent '*most scenic public road*' Mt. Philo Road, and State Park Road. The secondary purposes are to protect the farmland and areas of *Significant Aquatic Habitat, Significant Linkage Habitat, and Persistent Shrubland Habitat*. A provision will be added stating "*with the exception for invasive species management, the identified habitat lands, wetlands, and their 50' buffer areas within Lot #1, Lot #2, and Lot #3 (below elevation 280' on the eastern side of the parcel) shall be maintained in their natural state, in which no cutting, clearing, or mowing, grazing of animals, or other disturbance to the land, nor interference within the river corridor area of the Kimball Brook is allowed.*"
11. All lands outside of the proposed building envelopes (except for the area proposed for the wastewater mound cluster on the southeastern corner of the property, and the stormwater retention areas adjacent to the proposed driveway intended to serve Lot #1) shall be included within the Open Space Agreement.
12. No further subdivision of Lots #1, #2, or #3 shall be allowed.
13. The three steps outlined in above Finding 7.2(h) that address mitigation of the scenic impact of the wastewater mounds from the main entrance of Mt. Philo State Park shall be followed by the applicant.
14. All utilities and below grade infrastructure shall be directionally-bored underneath all wetlands and surface waters (e.g. the Kimball Brook and tributaries), and any buffer setbacks.
15. Prior to the submission of the mylar (i.e. the survey plat listed in **Exhibit 5B** above) 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.
  - b. Demarcate the fifty foot (50') setback of Mt. Philo Road and State Park Road in addition to the Town Highway right-of-way boundary.
  - c. Add the location of footprints for all driveways and the stormwater detention areas; the Kimball Brook and tributaries; and the culvert for the Lot #1 access driveway.
  - d. Add the location of proposed structures including the tractor shed, and the horse barn structure (including the retaining wall) with their eastern elevations dimensioned to the Town Highway right-of-way boundary.

- e. Add the treeline locations that are intended to screen structures on Lot #1 and Lot #2.
- f. Update any of the infrastructural design recommendations of Charlotte Volunteer Fire & Rescue Services.
- g. Label the building envelopes with their total acreage area and dimensions.
- h. Add the missing directional-boring points.
- i. Label the area designated as Open Space along with its associated acreage. A note will be added to the survey referencing the approved Open Space Agreement and its assigned land record volume and page number, and the Planning Commission decision PC-18-21-SD.

16. The replacement culvert proposed for the driveway crossing Lot #3 to serve Lot #1 shall follow the design and practices outlined in the Vermont Department of Fish and Wildlife, "Guidelines for the Design of Stream/Road Crossings for Passage of Aquatic Organisms in Vermont" (March 2009).

**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 April 5, 2018:** Peter Joslin (Chair), Charlie Pughe (Vice Chair), Marty Illick, Gerald Bouchard, Richard Eastman, and Shawn Coyle.

**Members Present at the Public Hearing on May 17, 2018:** Peter Joslin (Chair), Charlie Pughe (Vice Chair), Marty Illick, Gerald Bouchard, Richard Eastman, Shawn Coyle, and David Kenyon.

**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 28, 2018</u>
2. Signed:	<u>Marty Illick</u>	<input checked="" type="radio"/> For / <input type="radio"/> Against	Date Signed:	<u>June 28, 2018</u>
3. Signed:	<u>[Signature]</u>	<input checked="" type="radio"/> For / <input type="radio"/> Against	Date Signed:	<u>6/28/2018</u>
4. Signed:	<u>Gerald Bouchard</u>	<input checked="" type="radio"/> For / <input type="radio"/> Against	Date Signed:	<u>6/28/2018</u>
5. Signed:	_____	For / Against	Date Signed:	_____
6. Signed:	_____	For / Against	Date Signed:	_____