

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

**Rodney and Donna Stearns  
Preliminary Plan Application for a 2-lot Major Subdivision at 7427 Spear Street Extension  
Application # PC-19-65-SD**

**Introduction and Procedural History**

This proceeding involves the review of an application for a 2-Lot Major Subdivision submitted by Donna and Rodney Stearns for approval under the Town of Charlotte Land Use Regulations (hereafter referred to as "the Regulations") proposing to subdivide the 57.90 acre property located at 7427 Spear Street Extension in the Rural (RUR) zoning district.

The application was received on April 30, 2019. Electronic notice was posted on the Charlotte Town website calendar. Hardcopy notices were posted at the following three locations: the Town Offices at 159 Ferry Road, the Old Brick Store in the West Charlotte Village, and Spear's Corner Store in the East Charlotte Village on May 22, 2019. A notice of the public hearing was published in The Citizen newspaper on May 23, 2019. Hardcopy notices were also mailed out to all adjoining landowners to the property on May 16, 2019.

A Sketch Plan Review letter (**PC-18-216-SK**) was issued from the Planning Commission on March 19, 2019 after one public hearing that took place on February 7, 2019 at approximately 7:30 PM. The site visit with the Planning Commission took place at the property prior to the hearing on Saturday February 2, 2019 at approximately 9:30 AM and was attended by Commissioners Peter Joslin (Chair), Gerald Bouchard, Dick Eastman, and Marty Illick. As the application had proposed to create a fourth lot within a ten (10) year period, the Planning Commission classified the project as a "2-Lot Major Subdivision" pursuant to **Section 6.1(C)(2)** of the Regulations.

This subdivision application was considered by the Planning Commission at the public hearing on June 6, 2019 at approximately 7:25 PM. Present at the public hearing were the following members of the Planning Commission: Peter Joslin (Chair), Charlie Pughe (Vice Chair), Gerald Bouchard, Marty Illick, and Shawn Coyle. Additional participants and attendees included the Town Planner, and the applicants Donna and Rodney Stearns.

**Exhibits**

The following exhibits were submitted for the application:

1. Completed application form signed by Donna and Rodney Stearns received on April 30, 2019;
2. Proposed draft survey map: "Stearns Meadow – Final Subdivision Plat – Lands of Rodney G. Stearns & Donna M. Stearns – 7541 Spear Street - Charlotte, Vermont" (dated: 13 Aug 2002 / Revised: 29 Apr 2019) by Michael R. Magoon (No. 611), Land Lines Surveying and Mapping, Ferrisburgh, Vermont;

3. Sketch Plan Review; Planning Commission Letter (**PC-18-216-SK** Stearns), dated March 19, 2019;
4. Planning Commission Decision (**PC-12-07** Stearns); “Reconsidered and Restated Findings of Fact and Decision In Re Application of Rodney and Donna Stearns - Final Plat Hearing for a Three-Lot Major Subdivision – Elcy Lane”, approved on October 18, 2012;
5. Planning Commission Decision (**PC-09-05** Stearns); “Findings of Fact and Decision In Re Application of Rodney and Donna Stearns – Preliminary Plan Application for a Three-Lot Major Subdivision”, approved on May 7, 2009;
6. Planning Commission Decision (**PC-08-19** Stearns); “Findings of Fact and Decision In Re Application of Rodney and Donna Stearns - Subdivision Amendment”, approved on July 8, 2008;
7. Planning Commission Decision (**PC-06-11** Stearns); “Findings of Fact and Decision In Re Application of Rodney and Donna Stearns - Subdivision Amendment”, approved on June 6, 2006;
8. Planning Commission Decision (**PC-02-16** Stearns); “Findings of Fact and Decision In Re Application of Rodney and Donna Stearns, Sr. – Final Plat Application for a 9-Lot PRD Subdivision”, approved on October 25, 2002;
9. Planning Commission Decision (**PC-01-37** Stearns); “Findings of Fact and Decision In Re Application of Rodney and Donna Stearns – Preliminary Plat Application for a 9-Lot PRD Subdivision”, approved on January 17, 2002;
10. *Map Slide 182, Pages 5 and 6*; Surveys - “Stearns Meadow – Final Subdivision Plat – Lands of Rodney G. Stearns Meadow & Donna M. Stearns – 7541 Spear Street - Charlotte, Vermont” (dated: 26 Apr 2001 / Updated: 7 Dec 2013 / Recorded: 25 Mar 2013) by Michael R. Magoon (No. 611), Land Lines Surveying and Mapping, Ferrisburgh, Vermont;
11. *Map Slide 161, Pages 4 and 5*; Surveys - “Stearns Meadow – Final Subdivision Plat – Lands of Rodney G. Stearns Meadow & Donna M. Stearns – 7541 Spear Street - Charlotte, Vermont” (dated: 26 Apr 2001 / Updated: 21 May 2008 / Recorded: 5 Sep 2008) by Michael R. Magoon (No. 611), Land Lines Surveying and Mapping, Ferrisburgh, Vermont;
12. *Map Slide 150, Pages 1 and 2*; Surveys - “Stearns Meadow – Final Subdivision Plat – Lands of Rodney G. Stearns Meadow & Donna M. Stearns – 7541 Spear Street - Charlotte, Vermont” (dated: 26 Apr 2001 / Updated: 11 Oct 2006 / Recorded: 30 Nov 2006) by Michael R. Magoon (No. 611), Land Lines Surveying and Mapping, Ferrisburgh, Vermont;
13. *Map Slide 133, Pages 3 and 4*; Surveys - “Stearns Meadow – Final Subdivision Plat – Lands of Rodney G. Stearns Meadow & Donna M. Stearns – 7541 Spear Street - Charlotte, Vermont” (dated: 26 Apr 2001 / Updated: 24 Feb 2003 / Recorded: 25 Mar 2003) by Michael R. Magoon (No. 611), Land Lines Surveying and Mapping, Ferrisburgh, Vermont;
14. Wastewater System and Potable Water Supply Permit (Case Number: WW-138-1203) – Rodney and Donna Stearns, 7247 Spear Street, Charlotte, VT 05445 (Approved May 15, 2012);

15. Wastewater System and Potable Water Supply Permit (Case Number: WW-4-1872-1 / PIN: EJ01-0256) – Rodney and Donna Stearns, 5 Elcy Lane, Charlotte, VT 05445 (Approved July 6, 2006);
16. Lot 9 Water and Wastewater Plan (DWG 2 of 2) – Rod and Donna Stearns – Charlotte, Vermont (dated: 04/24/2019) by John H. Stuart (No. 3108), JH Stuart Associates, Essex, Vermont;
17. Charlotte Land Records – Volume 206, Pages 265-266 (15 Mar 2013) Amendment to Fire Pond Agreement & Waiver; Volume 206, Pages 261-262 (12 Mar 2013) Amendment to Roadway Agreement; Volume 206, Pages 259-206 (12 Mar 2013) Amendment to Open Space Agreement for 40.34 acres; Volume 139, Page 49 (23 May 2003) Open Space Agreement for 31.5 acres; Volume 126, Pages 457-459 (20 May 2002) State of Vermont, DEC – 8-Lot Single Family Residence Subdivision Permit (EC-4-2420); Volume 70, Page 440-442 (26 Jun 1992) Conveyance to Stearns from Leonard E. & Kathleen M. Stearns;
18. Planning Commission Minutes from meetings held on *June 6, 2019* and *February 7, 2019*.

### Regulations in Effect

Charlotte Town Plan, 2018

Charlotte Land Use Regulations, 2016

Recommended Standards for Developments and Homes, 1997

Vermont Agency of Natural Resources, Wastewater System and Potable Water Supply Rules, 2019

### Findings

#### Background

1. Rodney and Donna Stearns own a 57.9 acre property (i.e. **Lot #9**) located at 7427 Spear Street Extension within the Rural Zoning (RUR) district.
2. The **Lot #9** parcel was created as part of a 9-Lot Subdivision and Planned Residential Development in 2002 (see **Exhibits 8** and **9**); amended in 2006 and 2008 (see **Exhibits 6** and **7**); and was further reduced in a 4-Lot subdivision that occurred in 2012 (see **Exhibit 4**).
3. This application proposes to subdivide **Lot #9** (which includes 17.56 acres of ‘Excluded area’ and a 40.34 acre area that is designated within an Open Space Agreement [OSA]) into:
  - Lot #9:** which would be reduced to 55.88 acres (with a 0.64 acre building envelope), and includes the 40.34 acres of Open Space. The excluded area would be reduced to 15.54 acres.
  - Lot #12:** a 2.02 acre parcel (with a 0.6 acre building envelope) located on the southern side of Spear Street Extension. The new lot would contain a single-family home along the eastern portion of the non-conserved portion of the property.
4. During the Sketch Plan Review (**PC-18-216-SK**) for the proposed subdivision, the Planning Commission classified the project as a “2-Lot Major Subdivision”. In accordance with Section 6.1(C)(2) of the Regulations, a Major Subdivision is described as *“any residential subdivision, or re-subdivision of land resulting in the creation of four (4) or more lots within any 10 year period,*

*regardless of any change in ownership”.*

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

1. The Rural District dimensional standard for the *Minimum Setback/Side* and *Minimum Setback/Front* is fifty feet (50’).
2. As was addressed throughout the Sketch Plan Review proceedings (**PC-18-216-SK**) and during the Preliminary Plan hearing, the proposed map submitted by the applicant (see **Exhibit 2** above) indicates that the building envelope for **Lot #12** does not follow the district fifty-foot (50’) setback from the proposed western property boundary.
3. The Rural District dimensional standard for the *Maximum Lot Coverage* is 30%. As **Lot #12** is proposed to be 2.02 acres, the 0.6 acre building envelope conforms to the standard.

### 3.2 Road, Driveway and Pedestrian Access Requirements

1. Access to **Lot #9** would be served by a proposed driveway originating from Spear Street Extension. A Highway Access Permit will be required for this location authorized by the Selectboard.

### 7.2 General Standards - Areas of High Public Value

The following Areas of High Public Value (AHPV) have been identified on the property:

1. Land in Active Agricultural Use: All of **Lot #9** is enrolled in the State’s Use Value Appraisal (UVA), or agricultural “*current use*” program.
2. Primary Agricultural Soils: All of **Lot #9** is classified as Statewide soils, according to the *USDA Natural Resources Conservation Service (NRCS) GIS database*.
3. Surface Waters, Wetlands, and associated buffer areas: There are three (3) ANR Small Stream (50’) Setback areas identified on the property; two traverse through the center of **Lot #9**, and the other roughly runs along the eastern property boundary of the **Lot #9** OSA (according to the *VCGI/ANR Vermont Hydrography Dataset – VHD*).
4. Wildlife Habitat: About 0.1 acres of *Significant Aquatic Habitat* exists along the eastern side of the **Lot #12**, according to the “*Charlotte Significant Wildlife Habitat Map and Database*”.
5. Scenic Views and Vistas: There is an identified scenic view of the Open Space Area according to the Mapping Application.
6. Conserved Land on Adjacent Parcels: 40.34 acres of OSA exist on **Lot #9**, and 61.81 acres of OSA exist across Spear Street to the north of proposed **Lot #12**.

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

1. “. . .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. . .”

- a. The 0.6 acre building envelope proposed for **Lot #12** is demarcated without a fifty-foot (50') setback from the proposed western property boundary. The applicant should update the proposed survey to include the fifty-foot (50') setback from the proposed western property boundary for the Final Plan application.
- b. The 0.64 acre building envelope proposed for **Lot #9** has an irregular placement where the northeast corner covers only a portion of an existing barn. Unless the removal or relocation of the barn is planned, the building envelope for **Lots #9** should be adjusted to exclude the barn.

#### 7.6 Water Supply & 7.7 Sewage Disposal

1. On July 6, 2006, the State of Vermont issued permit #*WW-4-1872-1*, which approved a four-bedroom home, drilled well, and wastewater system for existing **Lot #9**. All these improvements are located on proposed as **Lot #12** (indicated in **Exhibit 2**).
2. On May 15, 2012, the Town of Charlotte issued permit #*WW-138-1203*, which approved capacity for **Lot #10** and **#11** on the southwest corner of the property. This is the most recently known Water Supply and Wastewater permit approved for the property.
3. The submitted survey plan (**Exhibit 2**) and wastewater design (**Exhibit 16**) depict a "proposed drilled well" and "Lot 9 wastewater system", which have not been previously approved according to any plans within the Town's records. The **Lot #12** well and wastewater system in these plans appear to the same infrastructure that was approved in permit #*WW-4-1872-1*.
4. The appropriate permits should be obtained for the reconfiguration of the wastewater and water supply infrastructure of proposed **Lot #9**, and for the recognition of proposed **Lot #12**. As of the approval of this decision, the Zoning Administrator has not yet received any permit applications for the proposed development.

#### 8.4 Planned Residential Developments (PRDs)

1. The applicant has previously committed 40.34 acres of land in an Open Space Agreement (OSA) in previous proceedings for this property.
2. Because this property had originally already been created as part of a Planned Residential Development (PRD) subdivision in 2002 (see **Exhibit 8**), and where the applicants contributed additional acreage to the OSA in 2012 (see "*Amendment to Open Space Agreement*" in **Exhibit 17**), no further dedication of Open Space would be required for this proceeding.

#### **Decision**

Based on the foregoing Findings of Fact and Conclusions, the Planning Commission grants Preliminary approval of the application for a 2-Lot Major Subdivision subject to the following conditions. Prior to submission of the Final Plan application for the subdivision, the applicants shall:

1. Update the building envelopes for **Lot #9** and **Lot #12** in the survey plat as per **Findings 2.3(2)**; and **7.2(E)(1)(a)** and **(b)**.

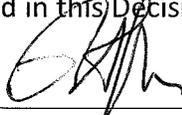
2. Obtain an approved Water Supply and Wastewater Plan permit for the proposed development pursuant to **Findings 7.6** and **7.7**.
3. Obtain a Highway Access Permit approved by the Selectboard as per **Finding 3.2**.

**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 for the applicant to submit a Final Subdivision Plan application to the Planning Commission for a 2-Lot Major Subdivision. The Application shall be submitted in accordance with such approved plans and conditions.

**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 June 6, 2019:** Peter Joslin (Chair), Charlie Pughe (Vice Chair), Gerald Bouchard, Marty Illick, and Shawn Coyle.

**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></u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>7/18/2019</u> |
| 2. Signed: | <u>Gerald A Bouchard</u>  | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>7/18/2019</u> |
| 3. Signed: | <u>Marty Illick</u>   | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>7.18.19</u>   |
| 4. Signed: | <u>SC GB</u>  | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>7.18.19</u>   |
| 5. Signed: | _____   | For / Against  | Date Signed: | _____            |
| 6. Signed: | _____   | For / Against  | Date Signed: | _____            |
| 7. Signed: | _____   | For / Against  | Date Signed: | _____            |