

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**Samuel W. and Priscilla L. Spear Revocable Trust
Southwest Quadrant of Ferry Road & Lake Road**

**Final Plan Application
For A
Two Lot Subdivision
Application # PC-10-27**

Background

The subject parcel was created by a subdivision (PC-05-53) approved on February 13, 2006. Sketch Plan Review for the current subdivision was held on July 16 and August 20, 2009. The project was classified as a Major Subdivision because it proposes to create four lots from a parcel within a ten year period. The Preliminary Plan Application (PC-09-25) was reviewed on November 19, 2009, and a decision was issued on December 30, 2009.

The grand list indicates the subject parcel has a 911 address of 1501 Ferry Road; however, this address is assigned to Lot 1, which was previously subdivided (by PC-05-53) but which the applicant still owns. The subject parcel is not developed, and therefore has no 911 address assigned to it.

Application

Materials submitted with the applications are listed in Appendix A.

Public Hearing

A public hearing for this application was held on August 5, 2010. Samuel Spear and Michael Spear were present representing the applicant. No other interested parties were present at the hearing or submitted written comments prior to the hearing.

Regulations in Effect

Town Plan, amended March, 2008

Land Use Regulations adopted March, 2009.

Recommended Standards for Developments and Homes adopted September, 1997

Findings

Background

1. The applicant owns a 124 acre parcel of land in the Rural District, which has frontage on both Lake Road and Ferry Road. The parcel was created by a three-lot subdivision approved in 2006 (PC-05-53), for which the parcel was labeled "Lot 3." The parcel currently has no improvements or development.
2. The application proposes to create two lots, labeled Lot 3 and Lot 4 on the proposed plat.

Lot 3 is proposed to be 85.2 acres and Lot 4 is proposed to be 38.8 acres.

Areas of High Public Value—Sections 7.2 and 7.3

3. The parcel includes or is adjacent to the following areas of high public value:
 - A. Land in active agricultural use: The northwestern portion of the parcel, which consists of the western portion of proposed Lot 3, is currently used for agriculture—it is leased to a local dairy farmer for corn and hay production (from observation and applicant’s testimony).
 - B. Primary agricultural soils: The parcel includes large areas with prime and statewide soils. There are a few pockets of soils that don’t qualify as either statewide or prime (from NRCS data).
 - C. Surface waters, wetlands and associated setbacks and buffer areas: There are several wetlands on the parcel. Those on the southern portion of the parcel are larger and likely to be Class 2. Those along the eastern and western boundaries of the parcel are smaller and are probably Class 3 (from Town Plan map 7).
 - D. Wildlife habitat: Town Plan map 6 indicates forested habitat on the southern portion of the parcel and along the hedgerow on the western boundary, associated support habitat along the eastern portion of the parcel, and a linkage on the northwest boundary (from Town Plan map 6).
 - E. Scenic views and vistas: A very small portion of Lake Road adjacent to the parcel is classified as a “most scenic road” on map 13 of the Town Plan (from Town Plan map 13).
 - F. Conserved land: An adjoining parcel to the southeast (the Mack farm) has been conserved via a Grant of Development Rights to the Vermont Land Trust, the Vermont Department of Agriculture, Food and Markets, and the Vermont Housing and Conservation Board. A town trail easement is located on the parcel on the east side of Lake Road (from town land records).
4. Considering the resources on and adjacent to this parcel, the Planning Commission finds that the following are the most important areas of high public value: the land in active agricultural use, which includes some of the land with prime agricultural soils; and the forested wildlife habitat on the southern portion of the parcel. These are prioritized resources that most strongly characterize the property, and which the Planning Commission feels are most important to protect during the subdivision process.
5. The applicant has indicated that development is not being proposed at this time on Lot 3.
6. The proposed plat shows two “proposed house sites” on Lot 4.
7. At the hearing the Planning Commission suggested that the applicant show building envelopes of one acre each at the locations of the “proposed house sites;” and the Planning Commission also suggested that a note be added stating that one or the other building envelope is to be used but not both, unless a new application for subdivision is submitted and approved. The applicant agreed to revise the plat accordingly.
8. The proposed development on Lot 4 will impact forested and supporting wildlife habitat and prime and statewide agricultural soils.
9. The Planning Commission notes that the parcel has extensive resources (areas of high public value), so it is impossible for the proposed development to not have some impact on these resources. However, the application has minimized the impact by carefully siting the proposed dwelling.

10. The proposed plat depicts 62.5 acres of Open Space (to be discussed in more detail below).
11. The Planning Commission finds that it is reasonably likely that development could be sited on Lot 3 in a manner that does not create an undue adverse impact on areas of high public value located on or in the vicinity of the parcel. However, the Planning Commission also notes that there is a potential that future development could impact the following areas of high public value:
 - A. The agriculturally used area on Lot 3.
 - B. Prime and statewide agricultural soils on both lots.
 - C. Class 2 wetland on Lot 4.
 - D. Forest wildlife habitat on Lot 4 and associated support wildlife habitat on both lots.
12. Accordingly, the Planning Commission finds that it is appropriate that any future development on both lots, other than the dwelling and associated infrastructure and outbuildings on Lot 4 proposed with this application, be reviewed in advance by the Planning Commission.

Compatibility with Agricultural Operations—Section 7.4

13. The westerly proposed building site is over 200 feet from the agricultural area on Lot 3 and the easterly proposed building site is even further away from Lot 3.
14. The Planning Commission finds that neither of the proposed building envelopes on Lot 4 will impact or be impacted by the agricultural operations on Lot 4.
15. A well for Lot 4 has not been depicted on the site plan for the Wastewater System and Potable Water Supply Permit.
16. Compatibility with agricultural operations will need to be reviewed prior to any development of Lot 3.

Facilities, Services & Utilities—Section 7.5

17. The project does not trigger the need for a fire pond, park, or playground due to its proposed creation of only the third building lot within a ten-year period.

Water Supply—Section 7.6

18. A Wastewater System and Potable Water Supply Permit (WW-138-0918) has been issued for Lot 4.
19. A proposed location for a well serving Lot 4 is not indicated on the site plan.

Sewage Disposal—Section 7.7

20. The application proposes one septic system for Lot 4, and requests a deferral for providing a septic design for Lot 3.
21. A Wastewater System and Potable Water Supply Permit (WW-138-0918) has been issued for the septic system serving Lot 4.
22. The Town's consultant issued a memo dated 9/28/09 which indicates that soils on Lot #4 have sufficient capacity for a mound that can serve one two-bedroom dwelling and one three-bedroom dwelling. Potentially such a mound could serve one dwelling on each of Lots 3 and 4—therefore the application has demonstrated sufficient sewage disposal capacity in accordance with Section 7.7(C)(1).
23. The application meets the provisions of Section 7.7(C) to allow a waiver of the requirement for providing a septic design for Lot 3.

Stormwater Management & Erosion Control—Section 7.8

24. This criterion does not require consideration due to the flat terrain and the limited nature of the development.

Landscaping and Screening—Section 7.9

25. This criterion does not require consideration due to the limited nature of the development.

Roads, Driveways & Pedestrian Access—Section 7.10 and Section 3.2

26. The applicant has obtained a Highway Access Permit (HAP-10-05) to serve the proposed residential use on Lot 4. The applicant has also obtained a Highway Access Permit (HAP-10-06) for agricultural use on Lot 3.

27. The application provides a specification for the driveway serving Lot 4 that complies with the Recommended Standards for Developments and Homes adopted September, 1997

Land to be Conserved—Section 7.11 and General Standards—Section 8.4(B)

28. Section 8.2(B)(1) of the Charlotte Land Use Regulations indicates that planned residential development (PRD) provisions shall be applied to all major subdivisions.

29. Section 8.4(C)(1) requires the designation of at least 50% of the parcel as Open Space. 50% of the subject parcel equals 62 acres.

30. The application proposes 62.5 acres of Open Space, which includes areas on both Lot 3 and Lot 4.

31. The proposed open space on Lot 3 is 50 acres and encompasses much of the area that is in agricultural use.

32. The proposed open space on Lot 4 is 12.5 acres, which includes a large block on the western end of the lot and a strip along its southern boundary, which encompasses forested wildlife habitat and likely Class 2 wetland. The strip along the southern boundary also includes wildlife habitat and likely Class 2 wetland. Both the western block and the southern strip are located adjacent to similar resources on neighboring parcels to the west and south.

33. The Planning Commission finds that the proposed Open Space is sited in an effective and appropriate location and configuration that will help to protect prioritized areas of high public value on the parcel.

34. The Planning Commission notes that Open Space designated for this subdivision shall serve to meet open space requirements for any future subdivisions of Lot 3 and Lot 4.

Decision

Based on these Findings, the Planning Commission approves the Final Plan Application for the proposed Subdivision with the following conditions:

1. The subdivision plat by Kevin LaRose will be amended as follows:
 - A. Building envelopes of one acre each will be depicted at the locations of the two “proposed house sites.”
 - B. A note will be added stating “One or the other building envelope may to be used but not both, unless a new application for subdivision is submitted and approved.”
 - C. A distance measurement will be added for the boundary of the Open Space on Lot 3 along its southerly lot line.
 - D. The label “60’ wide curb cut” (on east side of Lake Road with arrows pointing to the proposed 14’ wide driveway on Lot 4) will be deleted.
 - E. The easement to be reserved on Lot 3 in favor of Lot 1 for the setback from the replacement wastewater disposal area on Lot 1, as indicated in the application,

will be depicted and labeled.

- F. "Shared" will be deleted from the label "proposed shared septic system" on Lot 4.
2. A mylar (18" x 24") of the subdivision plat by Kevin LaRose, as amended in Condition 1 above, will be submitted to the Planning Commission for review and signature within 160 days. The applicant will record the signed mylars in the Charlotte Land Records within 180 days.
3. The Open Space Agreement will be amended as indicated in Appendix B.
4. Prior to the submission of the mylars in accordance with Condition 2 above, the applicant will:
 - A. Execute and record an Open Space Agreement (as amended) after review and approval by the Selectboard and Town Attorney.
 - B. Submit a letter from the surveyor indicating he has set the survey markers or pins in the field as indicated on the plat. If the survey markers or pins cannot be set at this time because of frozen ground, the applicant shall submit a letter from the surveyor indicating that he will set the markers or pins when the ground thaws and has been paid to do so.
5. Conveyance deeds for Lot 3 and Lot 4 will reference this Findings of Fact and Decision and the Open Space Agreement.
6. No new pole-mounted light fixture will be higher than 8 feet off the ground, and no new building-mounted light fixture will be higher than 15 feet off the ground. Fixtures will be shielded to direct light downward, and will not direct light onto adjacent properties or roads, and will not result in excessive lighting levels that are uncharacteristic of the neighborhood.
7. All new utility lines will be underground.
8. The driveway will be surfaced with non-white crushed stone.
9. If the driveway to be used for residential purposes on Lot 4 is longer than 800 feet in length, it will have a minimum of 18" of gravel with four inches of crusher run wearing surface, and it will have a vehicle turnout (12 feet wide by 35 feet long) approximately at the half-way point.
10. Any future development of Lot 3 will require a subdivision amendment, which will include review of a building envelope, wastewater disposal and access; however, the Open Space that has been designated with the current application shall serve to meet open space requirements for any future subdivisions of Lot 3 and Lot 4.

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 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 permit and be subject to enforcement action by the Town.

This decision may be appealed to the Vermont Environmental Court by the applicant or an interested person who participated in the proceeding. Such appeal must be taken within 30 days of the date of the 4th 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 August 5, 2010: Jeff McDonald, Jim Donovan, Linda

Radimer, Eleanor Russell, Paul Landler and Gerald Bouchard

Vote of Members after Deliberations:

The following is the vote for or against the application, with conditions as stated in this Decision:

- 1. Signed: _____ For / Against Date Signed: _____
- 2. Signed: _____ For / Against Date Signed: _____
- 3. Signed: _____ For / Against Date Signed: _____
- 4. Signed: _____ For / Against Date Signed: _____
- 5. Signed: _____ For / Against Date Signed: _____
- 6. Signed: _____ For / Against Date Signed: _____
- 7. Signed: _____ For / Against Date Signed: _____

APPENDIX A

The following items were submitted in association with the application:

- 1. A Final Plan application form. The appropriate fee was paid with the Preliminary Plan application.
- 2. A memo entitled “Samuel W. & Priscilla Spear Rev. Tr. PC-09-25 Response to Decision from Public Hearing 11-19-09 dated June 11, 2010.
- 3. A survey by Ronald L. LaRose entitled “Plat Showing a subdivision of lands of Samuel & Priscilla Spear, Lake Road & Ferry Road, Charlotte, Chittenden County, Vermont” dated August 18, 2008, revised 6/3/10.
- 4. The following wastewater disposal information was submitted with the Preliminary Plan Application:
 - A. A plan by Lincoln Applied Geology, Inc. entitled “Samuel & Priscilla Spear, 1503 Ferry Road, Charlotte, Vermont, Site Plan” dated 9/21/05, no revisions.
 - B. A sheet labeled “Depth to Water Below Grade” with monitoring results for 14 data points on 25 dates.
 - C. A graph entitled “Spear Property Spring Water Level Monitoring Data.”
 - D. A detail sheet entitled “Samuel & Priscilla SpearProperty (sic), Charlotte, Vermont, Ground Water Monitoring Well Detail.”
 - E. A soil log for 10 test pits labeled “Samuel & Priscilla Spear, Performed 8/15/05 by Jamey Holstein, Spencer Harris, Town of Charlotte Sewage Officer, in Attendance.”
 - F. A letter dated March 9, 2006 from Tom P. Kilbourn of Lincoln Applied Geology to Dolores M. LaRiviere, Vermont Department of Environmental Conservation

regarding “M-4-06-8; Monitoring proposal for Priscilla and Samuel Spear property located on Ferry Road, Charlotte, VT.”

- G. A letter dated November 30, 2006 from Steven LaRosa of Lincoln Applied Geology to Dolores M. LaRiviere, Vermont Department of Environmental Conservation regarding “M-4-06-8-Ground Water Level Monitoring Results for Priscilla and Samuel Spear Property.”
- 5. A draft Open Space Agreement
- 6. Draft easement language
- 7. A Typical Driveway Cross Section

APPENDIX B

Paragraph 3 of the Open Space Agreement will include the following provisions:

- (a) The Grantors and their successors and assigns shall have the right to use the Open Space on Lot 3 for agricultural and farming purposes, including cultivation of crops and animal husbandry.
- (b) The Grantors and their successors and assigns shall have the right to use the Open Space on Lot 4 for the selective cutting and harvesting of firewood.
- (c) The Grantors and their successors and assigns shall have the right to use the Open Space on Lot 3 and Lot 4 for hunting, and they shall also have the right to grant permission to others to use the Open Space on Lot 3 and Lot 4 for such activities.
- (d) There shall be no construction or placing of any buildings or structures of any kind, temporary or permanent on the Open Space on either Lot 3 or Lot 4, except the Grantors, their successors and assigns, shall have the right to construct agricultural buildings and facilities within the Open Space on Lot 3.
- (e) There shall be no filling, excavating, dredging, mining or drilling, removal or topsoil, sand, gravel, rock, minerals or other materials, nor any building of roads except roads on Lot 3 to be used expressly and exclusively for agricultural purposes, nor change in the topography of the land in any manner except for drainage improvements on Lot 3 to assist with agricultural usage on Lot 3.
- (f) There shall be no dumping of ashes, trash, garbage or other unsightly or offensive material, and no changing of the topography through the placing of soil or other substance of materials such as landfill except as appropriate for agricultural purposes in compliance with Accepted Agricultural Practices.
- (g) There shall be no operation of motor vehicles, including snowmobiles, dune buggies, motorcycles, all-terrain vehicles or any other types of motorized vehicles on the property, except the following:

- i. Snowmobiles may be allowed within the Open Space on Lot 3.
 - ii. Motorized vehicles used in association with agriculture may be allowed within the Open Space on Lot 3.
 - iii. Motorized vehicles used in association with logging may be allowed within the Open Space on Lot 4.
 - iv. Motorized vehicles used in association with hunting may be allowed within the Open Space on Lot 3 and Lot 4.
- (g) There shall be no activities or uses on the property which shall be detrimental or could be detrimental to drainage, flood control, water conservation, fish and wildlife or habitat preservation.