

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

Charles P. Stearns

Final Plat Hearing

For A

Major Subdivision

Creating Six Building Lots and One Common Lot

In a Planned Residential Development

Application # PC-04-27

Background

The subject parcel of 33.21 acres was created in 1999 by a three-lot subdivision which created two building lots and one retained lot from 57 acres. Sketch Plan Review for the current project was held on October 2 and December 4, 2003. The Preliminary Plat Decision (PC-04-08) was issued on June 17, 2004.

Application

Materials submitted with the application are listed in Appendix A.

Public Hearing

A public hearing for this application was held on December 2, 2004. Charles Stearns and Carl Cole were present representing the applicant. Adjoining property owners Kevin and Sheila Bothwell were also present.

Regulations in Effect

Town Plan as amended March 2002

Zoning Bylaws as amended March 2002

Subdivision Bylaws as amended March 1995

Findings

1. The subject parcel is 33.21 acres, and has been used primarily for agricultural purposes. There are remnants of structures associated with a saw-mill on the parcel however these are not currently in-use.
2. The area immediately adjacent to Lewis Creek is in the Conservation District and the rest of the parcel is in the Rural District. Map 6 in the Charlotte Town Plan indicates there is a major wildlife linkage along Lewis Creek and forest habitat associated with the wooded portion of the parcel. There are Class Two wetlands along Lewis Creek, and a Class Three wetland closer to Spear Street. Map 13 in the Town Plan indicates wildlife value areas and crossings are located along Spear Street to the east of the parcel.
3. The fields on the parcel have Statewide Soils, but do not have Prime Soils. They are of a

quality, size and configuration that make them marginally suitable for commercial agricultural purposes, but they appear to be well-suited for non-commercial agricultural use. Additionally, the fields provide supporting wildlife habitat and contribute to the scenic rural character of the area.

4. In considering the quality and quantity of the resources on the parcel, the Planning Commission views wildlife habitat as the primary resource and the agricultural fields as the secondary resource on the parcel.
5. The area in the vicinity of the project is rural in character, with medium distance views of rolling farmland and woods. Existing dwellings in the close proximity to the project are generally dispersed, although there are some small clusters of dwellings in the vicinity. Based on visual analysis, most of the existing dwellings in the vicinity of the parcel that are visible from Spear Street are relatively modest in size.
6. Because the parcel is over 25 acres in size, Section 5.15 of the Zoning Bylaws and Chapter VI Section 2.M. of the Subdivision Bylaws require the Planning Commission to review the application under the Planned Residential Development (PRD) provisions.
7. The proposed layout provides a common lot (Lot 2) of 24.35 acres, of which approximately 19.5 acres is to be conserved by means of an agreement with the Town. This layout will result in the conservation of the primary resource on the parcel, ie: the wildlife area adjacent to Lewis Creek, and will also allow for conservation and continued use, albeit non-commercial, of the agricultural resource on the parcel.
8. The provision of affordable housing had been discussed during Sketch Plan Review. The original Sketch Plan Application proposed four large building lots; this was amended during the review to five building lots and one common lot in conformance with the PRD requirements in the bylaws. At the completion of Sketch Plan Review the Planning Commission indicated that it would consider allowing an additional building lot if one lot is designated for affordable housing.
9. The Preliminary Plat Application added a sixth building lot, and the application form stated that one lot will be available for two units of affordable housing. Condition #3 of the Preliminary Plat Decision states: "The Final Plat Application will include a contract to sell at least one proposed building lot to a not-for-profit housing organization for two units of perpetually affordable housing."
10. The applicant submitted a memorandum at the Final Plat public hearing that stated proposed revisions to Conditions 3 of the Preliminary Plat Approval, as follows: "The use of Lot #1 shall be restricted to the construction of affordable housing".
11. The Planning Commission finds that the applicant's proposed condition regarding affordable housing (or a similar condition) is an appropriate means of addressing this issue within the project.
12. There has been an indication from adjoining property owners that drilled wells in the vicinity of the project have produced low water yields. Condition #4 of the Preliminary Plat Decision states: "A new drilled well will be installed in the location of one of the proposed wells prior to submission of the Final Plat Application. The Planning Commission will consider the yield of this well in evaluating the Final Plat Application." The applicant submitted a memorandum at the Final Plat public hearing that stated proposed revisions to Conditions 4 of the Preliminary Plat Decision, as follows: "Prior to the issuance of the first residential building permit in the subdivision, a drilled well will be installed in the location of one of the proposed wells to demonstrate the availability of

- an adequate water supply.”
13. The Planning Commission finds that the applicant’s proposed condition regarding drilling a well is an appropriate means of addressing this issue within the project.
 14. The project proposes two accesses, one which is an upgrade of the driveway serving the Webbe residence, which will become a private road serving Lots 3-7; and the other is an upgrade to an existing agricultural access, which will become a driveway for Lot 1. The Planning Commission has a long-standing policy of minimizing the number of access points to a project, however the Planning Commission finds that this access plan is appropriate in order to minimize the amount of land devoted to roadway and driveway, and maximize the amount of open land.
 15. Condition #10 of the Preliminary Plat Decision stated “As part of the Final Plat Review, the Planning Commission will evaluate structures in the vicinity of the project in order to determine appropriate size and scale limits for new structures in order that they will be compatible with the neighborhood. As stated in Finding #5 herein, based on a visual analysis, most of the existing dwellings in the vicinity of the parcel that are visible from Spear Street are relatively modest in size.
 16. At the Final Plat hearing, the Planning Commission proposed and the applicant accepted a size limit of 3,000 square feet for each of the single family dwellings on Lots 3-7.
 17. The district setback of 100 feet will reduce the ability to appropriately site a two-family dwelling on Lot 1. Historically, houses in this area have been located close to the road. The Planned Residential Development standards (in Section 5.15 of the Zoning Bylaws) allow for the reduction of district dimensional requirements (eg: front setbacks).
 18. As the plans have been submitted, the required well separation distances from the proposed wells will impact adjoining properties.
 19. At the Final Plat hearing the applicant requested that the sewage disposal easement area be enlarged, and the open space area be reduced, by approximately ½ acre to allow for future use of additional wastewater disposal capacity. The applicant proposes to retain the rights to this capacity for future use. The Planning Commission finds this acceptable, with conditions as noted.

Decision

Based on these Findings, the Planning Commission approves Final Plat Application PC-04-27 with the following conditions:

1. The Subdivision Plat (by Land Lines) and the Project Site Plan (by JH Stuart Associates) and the Wastewater Disposal Plan (by JH Stuart Associates) will be amended as follows:
 - A. On the Subdivision Plat and the Project Site Plan—the sewage disposal easement area and the open space area on Lot 2 will be revised as discussed at the Final Plat hearing to enlarge the sewer easement area by approximately ½ acre.
 - B. On the Subdivision Plat and the Project Site Plan —the front setback for Lot 1 shall be reduced to 50 feet from the Spear Street right-of-way.
 - C. On the Project Site Plan and the Wastewater Disposal Plan—proposed drilled wells will be relocated to minimize the portion of the separation areas (“well shields”) located on adjacent parcels (ie: Webbe and Titus).
 - D. On the Project Site Plan—the Land Lines title block will be removed.

2. Two paper copies (one full size and one 11" x 17") of each of the plans noted in Condition 1 above, with amendments as indicated, will be submitted to the Planning Commission for review within 60 days; the applicant will record mylars (18" x 24") of each plan in the Charlotte Land Records within 90 days.
3. Prior to the submission of the mylars to the Planning Commission, survey pins will be set in the field as indicated on the survey. If the survey pins cannot be set at this time because of frozen ground, the applicant shall submit a letter from the surveyor indicating that s/he will set the pins when the ground thaws and has been paid to do so.
4. Prior to the submission of the mylars to the Planning Commission and after review and approval by the Town Attorney, the Roadway Agreement and Waiver, the Fire Pond Agreement, Waiver and Easement, the Conservation and Agricultural Easement and Restriction, and the Declaration of Covenants, Easements and Restrictions for the Charles Stearns Subdivision will be executed and recorded in the Charlotte Land Records.
5. Warranty deeds that will be used for conveying Lots 1, 3, 4, 5, 6 and 7 will be drafted essentially as submitted with the application, and include any requirements from the Town Attorney.
6. Prior to the submission of a Zoning Permit application for any lots within the subdivision, wooden stakes will be set at the corners of the building envelope on that lot.
7. The *above grade interior living space* on Lots 3 through 7 shall not exceed 3,000 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.
8. In order to facilitate the orderly build-out of the subdivision, the infrastructure shall be installed as follows:
 - A. Prior to the issuance of the first zoning permit in the subdivision, a drilled well will be installed in the location of one of the proposed wells (as amended by Condition #1 herein), with a yield of at least one gallon per minute.
 - B. All septic systems, the fire pond and the dry hydrant system shall be installed prior to the submission of an application for a Certificate of Occupancy for any lot within the subdivision.
 - C. The sub-base for the road serving Lots 3 – 7 shall be installed prior to the submission of an application for a Certificate of Occupancy for any of Lots 3 – 7.
9. The first application for a Certificate of Occupancy within the subdivision shall include a letter from an appropriately certified engineer stating that all septic systems and the fire pond and dry hydrant have been constructed in conformance with the design, and a letter from the Charlotte Fire Department certifying that the fire pond/dry hydrant system is operational.
10. The application for the last Certificate of Occupancy for Lots 3-7 shall include a letter from an appropriately certified engineer stating that the road and drainage improvements (ie: culverts, ditching and rip-rap) have been constructed in conformance with the design.
11. The road shall be constructed along the eastern side of the right-of-way, as depicted in the project plans.
12. Lots 3-7 will only be used for single family dwelling and allowed accessory uses and structures.
13. Lot 1 may be used for a two family dwelling and allowed accessory uses and structures;

all dwelling units on Lot 1 shall be affordable dwellings units, as defined in the Zoning Bylaws (as amended).

- 14. Lot 2 shall not be used for residential purposes. A barn may be allowed after review and approval by the Planning Commission.
- 15. At such time as use of the additional sewage disposal capacity on Lot 2 is proposed, the applicant shall apply to the Planning Commission for a Subdivision Amendment.
- 16. 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.
- 17. All new utility lines will be underground.
- 18. The development roadway and individual driveways 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.

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

Members Present at the Public Hearing: Jeff McDonald, Al Moraska, Jim Donovan, Gordon Troy, Linda Radimer, Robin Pierce, and John Owen

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; the fee was paid with the Preliminary Plat application.
2. A map entitled "Subdivision Plat, Lands of Charles P. Stearns, 6889 Spear Street, Charlotte, Vermont" by Land Lines dated February 10, 2004, last revised 7/26/04.
3. A map entitled "Topographic Base Plan, Lands of Charles P. Stearns, 6889 Spear Street, Charlotte, Vermont" by Land Lines (Michael Magoon) dated February 13, 2004, last revised 7/26/04.
4. A plan entitled "Charles P. Stearns, Project Site Plan, Charlotte, Vermont, Dwg. 1 of 3" by JH Stuart Associates, dated January 26, 2004, last revised February, 2004.
5. A plan entitled "Charles Stearns, Wastewater Disposal Plan, Charlotte, Vermont, Dwg. 2 of 3" by JH Stuart Associates, dated January 2004, last revised 10/04.
6. A plan entitled "Charles Stearns, Proposed Wastewater Plans, Charlotte, Vermont, Dwg. 3 of 3" by JH Stuart Associates, dated January 2004, last revised 10/04.
7. A sheet entitled "Soil Test Results (7/24/03 and 1/07/04), Charles Stearns: Spear Street Extension".
8. A plan entitled "Charles Stearns, Charlotte, Vermont, Common Driveway Plan/Profile, Drawing 1A" by JH Stuart Associates dated February 2004, last revised 8/04.
9. A plan entitled "Charles Stearns, Charlotte, Vermont, Fire Pond Site Plan/Cross Section, Drawing 1B" by JH Stuart Associates dated February 2004, last revised 10/04.
10. A draft document entitled "Conservation Agricultural Easement and Restrictions."
11. A draft document entitled "Declaration of Covenants, Easements and Restrictions, Stearns Subdivision, Charlotte, Vermont."
12. A draft document entitled "Roadway Agreement and Waiver."
13. A draft document entitled "Fire Pond System Agreement, Waiver and Easement."
14. A letter dated October 25, 2004 from Frank DelGiudice of the Department of the Army, New England District, Corps of Engineers, to Charles Stearns.
15. A copy of an executed Easement and Right of Way Agreement between Charles P. Stearns and Richard W. Webbe recorded in volume 152 page 100 of the Charlotte land records.
16. (With the Preliminary Plat Application) A sheet entitled "Fire Pond Volume" by JH Stuart dated 2/04, no revisions.
17. (With the Preliminary Plat Application) A letter from John H. Stuart to Cole Realty dated April 15, 2004.
18. (With the Preliminary Plat Application) A sheet entitled "Area Well Logs," indicating the depth and yield of wells for Spadacinni, Masterson, Webbe and Goodwin.
19. (With the Preliminary Plat Application) A letter from April Moulart of the Vermont Agency of Natural Resources dated December 26, 2003.