

CHARLOTTE PLANNING COMMISSION

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

Rodney and Donna Stearns Final Plan Application For A Three-Lot Major Subdivision Elcy Lane Application # PC-12-07

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. The Preliminary Plan Decision (PC-09-05) was issued on September 7, 2009. The Planning Commission granted extensions for the submission of the Final Plan Application on April 15, 2010, November 4, 2010, April 15, 2011 and November 3, 2011.

The Final Plan Hearing was held on May 17 2012 and a decision was issued on June 21, 2012. The applicant requested reconsideration of the Findings of Fact and Decision, which the Planning Commission granted on July 19, 2012. This Findings of Fact and Decision is the result of the reconsideration

Application

Materials submitted with the application are listed in Appendix A.

Public Hearing

A public hearing was opened for this application on May 17, 2012. Rodney and Donna Stearns were present at the meeting. No other parties were present or participated.

Reconsideration

The public hearing was re-opened on August 16, 2012 to reconsider the Findings of Fact and Decision. Rodney and Donna Stearns were present at the meeting. No other parties were present or participated.

Regulations in Effect

Town Plan, amended March, 2008

Land Use Regulations, amended March, 2010

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 includes all remaining land.
2. Lot 9 is currently 68.32 acres and includes a single family dwelling and two barns. Lot 9 also has various easements for wastewater disposal areas for other parcels.
3. Lots 10 and 11 are proposed to be 5.0 and 5.02 acres in size, respectively, and both are proposed to have building envelopes of approximately $\frac{3}{4}$ of an acre.
4. Lots 10 and 11 will use all of the remaining land that can be accessed by Elcy Lane.
5. The pre-subdivision and post-subdivision density of Lot 9 is determined as follows:
 - Lots 1-8 were developed as a planned residential development, and used 40 acres of density. The actual total acreage of Lots 1-8 is 9.62 acres. Therefore, Lots 1-8 use 30.38 acres of density from Lot 9.
 - Lot 9 has a single family dwelling, and therefore uses five acres of density.
 - Therefore, of Lot 9's 68.32 acres, 35.38 acres of density are "committed" for existing development on Lots 1-9, and 32.94 acres of density are currently available (prior to the proposed subdivision).
 - Lots 10 and 11 will each use five acres of density.
 - 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, so neither requires density.
 - Lot 9 will have 22.94 acres of unencumbered density if this application is approved.

Conclusion 1: the parcel has sufficient density for the proposed project.

Applicable standards in Chapter VII of the Charlotte Land Use Regulations ("Regulations") are reviewed below in Findings 3-46.

Sections 7.2 and 7.3—Areas of High Public Value

6. Lot 9 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.
7. The project will impact an area that is suitable for agricultural purposes, and will impact the scenic view from Spear Street.
8. The application proposes to add 9.96 acres of open space, which will result in all but 12.96 acres of Lot 9 being under the jurisdiction of an Open Space Agreement.
9. By putting 9.96 acres of Lot 9 under an Open Space Agreement with the Town, the applicant will mitigate the project's impacts on agricultural and scenic resources associated with the parcel.

10. The proposed layout includes an easterly setback on Lot 11 that appears to be greater than 50 feet, which will minimize any impact to the wetland that runs along the eastern border of Lot 11. However, the size of the setback is not provided on the plat, nor are other setbacks or dimensions of the building envelopes.

Conclusion 2: The application has sufficiently minimized and mitigated the project's impact on prioritized areas of high public value, and therefore the project will not have an undue adverse impact on the prioritized areas of high public value.

Section 7.4—Compatibility with Agricultural Operations

11. The subject parcel and adjoining parcels are used for hay and pasture.
12. The proposed building lots are relatively clustered with other developed lots.
13. The well shields for the proposed wells are located on the applicant's parcel.
14. The proposed wells are greater than 200 feet from land that is used for agriculture.

Conclusion 3: The project will not have conflicts with any agricultural operations.

Section 7.5—Facilities, Services & Utilities

15. Due to its small size, the proposed subdivision is unlikely to create a burden on existing or planned municipal educational facilities and services.
16. A fire pond was constructed with the previous subdivision.
17. The application includes a draft Amendment to the Fire Pond Agreement and Waiver.
18. It is noted that neither the original agreement nor the draft amendment includes an easement allowing the Town to repair the fire pond and/or dry hydrant.

Conclusion 4: The project will not create an unreasonable burden on existing or planned municipal facilities or services.

Section 7.6—Water Supply

20. There is no indication of water scarcity in the vicinity of the project.
21. The well shield for the proposed well is located on the applicant's parcel.
22. The applicant has obtained a Wastewater System and Potable Supply Permit (WW-138-1203).

Conclusion 5: It appears that the proposed water supply will be adequate for the proposed use, and that it will not adversely impact existing water supplies in the vicinity.

Section 7.7—Sewage Disposal

23. The application proposes a new wastewater disposal system for Lots 10 and 11 located on Lot 9 within an easement area that was designated with the previous subdivision.
24. The draft Amendment to Declaration of Stearns Meadow includes wastewater disposal easements benefitting Lots 10 and 11 .
25. The applicant has obtained a Wastewater System and Potable Supply Permit (WW-138-1203) for the proposed subdivision.
26. The application includes a draft Amendment to Sewage Service Agreement, Waiver and Easement.

Conclusion 6: The project has sufficient wastewater disposal capacity, and the application has provided appropriate documentation.

Section 7.8—Stormwater Management & Erosion Control

27. The project involves the development of two building lots and associated infrastructure,

resulting in two dwellings on 10.02 acres. This is a low intensity development.

28. The project will not affect steep or very steep slopes.
29. A seasonal unnamed stream is located just east of the easterly boundary of Lot 11. There are no other sensitive areas in the vicinity of the project.
30. A buffer of over 50 feet is provided between the stream and the building envelope, which provides sufficient stormwater treatment from the developed site.
31. During construction it is possible that uncovered ground from the construction site could erode into the stream if a barrier is not installed.

Conclusion 7: Considering the above findings, stormwater run-off is not likely to create impacts beyond the immediate developed site; however, precautions should be taken during construction to keep run-off from entering the adjoining stream to the east.

Section 7.9—Landscaping and Screening

32. The project will not impact existing specimen trees, tree lines or wooded areas or particular natural or aesthetic value.
33. It does not appear that a vegetative buffer is needed between the project and adjoining areas.

Conclusion 8: The project will not have impacts that warrant a requirement to preserve existing vegetation or install additional landscaping.

Section 7.10—Roads, Driveways & Pedestrian Access

34. The proposed subdivision, which will create two building lots, will not create a significant increase in traffic on public roads in the vicinity of the project over what currently exists.
35. Lots 10 and 11 will use Elcy Lane, which is a private road created by the previous subdivision.
36. The application includes a draft Amendment to Declaration of Stearns Meadow, draft Warranty Deeds, and a draft Quit-Claim Deed for the conveyance of Elcy Lane to The Stearns Meadow Association, which together provide access easements for both lots and delegates responsibility for maintaining the road.
37. The application includes a draft Amendment to Roadway Agreement and Waiver.
38. An appropriate cul-de-sac or hammerhead is needed at the southern terminus of Elcy Lane.

Conclusion 9: The project is unlikely to create unreasonable traffic congestion or unsafe traffic conditions, and the application has provided appropriate documentation. A condition requiring construction of a cul-de-sac or hammerhead is appropriate.

Section 7.11—Common Facilities, Common Land, & Land to be Conserved; and

Section 7.12—Legal Requirements

39. No common land is proposed.
40. The proposed open space area on Lot 9 is delineated on the plat.
41. A draft Amendment to Open Space Agreement was submitted with the application. The draft includes a provision that would require the Municipality to allow the open space to be divided between two lots should an application for a subdivision be submitted.
42. The application includes other appropriate legal documents as described in the findings above. Documents to which the Town is a party will require approval by the Selectboard.

Conclusion 10: The application has provided the appropriate documents for the project, subject to the review and approval of the Selectboard and, if desired, the Town Attorney. The provision in the draft Amendment to Open Space Agreement that would bind the Town to allow the open space area to be divided between two parcels is not appropriate, as the impacts of such a division of the open space have not been evaluated. Also, the Land Use Regulations allow lots to be less than the district minimum lot size when an application is submitted as a planned residential development.

Decision

Based on these Findings, the Planning Commission approves Application PC-12-07 with the following conditions:

1. The survey plat will be amended as follows:
 - A. The title will be changed to “Stearns Meadow, Final Subdivision Plat”.
 - B. Dimensions of the building envelopes on Lots 10 and 11, and the distances from the two nearest property lines or survey markers will be indicated.
 - C. A table or note will be added which indicates the density of Lot 9 that is dedicated to Lots 1-9, and the unencumbered density (as indicated in the findings).
2. One digital copy (pdf), two paper copies (one 11”x 17” and one full size) and mylars (18” x 24”) of the survey plat (both Drawings 1 & 2), as amended by Condition #1 above, will be submitted to the Planning Commission for review and signature (of the mylars) within 160 days. The applicant will record the signed mylars in the Charlotte Land Records within 180 days.
3. Prior to the submission of the mylars in accordance with Condition #2 above, the applicant will complete the following steps:
 - A. Submit a letter from the surveyor indicating he has set the survey markers in the field as indicated on the plat.
 - B. Execute the following documents and record them in the Charlotte Land Records (with the mylars) after review and approval by the Selectboard.
 - i. Amendment to Open Space Agreement
 - ii. Amendment to Sewage Service Agreement, Waiver and Easement
 - iii. Amendment to Roadway Agreement and Waiver
 - C. Execute the Amendment to Declaration of Stearns Meadow and record it in the Charlotte Land Records (with the mylars).
 - D. Execute an easement for utilities encumbering Lot 1 for the benefit of Lots 10 & 11
 - E. Execute the Quite-Claim Deed to convey Elcy Lane to The Stearns Meadow Association, Inc. and record it in the Charlotte Land Records (with the mylars).
4. No new pole-mounted light fixture will be taller than 8’ off the ground, and no new building-mounted light fixture will be taller than 15’ 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.
5. All new utility lines will be underground.
6. All new driveways will be surfaced with non-white crushed stone.

- 7. All structures on Lots 10 and 11 will be located within the respective building envelopes on those lots; however, barns used to keep animals may be located outside of the building envelopes.
- 8. A haybale dam or similar barrier will be used along the eastern boundary of Lot 11 during construction on that lot to prevent run-off from impacting the adjoining seasonal stream.
- 9. Prior to the issuance of a Certificate of Occupancy for the first dwelling on either Lot 10 or Lot 11, a cul-de-sac or hammerhead shall be constructed at the southern terminus of Elcy Lane. This can be configured in conjunction with the beginning of the driveway serving the properties to the west, or with the driveways serving Lots 10 and 11; The cul-de-sac or hammerhead shall comply with the Charlotte Volunteer Fire and Rescue Services, Inc. Recommended Standards for Developments and Homes.

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 May 17: Jeff McDonald, Peter Joslin, Ellie Russell, Paul Landler and Gerald Bouchard.

Members Present at the Public Hearing on August 16: Jeff McDonald, Jim Donovan, Linda Radimer, Peter Joslin, Paul Landler and Gerald Bouchard.

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; the fee was paid with the Preliminary Plan Application.
- 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 May 16, 2012.
- 3. A survey plat (Drawings 1 & 2) by Michael R. Magoon entitled “Stearns Meadow,

Preliminary Subdivision Amendment Plat, Lands of Rodney G. Stearns & Donna M. Stearns, 7541 Spear Street, Charlotte, Vermont” dated April 26, 2001, last revised 4/10/12.

4. Draft Warranty Deeds for Lot 10 and Lot 11.