

# CHARLOTTE PLANNING COMMISSION

## FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**Kathy Gutting and David Fassler**

**Final Plat Hearing  
For A  
Three-Lot Subdivision  
Application # PC-06-08**

### **Background**

Sketch Plan Review for this project was conducted on January 5<sup>th</sup> and January 19<sup>th</sup>, and a site visit was conducted on January 14<sup>th</sup>.

### **Application**

Materials submitted in association with the application are listed in Appendix A.

### **Public Hearing**

A public hearing for this application was held on May 4, 2006 and continued to June 15 (no testimony taken) and July 6, 2006. Don Welch represented the applicant at all meetings.

The following interested parties were present at least one of the meetings: Katherine Snead, Alicia Eure, Elizabeth Scheuerman, Gary Pittman, Donna Pittman, Jeffrey McDonald, Jane Lawlis, Drake Wallis, and Linda Hamilton (representing the Charlotte Conservation Commission).

### **Regulations in Effect**

Town Plan as amended March 2002

Land Use Regulations adopted March, 2006.

Sewage Ordinance as amended December, 2004.

Recommended Standards for Developments and Homes adopted September, 1997

### **Findings**

1. Materials submitted after the meeting on May 4<sup>th</sup> are listed in Appendix B.
2. Katherine Snead submitted two letters, one dated April 19 to Tom Mansfield, and one dated April 26, 2006 to Don Welch.
3. The Conservation Commission submitted a letter dated July 6, 2006.
4. The following *areas of high public value* (as listed in Section 7.2 of the Charlotte Land Use Regulations) are located either on or in the vicinity of the subject parcel:
  - A. Agricultural Use and Soils**-The parcel is currently used for horses and a homestead sheep operation. The parcel is adjacent to a large field that is in a row and hay crop rotation. There are soils of statewide significance on most of the parcel; there are

prime soils where the existing dwelling is located.

**B. Surface Water and Wetlands-**The applicant has delineated wetlands on the parcel, which are primarily in the middle and eastern portion of proposed Lot 2. There is also a stream that runs through proposed Lot 3; there was testimony from an adjoining property owner in the hearing that the stream may have importance for recharging groundwater.

**C. Scenic Views-**Mount Philo Road is listed as a Most Scenic Road on Map 13 of the Town Plan.

**D. Critical Wildlife Habitat-**The wooded portion of the parcel is indicated as Forest Habitat on Map 6 of the Town Plan. Maps 6 and 13 indicate a wildlife corridor and value area along Mount Philo Road.

**E. Conserved Land-**The agricultural field immediately east of the subject parcel is conserved by an Open Space Agreement with the Town.

5. In prioritizing the *areas of high public value*, there are two primary values: wildlife habitat and surface water. Wildlife is a high value not because the parcel itself has a great quantity of habitat, but because it has good quality habitat and provides an important linkage to other habitat areas in a neighborhood where much of the frontage of Mount Philo Road has become developed. Also, because the wildlife and surface water resources overlap, the quality of the habitat is higher than would be the case otherwise.
6. The agricultural value, although important, is a secondary value because of the relatively small size of the parcel, the uneven topography, the wetness, and medium quality of most of the soils.
7. The scenic value along Mount Philo Road is an important value, but is secondary because the scenic quality is good but not outstanding in this particular location.
8. Section 7.3.D. of the Land Use Regulations provides criteria to allow subdivisions and associated site development to avoid impacts on and fragmentation of *areas of high public value*. As presented in the site plan by Brad Rabinowitz architect dated 6/29/2006, the development plan complies with these criteria (with the conditions below).
9. Although the proposed layout is not a planned residential development, the application has clustered the development sites to the extent feasible (considering the location of wastewater disposal areas).
10. The two primary values (wildlife habitat and surface water) are protected through a careful development plan that uses building envelopes and tree-cutting conditions to restrict development from these areas.
11. It is noted that the Stockbridge development, which is adjacent to the project, has a restrictive covenant regarding tree-cutting.
12. Agricultural use (the horse operation) can continue in the open areas. In fact, the project includes a horse barn and horse-riding arena.
13. The scenic character of this section of Mount Philo Road will not be impacted by this project provided there are not significant changes to the access road.
14. The applicant has obtained a Highway Access Permit; the Selectboard has indicated that if sight distance is improved sufficiently by the cutting of trees to the north of the curb-cut, the roadbed of the access road will not need to be raised or paved.
15. Because the project is a Minor Subdivision, designated Open Space is not required by the Land Use Regulations.
16. Wastewater disposal designs have been reviewed by the Town's consultant, who has indicated that they are acceptable. The applicant will need a State wastewater disposal

permit.

## Decision

Based on these Findings, the Planning Commission approves the Final Plat Application for the proposed three-lot subdivision with the following conditions:

1. The subdivision plat will be amended as follows:
  - A. The building envelope for Lot 2 will be corrected to match the site plan by Brad Rabinowitz Architect dated 6/29/06 (i.e. 350' (north/south) x 300' (east/west).
  - B. The building envelope for Lot 3 will be corrected to match the site plan by Brad Rabinowitz Architect dated 6/29/06.
  - C. A note will be added as follows: "The purposes of the building envelope is to encourage the continuation of forest for wildlife habitat with a mix of native tree and understory species of various ages, and to keep disturbance at a minimum."
2. Two paper copies (one full size and one 11" x 17") and a mylar (18" x 24") of the plat, as amended in accordance with Condition #1 above, 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.
3. Prior to the submission of the mylar in accordance with Condition #2 above, the following will occur:
  - A. The applicant will obtain the appropriate wastewater disposal permit from the State;
  - B. The applicant shall submit a letter from the surveyor indicating that he has set the survey pins in the field as indicated on the survey;
  - C. The Roadway Agreement and Waiver will be submitted to the Selectboard for approval; once approved the document will be executed by the applicant and the Selectboard Chair and recorded in the Charlotte Land Records;
  - D. The Road Maintenance Agreement will be executed by the parties in the same approximate form as it was submitted, with corrections only for any technical deficiencies, and recorded in the Charlotte Land Records.
4. Prior to the submission of a Zoning Permit application for any lot within the subdivision, wooden stakes will be set at the corners of the building envelope on that lot.
5. Prior to the submission of the first Zoning Permit application within the subdivision, the applicant will obtain approval from the Selectboard for a road name, and install a road name sign.
6. The common road and driveways will be constructed in accordance with the Charlotte Volunteer Fire and Rescue Services, Inc. Recommended Standards For Development and Homes, adopted by the Planning Commission on September 2, 1997. Additionally, the driveways to Lots 2 and 3 will be constructed as depicted on the site plan by Brad Rabinowitz Architect dated 6/29/2006.
7. The application for the first Certificate of Occupancy for Lot 2 or Lot 3 shall include a letter from an appropriately certified engineer stating that the septic system and the shared portion of the common driveway have been constructed in conformance with the design.
8. Prior to submission of the application for a Certificate of Occupancy for Lot 2, landscaping will be installed along the western side of the driveway, as depicted in the

- site plan by Brad Rabinowitz Architect dated 6/29/2006.
9. Installation of the driveway to Lot 3 will avoid impacts to White Pine trees located just east of where the driveway branches from the common road to Lots 1 and 2.
  10. No dwelling unit or accessory structure will be constructed outside the building envelopes depicted on the plat.
  11. Prior to any cutting of trees on Lot 2 and Lot 3, a Forest Management Plan will be submitted to the Planning Commission for administrative review and approval. The Forest Management Plan will have, as its primary objective, the continuation of the forest for wildlife habitat, with a mix of native tree and understory species of various ages, and minimal disturbance. Any tree cutting will maintain a minimum of 90% of the tree canopy with a mix of native species of various ages.
  12. No pole-mounted light fixture will be taller than 8' off the ground, and no building-mounted light fixture will be taller than 20' off the ground. Fixtures will be shielded to direct light downward.
  13. All new utility lines will be underground.
  14. The common roadway shall be surfaced with non-white crushed stone.

**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 4<sup>th</sup> 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 May 4:** Jim Donovan, Linda Radimer, Robin Pierce, John Owen, Peter Joslin and Robert Mack

**Members Present at the Public Hearing on July 6:** Linda Radimer, Robin Pierce, John Owen, Peter Joslin and Andrew Thurber

**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**

1. An application form and appropriate fee.
2. A memo (with accompanying letter and waiver request) dated April 05, 2006 from Don Welch to Tom Mansfield and Charlotte Planning Commission.
3. A letter of authorization from Kathy Gutting.
4. A plan by Lincoln Applied Geology entitled “Kathy Gutting and David Fassler Property, 4047 Mt. Philo Road, Charlotte, Vermont, Proposed Site Plan with Wastewater and Water Systems” dated 4/5/06, no revisions.
5. A detail sheet by Lincoln Applied Geology entitled “Kathy Gutting and David Fassler Property, 4047 Mt. Philo Road, Charlotte, Vermont, Lot 1 Replacement Mound, Details and Standards, Wastewater System Details” dated 4/5/06, no revisions.
6. A detail sheet by Lincoln Applied Geology entitled “Kathy Gutting and David Fassler Property, 4047 Mt. Philo Road, Charlotte, Vermont, Standard Water Supply and Standard Site Details” dated 4/5/06, no revisions.
7. A detail sheet by Lincoln Applied Geology entitled “Kathy Gutting and David Fassler Property, 4047 Mt. Philo Road, Charlotte, Vermont, Lot 2 and 3 Mound Details” dated 4/5/06, no revisions.
8. A document prepared by Stephen Revell of Lincoln Applied Geology entitled “Kathy Gutting & David Fassler, Proposed Three-Lot Residential Development Wastewater System and Potable Water Supply Design Summary” dated April 5, 2006, with Attachment A (Soil Test Pit Lot), B (Percolation Test Results), C (Pressure Distribution and Mound Design Details) and D (Distribution Pump Specifications).
9. A site plan by Brad Rabinowitz Architect entitled “Site Plan, Proposed Lot 2 Driveway Grading Plan, Renovations of Residence for Kathy Gutting and David Fassler, Mt. Philo Rd., Charlotte, VT” dated March 31, 2006, no revisions.

**APPENDIX B**

1. A memo dated June 30, 2006 from Don Welch to Dean Bloch
2. A survey by Stuart J. Morrow entitled “Final Plat, Minor Subdivision, Property of Kathy Gutting, 4047 Mount Philo Road, Charlotte, Vermont” dated May, 2006, no revisions.
3. A site plan by Brad Rabinowitz Architect entitled “Site Plan, Drawing No. S.5, New Residence for Kathy Gutting and David Fassler, Mt. Philo Rd., Charlotte, VT” large size dated 6/29/06, small size dated 6/30/06 with note “For Final Subdivision Hearing July 6, 2006”, no revisions.
4. A wetland delineation by Errol Briggs of Gilman & Briggs Environmental dated May 24, 2006.