

# CHARLOTTE PLANNING COMMISSION

## RECONSIDERED AND RESTATED FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

### **Rodney and Donna Stearns, Sr. Final Plat Application For A 9-Lot PRD Subdivision Application # PC-02-16**

#### **Background**

The applicant received Sketch Plan Review on December 21, 2001. The Preliminary Plat Decision (PC-01-37) was issued January 17, 2002. A three month extension for submitting the Final Plat Application was granted on June 20, 2002. The Final Plat Application (PC-02-16) was submitted on August 15, 2002. A Findings of Fact and Decision was issued on October 25, 2002.

The applicant requested reconsideration of the Decision at the Planning Commission's meeting on November 7, 2002, which the Planning Commission granted. This Findings of Fact and Decision is the result of the reconsideration.

#### **Application**

The application consists of:

1. An application form. The fee was paid with the Preliminary Plat Application.
2. A survey map entitled "Subdivision Plat of the Lands of Rodney G. Stearns & Donna M. Stearns, 7541 Spear Street, Charlotte, Vermont, Drawing 1" by Land Lines dated April 26, 2001, last revised 8/13/20 (sic).
3. A survey map entitled "Subdivision Plat of the Lands of Rodney G. Stearns & Donna M. Stearns, 7541 Spear Street, Charlotte, Vermont, Drawing 2 of 2" by Land Lines dated August 13, 2002, no revisions.
4. Wastewater plans entitled "Rodney and Donna Stearns, Proposed Wastewater Plans, Charlotte, Vermont, Dwg. 1 of 2" by JH Stuart Associates, dated 5/01, last revised 4/02. This plan was revised from an earlier drawing but was not given a revision date. It includes a 24" cross culvert for the development road and rip-rap for the southern terminus of the ditches on both sides of the development road.
5. Wastewater plans entitled "Rodney and Donna Stearns, Proposed Wastewater Plans, Charlotte, Vermont, Dwg. 2 of 2" by JH Stuart Associates, dated 5/01, last revised 4/02.
6. Plans entitled "Rodney and Donna Stearns, Roadway Plan/Profile, Charlotte, Vermont, Dwg.1 of 1" by JH Stuart Associates dated 5/01.
7. A letter from John H. Stuart, P.E. to Town of Charlotte (Attn: Dean Bloch, Planner) dated May 6, 2002.
8. A document entitled "Excerpts from Draft Declaration of Stearns Meadow, Submitted to the Town of Charlotte in Conjunction with Final Plat Approvals of Subdivision Application of Rodney G. Stearns and Donna M. Stearns," dated June 28, 2002.
9. A draft Open Space Agreement.
10. A draft Fire Pond Agreement and Waiver

11. A draft Roadway Agreement and Waiver
12. A draft Sewage Service Agreement, Waiver and Easement

## **Public Hearing**

A public hearing for the Final Plat application was held on September 19, 2002. Rodney Stearns Sr. and Donna Stearns were present at the hearing representing the applicant. Adjoining property owners present were: Vicky Wideman, Matt Dawson, and Peter Nobes. Linda Hamilton, representing the Charlotte Conservation Commission, was also present.

## **Reconsideration**

In order to reopen a public hearing, the Planning Commission must find that one or more condition(s) inadvertently resulted in unintended and negative consequences, or that germane information was not considered by the Planning Commission during the original hearing. At its meeting on November 7, 2002 the Planning Commission heard the applicants' request for a reconsideration of the Findings of Fact and Decision dated 10/25/02, and determined that the applicants' request satisfied the requirements stated above, as follows: 1) Condition 2.b. which required enlarging the Open Space Area would include a potential future wastewater disposal area within the Open Space Area, which could create a conflict between uses in the future; and 2) Conditions 15 and 19 requiring conveyance of the development roadway to the homeowner's association would create an additional (tenth) lot, which was not the intention of the Planning Commission.

A public hearing for the reconsideration of the Findings of Fact and Decision dated 10/25/02 was held on December 19, 2002 and was continued on January 2, 2003. Rodney Stearns Sr. and Donna Stearns were present at the hearing (both dates) representing the applicant. Adjoining property owners Vicky Wideman and Peter Nobes were present were on December 19<sup>th</sup>. Linda Hamilton, representing the Charlotte Conservation Commission, and Marty Illick, representing the Lewis Creek Association were present on December 19<sup>th</sup> and January 2<sup>nd</sup>.

## **Regulations in Effect**

Town Plan as amended March 2002  
Zoning Bylaws as amended March 2002  
Subdivision Bylaws as amended March 1995

## **Findings**

1. The applicants own a 77.23 acre parcel, on which their current residence and farm buildings are located. The parcel is located in the Rural Zoning District.
2. There are large areas on the parcel with good agricultural soils. The portion of the property towards the western property line is the least productive for agricultural purposes. This is the area that the applicants propose to develop.
3. The applicants are proposing a nine-lot PRD subdivision, creating one lot for their existing residence (Lot 1), seven lots for new residential construction (Lots 2-8), and one lot which will contain the best agricultural areas as well as the barn and ponds (Lot 9). The applicants will retain ownership of Lot 9, but propose to convey a conservation easement to the Town of Charlotte on a portion of Lot 9, by means of an Open Space

Agreement.

4. In reviewing a planned residential development, the Planning Commission may allow modification of the area and dimensional requirements of the zoning district bylaws found in Chapter IV of the Charlotte Zoning Regulations.
5. At the public hearing the applicant submitted a revision of drawing 1 of the survey map cited above, with a revision date of 9/17/02. This revision included revised lot setbacks.
6. Additional setbacks (from what is proposed) are appropriate from property lines, from the fire pond overflow (which has seasonal flows), and from Lot 9 (which will continue to be used for agricultural purposes) in order to allow for orderly and stable development that minimizes chances for conflict between lot owners.
7. At the public hearing the applicant submitted a letter from Christopher Brunelle, Stream Alteration Engineer for the State of Vermont, to Rod Stearns, dated September 13, 2002.
8. At the public hearing the applicant and others present stated that a wildlife corridor runs along the eastern boundary of the subject parcel. The applicants agreed to adjust the Open Space Area to include the entire eastern-most portion of Lot 9.
9. The Department of Environmental Conservation of the State of Vermont issued a Subdivision Permit (EC-4-2420) for this project (ie: an eight lot, single family residence subdivision, Lots 1-8, Lot 1 with an existing single family residence).
10. Chapter VII Section 13.2 of the Subdivision Bylaws allows sewage disposal capability to be waived for parcels created for agricultural purposes. This provision applies to Lot 9 of the proposed subdivision.
11. Chapter VI Section 2.A. of the Subdivision Bylaws states that the proposal shall give due regard to the preservation of existing significant natural features, including view sheds.
12. Chapter VI Section 2.C. of the Subdivision Bylaws states that the proposed density, building sizes, pattern of development, and configuration of open space are to be compatible with the surrounding natural and/or built environment.
13. The proposed development will be visible from sites V1 (on Mount Philo) and V11 (on Spear Street near the subject property, looking south) on the Cultural and Recreational Resources Map and listed in Section 4.4.5 of the Town Plan. The proposed development will also be likely to be visible from the adjoining property to the west. The addition of evergreen trees is necessary to reduce the visual impact of the development.
14. The reinforcement of the existing hedgerows with additional evergreen species, especially on the western side of the proposed development, will help the development fit into the landscape, and will reduce the impact on the viewsheds identified in the Town Plan, and on the adjoining properties.
15. The average interior living space for seventeen residences surrounding the subject property is 1825 square feet. (Based on information from the Charlotte Lister's Office).
16. The applicant has proposed (in Excerpts from Draft Declaration of Stearns Meadow) that the above grade interior living space on Lots 2-8 will not exceed 2,500 square feet. The applicant has also proposed to restrict the height of dwellings to twenty-five feet. The Planning Commission finds that restricting the size and height of dwellings will help the development fit into the pattern of development in the area, and reduce its overall impact.
17. The Planning Commission reviewed the engineer submission and believes that eighteen (18") inch culverts may be larger than required.
18. Based on Map 7 (entitled "Wetlands in Charlotte, Vermont") in the Charlotte Town Plan, as well as site visits, the wet area on proposed Lot #2 in the vicinity of the existing farm pond appears to be associated exclusively with the farm pond, and is not contiguous with other wetlands. Development on Lot #2 will avoid this wet area due to setbacks.
19. The impact of the development on the surrounding area will be reduced by controlling

- exterior lighting, utility lines, and road surfaces.
20. The applicant has entered into discussion with an adjoining property owner (Boffa) to provide access to the adjoining parcel for development purposes by means of the proposed development roadway.
  21. At the public hearing on December 19<sup>th</sup>, Linda Hamilton and Marty Illick submitted proposed revisions to the Town's current standard Open Space Agreement. The Planning Commission finds that the Open Space Agreement submitted by the applicant conforms to the town's current policy.

## Decision

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

1. Survey sheet 1 will be amended to provide a thirty-foot setback from the fire-pond overflow on Lot 7, ten-foot setbacks from side and front lot-lines for all lots, and a fifty-foot rear-yard setback for Lot 8.
2. Survey sheets 1 and 2 will be amended as follows:
  - a. A building envelope no larger than one (1) acre in size will be indicated on Lot 9 to the east of the barn. The building envelope may have a front-yard setback of seventy-five (75) feet from the right-of-way of Spear Street Extension, and shall have a fifty (50) foot setback from the northern edge of the Open Space Area.
  - b. The Open Space Area will be expanded to include the northeast corner of Lot 9, including area 650 feet to the west of the eastern parcel line.
  - c. A note will be added indicating the potential wastewater disposal area in the southeast corner of Lot 9.
3. Survey sheets 1 and 2 may be amended as follows:
  - a. The western boundary of the Open Space area may be moved eastward in order for the Open Space Area to remain 31.5 acres in size.
  - b. A sixty-foot wide right-of-way extending from the proposed development roadway to the Boffa parcel may be added.
4. Prior to the conveyance of each lot, survey pins will be set in the field as indicated on the survey.
5. Lots 2-8 will have setbacks as indicated on sheet #1 of the survey, as amended by Condition #1 above. Prior to the conveyance of each lot, wooden stakes will be set at setback corners.
6. Prior to the conveyance of Lots 2-4, the following items will be constructed: the development roadway from Spear Street Extension to the driveway for Lot 4, the fire pond access, the dry hydrant system, wastewater force mains (up to the boundary line of each building lot), and utility conduits (up to the boundary line of each building lot).
7. Prior to construction of any portion of the development roadway, the applicant will obtain approval from the Selectboard for the road-cut on Spear Street Extension.
8. Prior to the conveyance of any lot, the dry hydrant system will be tested to the written satisfaction the Chief of the Charlotte Fire Department.
9. Prior to the conveyance of Lots 5-8, the remainder of the development roadway, including the turnaround, cross-culvert and rip-rap, will be constructed.
10. The existing hedgerows along the western boundary of Lots 3, 4, 5 and 6, and along the eastern boundary of Lots 2, 7 and 8 will be maintained. Trees within the hedgerow (with the exception of those that are dead or diseased) and those that area required to be planted

- by Condition 11 below will not be cut except to improve the site distance at the intersection of the development road and Spear Street Extension.
11. Prior to the conveyance of Lots 3 and 4, twenty-five (25) evergreen trees will be planted along the westerly lot-lines of Lots 3 and 4. Trees are to be an average of five (5) feet in height when planted. The species and planting locations are to be determined by the applicant and the neighbor to the west (Wideman). A mixture of species is encouraged.
  12. Trees that are required to be planted by the applicant (as per Condition 11 above) will be replaced by the applicant or its successors if they become diseased or die within two years.
  13. Prior to any building permits being issued for Lots 2-4 (as per Conditions 6 above), a signed statement from the design engineer will be submitted to the Zoning Administrator stating that the road, septic systems and utility conduit for those lots have been installed in conformance with the design. Prior to any building permits being issued for Lots 5-8 (as per Conditions 9 above), a signed statement from the design engineer will be submitted to the Zoning Administrator stating that the road, septic systems and utility conduit for those lots have been installed in conformance with the design.
  14. The applicants will have their engineer review the calculations submitted for culvert sizing, and determine whether fifteen (15”) inch culverts are sufficient for the driveways.
  15. Prior to Certificates of Occupancy being issued for Lots 2-8 in this subdivision, culverts sized at either fifteen (15”) inch or eighteen (18”) inch, depending upon the engineer review as provided in Condition #14 above, will be installed in accordance with Vermont Standard A-76 for each driveway, when constructed.
  16. A sentence will be added to paragraph (f) on page 4 of the Open Space Agreement that states: “To this end, an unmowed buffer of thirty feet (30’) will be maintained along the eastern border of the Open Space Area.”
  17. With the conveyance of Lots 2-8, each lot will be conveyed an easement allowing use of the development roadway for the purposes of ingress and egress. Within one year after the applicant deems the project is complete, the development roadway will be conveyed to the homeowners’ association.
  18. The *above grade interior living space* on Lots 2 through 8 shall not exceed 2,500 square feet on each lot. *Interior living space* shall include any enclosed living and home office areas, enclosed porches and decks, and space in accessory structures such as barns or garages used for such purposes. *Above grade interior living space* will not include basements, unoccupied garages, barns, sheds, open porches, open decks, open patios, etc. Article X Section 10.1 (l) will be amended to reflect this condition.
  19. Schedule A-1 to Declaration of Stearns Meadows will be amended to reflect the most recent survey maps.
  20. The Fire Pond Agreement and Waiver will be amended to include a provision for the Town to repair the fire pond and associated equipment, and assess the homeowners for the cost of such repair.
  21. Within 90 days after the review and approval by the Planning Commission and the Town’s attorney, and prior to the sale of Lots 2-8, the applicant will execute and record in the Charlotte Land Records the following documents: “Declaration of Stearns Meadow,” “Roadway Agreement and Waiver,” “Sewage Service Agreement, Waiver and Easement,” “Fire Pond Agreement and Waiver,” and the “Open Space Agreement.”
  22. Mylars (18” x 24”) of both sheets of the survey (as amended by Condition #1 and #2 above) will be submitted to the Planning Commission for review within 60 days, and recorded in the Town Land Records within 90 days.
  23. Lots 1-8 will only be used for Single Family Residences and Accessory Structures.

- 24. No further subdivision will be permitted on Lots 1-8.
- 25. Roof ridgelines of dwellings on Lots 2-8 will not exceed twenty-five feet in height.
- 26. 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.
- 27. All new utility lines will be underground.
- 28. The development roadway and individual driveways shall be surfaced with non-white crushed stone.

**Additional Conditions:** All plats, plans, drawings, 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.

**You and any interested parties are entitled to appeal this decision to the Environmental Court within 30 days of the date of 4<sup>th</sup> signature below approving this decision, as per requirements of 24 VSA Chapter 117, Sections 4471 and 4475.**

**Members Present at the Public Hearing on September 19<sup>th</sup>:** Jeff McDonald, Al Moraska, Dave Brown, Josie Leavitt, Gordon Troy and Gene Diou.

**Members Present at the Public Hearing on December 19<sup>th</sup>:** Jeff McDonald, Al Moraska, Josie Leavitt, Gordon Troy and Gene Diou.

**Members Present at the Public Hearing on January 2<sup>nd</sup>:** Jeff McDonald, Al Moraska, Jim Donovan, Gordon Troy, Gene Diou and Linda Radimer.

**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: \_\_\_\_\_
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