

Below is the summary of the legal opinion requested regarding the additional residential unit (and the consideration of PRD) for the Ballek-Echeverria horse farm proposal on Mt. Philo Rd.

Legal question on (May 2018) :

The Planning Commission is seeking a legal opinion on the proposed Ballek-Echeverria "Four Meadows" horse farm, across from Mt. Philo State Park. The application (posted at this link: <https://is.gd/Z9KIPU>) is for a 3-Lot subdivision. Two of the proposed lots would be for single family houses, and one lot would be for a single family dwelling and a horse barn. Next to the horse barn the applicants have proposed building a caretakers' residence, which is asserted by the applicant falls under Section 4.2(B) of the Regulations – "Accessory Dwelling to an Agricultural Operation (Farm Worker Housing)". To see the map indicating the location of the dwelling, see:

<https://www.dropbox.com/sh/w2p0y8g3so2dp12/AAB76QmkZFDu3keROCxYSVOma?dl=0&preview=05-+GIS+Maps+Combined.pdf>

Could you confirm that the proposed structure falls under Section 4.2(B), IF the use of the property has been determined to be an agricultural by the VT Agency of Agriculture???

An opponent of the proposal has argued that the horse farm is not an agricultural operation, and therefore the caretakers' residence does not qualify as an accessory for an Ag. operation. However, the VT Agency of Agriculture has sent two letters confirming the Ag. use by separating the caretakers' residence from the barn structure.

The opponent of the proposal further asserts that, as this is an additional proposed residence, then the application should be considered a Major Subdivision (and hence a PRD, under 6.1(C)(2)). I've not been able to confirm the opponent's assertion within Chapter 6. The only place where I found that total units impact density is within the PRD language under Chapter 8. Here it would seem that if the Planning Commission did decide that the project should be categorized as a PRD, then residential units would come into play. I am estimating that the question that I should really be asking is: Does not the PC have the authority to determine that the project will be reviewed as a PRD regardless of proposed units, if they feel the proposed subdivision significantly impacts the Areas of High Public Value, under Sections 8.2(B)(3) and 8.4(C)(1)??

For your interest, I have attached the staff report for the project: <https://is.gd/rA70As>

Lastly, the Planning Commission did not determine that the project should be reviewed as a PRD during the Sketch Plan Review (as per Section 6.3(C)(2) – Action on Sketch Plan). Now that the application has moved to a Subdivision application, does the PC still retain the authority to determine the proposal should be reviewed as a PRD ??

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Answer:

Summary from Town Attorney (from correspondence):

Based on my review of the Charlotte LURs, Section 4.2(B), and assuming the horse barn qualifies as a required agricultural practice, it appears that the proposed caretaker's residence is potentially approvable under that provision of the LURs as an "accessory dwelling to an agricultural operation," subject to the Planning Commission making positive findings under Items (1)-(6). Based on the map that you provided, it seems that the proposed caretaker's residence would likely meet the requirements of Items (2), (3) and (5). Observe, however, that the LURs do not specifically define the terms "farm labor" or "farm worker" – the Planning Commission should specifically inquire regarding the duties and responsibilities of the "caretaker" to insure that he or she is, in fact, employed on the farm and provides labor to the farm. In common parlance, a farm laborer is someone who provides unskilled, manual labor for wages. I am uncertain whether a caretaker, in all instances, would meet this definition. Please also note that dimensional and other provisions of the LURs may apply to farm worker housing, in addition to the requirements of Section 4.2(B).

Although the letters from the Agency of Agriculture are not as clear as they could be, I generally agree that, in the Agency's view, the proposed equestrian facility may qualify as a required agricultural practice, with certain design and operational changes. In short, to qualify as a farm structure/required agricultural practice, exempt from local zoning regulation, it is the Agency's view that the barn cannot include a residence and the facility cannot offer riding lessons to clients bringing horses in from off the property (i.e., non-boarded horses), host horse shows and exhibitions, or use farm structures (e.g., buildings and/or arenas) for this purpose. This is not to say that such structures or activities are prohibited on the property – only that they are not exempt from zoning review.

As we discussed by telephone, it is our opinion that the Planning Commission does have the authority to convert a minor subdivision hearing to a PRD hearing without reopening sketch plan review (although reopening sketch plan is also an option). To do so, however, the Planning Commission should re-warn the minor subdivision hearing (final plan) as a PRD. Notice should also be provided to the applicant, by phone and in writing. The Planning Commission should also be prepared to explain why it believes PRD review is required.

It is possible, given the relative "formality" of Charlotte's sketch plan review process and Planning Commission's failure to classify the project as a PRD in its January 18, 2018 sketch plan review letter, that the applicant will seek to challenge the Planning Commission's unilateral conversion of the project to a PRD at this time. This may ultimately lead to a challenge before the Environmental Division. Therefore, the Planning Commission, before making a final decision on whether to convert the application to a PRD review, should consider carefully whether such review is necessary. In other words, what regulatory power or flexibility does the Planning Commission believe that PRD review affords it that cannot be exercised through the minor subdivision review process? Although our understanding of the project details is somewhat limited, 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. Given its broad authority to conduct subdivision review, and to impose reasonable conditions, the Planning Commission should closely analyze the need for PRD review before taking steps to convert this project to allow for PRD review.