

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

Rodney and Donna Stearns Preliminary Plan Application For A Three-Lot Major Subdivision Application # PC-09-05

Background

The applicants previously received approval for a nine-lot subdivision on January 24, 2003 (PC-02-16, Reconsidered and Restated). The current project proposes to create two building lots (Lot 10 and Lot 11) from Lot 9. Sketch Plan Review for the current project was held on October 16, 2008, at which time the project was classified as a major subdivision since the application was submitted within ten years of the previous subdivision.

Application

Materials submitted with the application are listed in Appendix A.

Public Hearing

A public hearing was opened for this application on April 2, 2009. Rodney and Donna Stearns were present at the meeting. Trafton Crandall of the Conservation Commission was present at the hearing but did not participate. No other parties were present or participated.

Regulations in Effect

Land Use Regulations, amended March, 2009.

Town Plan, amended March, 2008.

Recommended Standards for Developments and Homes adopted September, 1997

Findings

1. The applicants propose to create two building lots (Lots 10 and 11) from Lot 9, which is the third lot.
2. Lot 9 currently includes the following *areas of high public value*:
 - A. Land in active agricultural use: The parcel is used for pasturing livestock and haying. The portion of the parcel where Lots 10 and 11 are proposed has historically been used for pasture.
 - B. Prime and statewide soils: There is a small pocket of prime agricultural soil near Spear Street; there are statewide agricultural soils on much of the rest of the parcel except for a small pocket south of Lot 8 (from VCGI data);
 - C. Surface water: There appear to be several intermittent streams running through the parcel (from VCGI data) and a wetland runs along the east side of proposed Lot 11 (from Town Plan map 7);

- D. Scenic view: The view south from Spear Street is identified as V11 in Section 4.6.6 and on Map 12 of the Town Plan.
- E. Conserved Land— 31.5 acres on the east side of Lot 9 is under an Open Space Agreement with the Town.
3. Lot 9 is currently 69.63 acres, and includes a single family dwelling and two barns.
 4. Lots 10 and 11 are both proposed to be five acres in size, and both are proposed to have building envelopes of approximately $\frac{3}{4}$ of an acre.
 5. Lots 10 and 11 will use all of the remaining land that can be accessed by Elcy Lane, which potentially could force any additional development into the meadow east of Elcy Lane.
 6. The density of Lot 9 is determined as follows:
 - Lot 9 is proposed to be approximately 59.63 acres.
 - Five acres of density will be allocated to the existing single family dwelling on Lot 9
 - The two barns are being used either for agriculture or for the storage of equipment in a manner that qualifies as a Home Occupation 1, neither of which requires density.
 - 31.5 acres were designated as Open Space during the previous subdivision.
 - Therefore, Lot 9 consists of 23.13 acres that are unencumbered.
 7. At the hearing, the applicants stated that they are willing to put the remainder of Lot 9 except for five acres associated with the existing dwelling and barns (i.e. 23.13 acres) under an Open Space Agreement in exchange for making Lots 10 and 11 five acres each and thereby using the remainder of land that can be accessed by Elcy Lane.
 8. By offering an Open Space Agreement on the remainder of Lot 9, the applicant will be foregoing any future development on the parcel, and limiting the development envelope to the area immediately adjacent to Elcy Lane and the existing dwelling and barns on Spear Street, which will mitigate the current project's impacts on agricultural and scenic resources associated with the parcel.
 9. The proposed layout includes a 75 foot easterly setback on Lot 11. This setback will minimize any impact to the wetland that runs along the eastern border of Lot 11.
 10. A plan depicting the location of the wastewater disposal system has been submitted, however, test pit information and a detail sheet for the system has not been provided. A wastewater permit will also require this information, and should be obtained prior to the Final Plat Application.
 11. The wastewater plan submitted with the application depicts the protective distance for the proposed well on Lot 10 partially located on the adjoining parcel to the west. Section 7.6(4) of the Charlotte Land Use Regulations requires an easement for the protective distance which will impact adjoining properties.
 12. A Sewage Service Agreement, Waiver and Easement was required by the Town when the original subdivision was approved because, even the septic systems for each lot is an individual system, because all of the septic systems are located close to each other within a closely defined area. This document should be updated.
 13. Access to the lots is proposed via Elcy Lane, which is a private road. Lots 10 and 11 are located at the southern end of Elcy Lane, and they are proposed to have all rights and responsibilities of Lots 2-8 with regard to the roadway. An appropriate cul-de-sac or hammerhead will be needed at the southern terminus—this can be configured in conjunction with the driveway serving the Boffa subdivision to the west, and/or the proposed driveways serving Lots 10 and 11, and should comply with the Charlotte

Volunteer Fire and Rescue Services, Inc. Recommended Standards for Developments and Homes. The Fire Chief should be asked to review the plan.

14. The site plan submitted with the application indicates two 18 inch culverts are to be installed across Elcy Lane near the southern terminus of the road. It is not clear whether these are necessary, and if they are necessary, it is not clear where they should be located relative to the driveway serving the Boffa subdivision to the west.
15. The Roadway Agreement and Waiver and the Declaration of Stearns Meadow, which were both created for the original subdivision, need to be updated.
16. As proposed, Lots 10 and 11 will impact some land that could be used for agricultural purposes and which has statewide agricultural soils. The proposed lots will also impact the scenic view from Spear Street. However, it is noted that any development on the parcel would impact some *area of high public value*, and it is further noted that the Charlotte Land Use Regulations [see in particular Section 7.3 (D)(1), (2) and (3)] do not prohibit impacting *areas of high public value*, but indicate that building envelopes, lot lines, infrastructure, roads, driveways and utility corridors should not create any undue adverse impacts on *areas of high public value*, and that building envelopes shall be designed to minimize undue adverse impacts.
17. The Planning Commission preliminarily finds that the proposed development, which is to include the enlargement of the Open Space Area on the remainder of Lot 9 (except for five acres around the existing house and barns), has minimized impacts on areas of high public value and will not create undue adverse impacts.
18. Condition 17 of PC-02-16 states that the road (Elcy Lane) will be conveyed to the association after buildout.
19. There are several items that need to be addressed on the plat.
 - the lot lines, acreages and building envelopes for Lots 10 and 11 should be added by a licensed surveyor;
 - the acreage for Lot 9 and proposed open space should be updated;
 - the note on Lot 2 related to the previous boundary adjustment should be deleted; and
 - the new configuration should be depicted on the Vicinity Map and on Sheet 2.

Decision

Based on these Findings, the Planning Commission approves Application PC-09-05 with the following conditions:

1. Prior to the submission of the Final Plan Application, the applicant will obtain a wastewater permit for Lots 10 and 11.
2. A survey by a licensed surveyor will be submitted with the Final Plan Application which approximates the Preliminary Plan but also addresses the items noted in Finding 19.
3. Either the Final Plan Application will include an executed easement for the protective distance for the well on Lot 10, or the wastewater plan submitted with the Final Plan Application will be revised so that the well on Lot 10 is relocated in order to allow the protective distance to be located entirely on land owned by the applicant.
4. The westerly extension of Elcy Lane (i.e. the driveway to the Boffa subdivision) and the proposed turn-around at the southern end of Elcy Lane will be added on the site plan (by JH Stuart). The applicants will confirm with their engineer whether two 18 inch culverts

are needed at the southern terminus of Elcy Lane.

- 5. The applicant will submit with the Final Plan Application a written confirmation from the Fire Chief which indicates that the fire pond and dry hydrant are in working order, and that the proposed turn-around at the south end of Elcy Lane is appropriately designed.
- 6. The following draft documents will be submitted with the Final Plan Application:
 - A. Open Space Agreement
 - B. Sewage Service Agreement, Waiver and Easement
 - C. Roadway Agreement and Waiver
 - D. Declaration of Stearns Meadow
 - E. Deed for conveyance of Elcy Lane to the Association.

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 April 2: Jeff McDonald, Jim Donovan, Linda Radimer, Peter Joslin, Ellie Russell and Paul Landler.

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 application consists of:

- 1. An application form and appropriate fee.
- 2. A wastewater plan by JH Stuart Associates entitled “Rodney and Donna Stearns, Proposed Wastewater Plan, Charlotte, Vermont” Drawing 1 of 2, dated August, 2004, last revised on November, 2008.
- 3. A copy of a survey by Michael R. Magoon entitled “Stearns Meadow, Subdivision Plat, Lands of Rodney G. Stearns & Donna M. Stearns, 7541 Spear Street, Charlotte, Vermont” Drawing 1 of 2, dated April 26, 2001, last revised 5/21/08, with a hand drawn depiction of Lots 10 and 11.
- 4. Draft Warranty Deeds for Lot 10 and Lot 11.