

This 28<sup>th</sup> day of December, A.D. 2018  
 at 11 o'clock 0 minutes A m.  
 recorded in vol. 236 on page 211-216  
 Attest: Chris Metiver Town Clerk

**CHARLOTTE PLANNING COMMISSION  
 SUBDIVISION REVIEW  
 FINDINGS OF FACT AND DECISION**

**Charles Stearns Estate / Carl Cole  
 Final Plan Application for a Minor Subdivision Amendment for 6889 Spear Street Extension  
 Application # PC-18-166-SA**

**Introduction and Procedural History**

This proceeding involves the review for a Minor Subdivision Amendment submitted by Carl Cole, a representative for the Charles Stearns Estate to be approved under the Town of Charlotte Land Use Regulations (hereafter referred to as "the Regulations"). The application was received on September 17, 2018. A notice of public hearing was published in "The Citizen" newspaper on November 1, 2018. A hardcopy of the notice was posted at the following three locations: the Town Office Building, the Brick Store, and Spear's Corner Store on October 25, 2018, and was also mailed to all adjoining landowners on October 31, 2018.

This application proposes to modify Condition #13 of a January 2005 Planning Commission decision (PC-04-27 for Charles P. Stearns), which approved a 7-Lot Major Subdivision/PRD from a 33.21 acre parcel located at 6889 Spear Street Extension in the vicinity of Partridge Lane. A Sketch Plan Review letter (PC-18-72-SK) was issued from the Planning Commission on August 23, 2018 after two public hearings, which took place on June 7 and July 19, 2018.

A site visit to the property took place at 6:30 PM on June 7, 2018 just prior to the aforementioned Planning Commission meeting held that evening. Planning Commissioners in attendance included: Charlie Pughe (Acting Chair), Gerald Bouchard, Marty Illick, and Dick Eastman. Additional attendees included the applicants Kim Fath, Chris Metiver, Consultant/Representative Carlton Cole of Carl Cole Reality, LLC of Vergennes, VT, and the Town Planner.

The subdivision/boundary adjustment application was considered by the Planning Commission at a public hearing held on November 15, 2018 at approximately 7:35 PM. Present at the hearing were the following members of the Planning Commission: Peter Joslin (Chair), Gerald Bouchard, Dick Eastman, Charlie Pughe, and Marty Illick. Additional participants and attendees included the Town Planner, applicant representative Carl Cole, and others.

**Exhibits**

The following exhibits were submitted for the application:

1. Completed application form signed by Carl Cole;
2. Letter of Authorization from Co-Executor of the Charles Stearns Estate (Chris Metiver) for representation by Carl Cole;
3. Proposed map: "Subdivision Plat – Lands of Charles P. Stearns – 6889 Spear Street – Charlotte, Vermont" (dated / revised 9/3/2018) by Michael R. Magoon, L.S. No. 611, Ferrisburgh, Vermont;

4. Sketch Plan Review; Planning Commission Letter (**PC-18-72-SK Stearns-Cole**), dated August 23, 2018;
5. Map Slide 142, Page 3; Survey - "Subdivision Plat - Lands of Charles P. Stearns, 6889 Spear Street, Charlotte, VT.", by Michael R. Magoon, L.S. No. 611, of Land Lines Surveying and Mapping, Ferrisburgh, Vermont (dated: 10 Feb 2004 / revised: 16 Feb 2005);
6. Letter from Robert Leuchs (Director of Homeownership Programs) of the Champlain Housing Trust to Chris Metiver and Kimberly Fath, Co-Executors, Estate of Charles Stearns (dated February 23, 2018);
7. Letter from David Mullin (Executive Director) of Green Mountain Habitat for Humanity to Carl Cole of Carl Cole Reality, representative of the Charles Stearns Estate (dated February 12, 2018);
8. Vermont ANR wetlands delineation documentation, including: **A.** A letter from Tina Heath, VT ANR District Wetland Ecologist for Chittenden County to Carl Cole that addresses the vegetation management (mowing) scheme (dated September 12, 2018); **B.** A letter from Tina Heath, VT ANR District Wetland Ecologist for Chittenden County to Karina E. Dailey, Senior Ecologist for Trudell Consulting Engineers, affirming the acceptance of the wetland delineation by ANR's Wetlands Program, based on a field review; and **C.** Wetland Delineation Map by Trudell Consulting Engineers;
9. Planning Commission Decision **PC-04-27**; Final Plat Hearing For A Major Subdivision Creating Six Building Lots and One Common Lot In a Planned Residential Development, Approved by the Planning Commission: January 2005;
10. Planning Commission Decision **PC-04-08**; Findings of Fact and Decision In Re Application of Charles P. Stearns: Preliminary Plat Hearing For A Major Subdivision Creating Six (6) Building Lots In a Planned Residential Development, Approved by the Planning Commission: June 2004;
11. Planning Commission Minutes from the meeting held on *November 15, 2018*;
12. Planning Commission Minutes from meetings held on *December 2, May 6, April 15, and March 4, 2004*; and *December 4, October 30, and October 2, 2003*;

### **Regulations in Effect**

Charlotte Town Plan, 2018

Charlotte Land Use Regulations, 2016

Recommended Standards for Developments and Homes, 1997

### **Findings**

#### Background

1. The Charles P. Stearns Estate owns a 1.44-acre property (i.e. Lot #1) located at 6889 Spear Street Extension within the Rural Zoning district (RUR).
2. This application (based on the **PC-18-72-SK Sketch Plan Review**) proposes to amend Condition #13 of the January 2005 Planning Commission decision **PC-04-27** approving a 7-Lot Major Subdivision/PRD, and designating Lot #1 as an affordable housing lot. The condition as stated reads:

*"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)."*

Further detail on the reasoning behind the condition is covered in Finding #9 of the Preliminary decision **PC-04-08** (see Exhibit 10).

3. As a result of decision **PC-04-27**, Lot #1 was designated as an affordable housing lot per discussions of the Planning Commission during October-December 2003 for the Sketch Plan Review (**PC-03-26-SK**), and during March-December 2004 for the subdivision proceedings (see Exhibit 12). The Planning Commission felt Lot #1 should be affordable and made it a condition for approval.
4. As presented, the proposed Subdivision Amendment application requests the Planning Commission to modify the two-family affordable housing use designation on Lot #1 to become a single-family unit market rate lot, because the applicant has been unable to sell the lot to an affordable housing developer.
5. On August 23, 2018, the Planning Commission issued a Sketch Plan Review letter (see Exhibit 4 above), which contained the following statement:

*"In consideration of the letters received from the Champlain Housing Trust and Green Mountain Habitat for Humanity (see **Exhibits 6 and 7 above**) indicating a low feasibility for affordable housing development, the Planning Commission is amenable to modifying Condition #13 should you decide to submit a Subdivision Amendment application."*

### 2.3 Application of District Standards – Table 2.5 Rural District (RUR) – (E) Dimensional Standards

1. The dimensional standards for the Rural District (RUR) indicate the *Maximum Lot Coverage* to be 30%. The building envelope for Lot #1 should not allow for any structures, improvements, or impervious surfaces to exceed the lot coverage standard. As the Lot #1 was surveyed to be 1.44 acres, the corresponding building envelope should not exceed a maximum of 0.432 acres.
2. The dimensional standards for the Rural District (RUR) indicate the *Minimum Frontage* to be 300 feet. As the road frontage for Lot #1 was surveyed to be a non-conforming 264.28 feet (see Exhibit 3 above), it would require the original subdivision to have been approved as a Planned Residential Development (PRD) to modify this dimensional standard, as per Section 8.4 of the Regulations (which is addressed in **Finding 8.4** below).

### 3.2 Road, Driveway and Pedestrian Access Requirements

*(B) "Highway Access Permit. Access onto town highways is subject to the approval of the Charlotte Selectboard. . . in accordance with state statutes and the Town of Charlotte's "Policy and Procedure for Highway Access Permits" as most recently amended. Highway access permits must be issued prior to the issuance of a zoning permit. . ."*

1. The applicants' representative Carl Cole submitted a Highway Access Permit (Permit # HAP-18-11) to the Charlotte Selectboard on November 11, 2018.

*(D) "Roads and Driveways. Driveways, which may serve up to two (2) lots, and private roads, which serve three (3) or more lots, must be designed and constructed to meet the standards as set forth in the Town of Charlotte's "Road and Driveway Standards" as most recently amended."*

## 7.2 General Standards - Areas of High Public Value

1. Primary Agricultural Soils (Prime and Statewide - PAS): The entire parcel comprises Statewide soils, according to the *USDA Natural Resources Conservation Service (NRCS) GIS database*.
2. Surface waters, wetlands and associated setback and buffer areas: The property is traversed by at least two (2) small streams, derived from the Vermont Agency of Natural Resources, *Vermont Hydrography Dataset (VHD)*. Possible Class II wetlands were initially identified along the southern portion of the parcel, according to the Vermont Department of Environmental Conservation's *Vermont Significant Wetlands Inventory (VSWI) "Wetlands Class Inventory Layer"*.

During the 2018 Sketch Plan Review (see Exhibit 4 above), the Planning Commission required the verification and delineation of the Class II wetlands as part of this Subdivision Amendment application. This task was subsequently undertaken by Trudell Consulting Engineers. The results of the wetland delineation as submitted in the proposed survey (see Exhibits 3 and 8 above) will require the modification of the location, size, and shape of the pre-existing building envelope for Lot #1 indicated in the 2005 survey (see Exhibit 5 above).

With regard to maintaining the wetland buffer area as lawn; according to the District Wetland Ecologist for Chittenden County (see Exhibit 8):

*"The wetlands and buffer zone can be maintained according to the historical vegetation management scheme in the area; if it was mowed 2 or 3 times per year then it is fine to keep doing that, as an example. However, depending if a permit is needed and what amount of impacts we're talking about, we may require "no mow" zones to offset impacts.*

*Generally, mowing a wetland or buffer zone to maintain as lawn requires a permit, since it's usually a change in the management schedule (with lawns being mowed every 1 or 2 weeks)."*

3. Wildlife Habitat: Identified within the GIS layers of the *"Charlotte Significant Wildlife Habitat Map and Database"* there are approximately 1.3 acres of *Significant Aquatic Habitat* on the property.

### 7.2(E) General Standards – Building Envelopes

*"...All proposed lots intended for development shall include designated building envelopes within which all structures and parking areas shall be located. . . The size and shape of each building envelope shall be established in accordance with these regulations, including all applicable standards under this chapter and the district. The Commission also may require the identification of specific building footprints if such information is needed to determine conformance with these regulations. . ."*

1. The existing building envelope on Lot #1 indicated in the 2005 survey (see Exhibit 5 above) exceeds the 0.432 acre building envelope requirement, as per **Finding 2.3(1)** above.
2. The building envelope for Lot #1 should be designed to protect the identified Class II wetland and its corresponding fifty-foot (50') buffer, and also conform to the *Minimum Setback/Front* to Spear Street Extension, as per the Rural (RUR) district dimensional standards covered in Section 2.3 of the Regulations.

#### 7.6 Water Supply / 7.7 Sewage Disposal

1. According to the November 15, 2018 Planning Commission minutes, the well had not yet been drilled. Although the water supply and wastewater permit and plan was stated to have mapped the location of the wellhead, the Planning Commission nevertheless expressed the desire to have the wellheads mapped on, but are absent from the proposed survey (see Exhibit 3 above).
2. According to the November 15, 2018 minutes, the applicant representative had stated that a permit will be requested from the State for a directional bore to cross the identified wetland via a force main, which has a twenty-foot (20') sewer easement mapped for Lot #1 in the proposed survey (see Exhibit 3).

#### 8.4 Planned Residential Developments (PRDs)

1. Subsection 8.4(C)(1) of the Regulations stipulate that PRDs within the Rural District designed as a Conservation Project *"shall be designed in a manner that maximizes the reduction of lot sizes and modification of setbacks and other dimensional standards to minimize undue adverse impacts to, and fragmentation of, Areas of High Public Value."*
  - a. The 2005 subdivision decision (**PC-04-27**) was approved as a PRD and therefore would allow for the Planning Commission to approve of the modified Rural District (RUR) *Minimum Frontage* dimensional standard for the proposed Subdivision Amendment, discussed in **Finding 2.3(2)** above.

#### **Decision**

Based on the foregoing Findings of Fact and Conclusions, the Planning Commission approves the application for a Minor Subdivision Amendment subject to the following conditions:

1. Two paper copies (one full size and one 11"x 17"), an electronic copy, and a mylar (measuring 18" x 24", with a margin of 2" outside of the border line for binding on the left edge of the sheet with a 1" border on all remaining edges) of the plat 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, after being signed by the Chair or Vice-Chair of the Planning Commission. Approved plats not filed and recorded within this 180 day period shall expire.
2. Prior to the submission of the mylar to the Planning Commission, the applicant shall update the survey plat to indicate:
  - a. Each of the wellheads for the subdivision, including that of Lot #1, as per **Finding 7.6(1)** above.
  - b. A building envelope for Lot #1 that does not exceed 0.432 acres, as per **Findings 2.3(1)** and **7.2(E)** above.
  - c. A note, labels, or a listing of acreage for each of the building envelopes indicated within the subdivision, including that of Lot #1.
3. Prior to the issuance of the Certificate of Occupancy for a house to be constructed on Lot #1, the applicant shall:

- a. Obtain Selectboard approval of Highway Access Permit (Permit # HAP-18-11), as per **Finding 3.2(B)(1)** above.
  - b. Construct the driveway in accordance with the Charlotte "Recommended Standards for Developments and Homes, 1997", as per **Finding 3.2(D)** above.
4. To address the allowable vegetative management (including any cutting, clearing, mowing, or other disturbance) within the identified wetlands and their corresponding fifty-foot (50') buffer area, the applicant will obtain a permit from the VT ANR Wetlands Program, as per **Finding 7.2(2)** above.

**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 the 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 the permit and would be subject to enforcement action by the Town. This approval shall expire if the mylar is not filed and recorded in the Charlotte land records within 180 days.

This decision may be appealed to the Environmental Division of the Vermont Superior Court by the applicant or an interested person who participated in the proceeding. Such appeal must be taken within 30 days of the latest date of 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 November 15, 2018:** Charlie Pughe (Acting Chair), Gerald Bouchard, Marty Illick, and Dick Eastman.

**Vote of Members after Deliberations:** The following is the vote for or against the application, with conditions as stated in this Decision:

- |            |                          |  |              |                    |
|------------|--------------------------|--|--------------|--------------------|
| 1. Signed: | <u>Gerald A Bouchard</u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>12/27/2018</u>  |
| 2. Signed: | <u>[Signature]</u>       | <input type="radio"/> For / <input checked="" type="radio"/> Against | Date Signed: | <u>27 DEC 2018</u> |
| 3. Signed: | <u>Charlie Pughe</u>     | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>12/27/18</u>    |
| 4. Signed: | <u>[Signature]</u>       | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>12/28/18</u>    |
| 5. Signed: | <u>Marty Illick</u>      | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>12-28-18</u>    |
| 6. Signed: | _____                    | For / Against  | Date Signed: | _____              |
| 7. Signed: | _____                    | For / Against  | Date Signed: | _____              |