

TOWN OF STOWE
DEVELOPMENT REVIEW BOARD
Findings of Fact & Conclusions of Law



PROJECT: 5938

SUBJECT PROPERTY: 990 Taber Ridge Road; 1254 Taber Ridge Road; 1938 Taber Hill Road; #08-041.000

PROPERTY OWNER: Linda Post
1938 Taber Hill Road
Stowe, VT 05672

APPLICANT: John Grenier, Grenier Engineering, PO Box 445, Waterbury, VT 05676

APPLICATION:

The Applicant, John Grenier on behalf of property owner Linda Post (herein referred to as the “Applicant”), request subdivision review for a boundary line adjustment between 990 Taber Ridge Road; 1254 Taber Ridge Road; and 1938 Taber Hill Road. The three (3) subject lots are currently in common ownership. The Applicant proposes to relocate the internal property lines dividing the lots as follows:

- Under its existing configuration 990 Taber Ridge Road contains ±25.54 acres. Following the proposed boundary line adjustment, it will be reduced to ±8.0 acres and contain the existing residence and related improvements;
- Under its existing configuration 1254 Taber Ridge Road (Lot 20) contains ±3.5 acres. Following the proposed boundary line adjustment, it will be increased to ±27.6 acres and contain the existing residence and related improvements;
- Under its existing configuration 1938 Taber Hill Road contains ±34.1 acres. Following the proposed boundary line adjustment, it will be reduced to ±27.6 acres and contain the existing residence and related improvements.

The subject parcel(s) are owned by Linda Post and accessed via Taber Ridge Road and Taber Hill Road (#08-041.000) in the Rural Residential 5 (RR5) zoning district and the Ridgeline and Hillside Overlay District (RHOD). The parcel containing 1254 Taber Ridge Road (Lot 20) was created in 1990 and received approval from the Planning Commission under S-87-84. The parcel containing 990 Taber Ridge Road was subdivided in 1993. The subdivision regulations in effect at the time did not require review for subdivided lots greater than 20 acres. The application has been reviewed by the Development Review Board (DRB) under applicable standards of the Town of Stowe Subdivision Regulations (as amended through July 16, 2012) for the purpose of subdivision/boundary line adjustment review.

The Development Review Board’s procedural history and relevant findings are attached.

REVIEW PROCESS:

(Application materials, hearing notices, meeting minutes on file at the Stowe Town Office.)

An application for subdivision review was filed by Applicant John Grenier on December 14, 2018. The application was accepted as administratively complete by Town of Stowe Zoning Director Sarah McShane

and referred to the Development Review Board for a public hearing. A public hearing of the DRB was scheduled for January 15, 2019 and warned by the Zoning Director in accordance with Section 2.14 of the regulations and 24 V.S.A. §4464. The hearing notice was published in the Stowe Reporter on December 27, 2018. The Applicant submitted a completed certificate of service in accordance with Section 2.14(1)(B).

The public hearing to consider the application convened on January 15, 2019 at the Akeley Memorial Building, 67 Main Street, with a quorum of the DRB present. No ex parte communications or conflicts of interests were reported.

The following persons attended and participated in the hearing process, and may be afforded status as interested persons with rights to appeal:

- Chris Austin, Grenier Engineering, PO Box 445, Waterbury, VT 05676
- Alan Thorndike, Darby Kolter & Nordle, LLP, 996 South Main Street, Suite 1 A, Stowe, Vermont 05672

The following materials were submitted in support of the application and entered into the hearing record:

1. Town of Stowe Development Application, dated 12/10/2018;
2. Cover letter from Grenier Engineering PC, dated 12/14/2018;
3. Lot Line Adjustment Site Plan Linda Post '990 Taber Ridge Road; 1254 Taber Ridge Road; 1938 Taber Hill Road' Sheet 1 of 1, prepared Grenier Engineering PC, dated 12/12/2018;
4. Description of property, no date.

The DRB adjourned the hearing that evening, following the submission of testimony and evidence, marking the start of the 45-day period for the issuance of written findings and a decision.

FINDINGS OF FACT & CONCLUSIONS OF LAW:

The Applicant's request for subdivision review/boundary line adjustment was reviewed by the Stowe Development Review Board (DRB) for conformance with applicable requirements of the Town of Stowe Subdivision Regulations (as amended through July 16, 2012) including the following:

- Section 2- General Provisions
- Section 3- Administration and Enforcement
- Section 4- Subdivision Requirements
- Section 5- Planning and Design Standards

During its review of the application, the Board made the following Findings of Fact:

1. As defined under the subdivision regulations, minimal alterations may be approved by the Zoning Administrator and are not required to follow the notice and hearing requirements for proposed subdivisions requiring DRB approval. "Minimal Alteration shall mean a change to existing parcels that either 1) involve the alteration, reconfiguration or relocation of existing property lines between existing parcels in a manner which does not result in any additional lots, plots, parcels of land (also referred to as a lot line adjustment) or movement of town highway and does not result in more than a 20% change in existing area of any existing lots...." The Applicant proposes to relocate the internal property lines of the parcels located at 990 Taber Ridge Road; 1254 Taber Ridge Road;

and 1938 Taber Hill Road. The proposed boundary line adjustments will result in a +20% change in existing lot area and therefore not eligible for administrative review as a minimal alteration.

2. **Zoning District.** The subject parcels are within the Rural Residential 5 (RR5) zoning district and Ridgeline and Hillside Overlay District (RHOD) as shown on the Official Town of Stowe Zoning Map (as adopted on October 9, 2018).
3. **Lot Area, Lot Width.** The Applicant proposes to relocate the property line dividing the parcels at 990 Taber Ridge Road; 1254 Taber Ridge Road; and 1938 Taber Hill Road. The minimum lot width in RR 5 is 300 feet. The minimum lot area is 5 acres. Following boundary line adjustment each lot will contain more than five (5) acres and more than 300 feet lot width, satisfying the lot area and lot width requirements.
4. **Setbacks.** Setback requirements in the RR-5 district are 70 feet (front), 75 feet (sides and rear). The setback lines are shown on each lot. Revised Lot 20 also includes an existing 75' conservation easement running parallel of the former property line of 1938 Taber Hill.
5. **Maximum Building Coverage.** The maximum building coverage does not apply to Rural Residential 5 (RR5) zoning districts.
6. **Use.** No changes of use are proposed under this application. All three (3) involved lots are developed with a single-family dwelling and related appurtenances.
7. **Height.** No buildings are proposed under this application.

SUBDIVISION REGULATIONS

SECTION 3- GENERAL SUBDIVISION APPLICATION PROCEDURES

8. **Section 3.1(3):** Minor subdivisions are defined as all subdivisions that propose less than five (5) lots, do not involve the construction of a public road, do not involve the construction of public utilities, and are not deemed to be a minimal alteration. Minor subdivisions allow the submission of one application and related materials to be reviewed by the Board. The Applicant proposes to relocate the internal property lines of the parcels located at 990 Taber Ridge Road; 1254 Taber Ridge Road; and 1938 Taber Hill Road. The proposed boundary line adjustments will result in a +20% change in existing lot area and therefore not eligible for administrative review as a minimal alteration.

SECTION 5.1 – GENERAL PLANNING STANDARDS:

9. **Section 5.1(1) – Character of Land for Subdivision:** Prior to the approval of a subdivision plat, the subdivider has the responsibility to satisfy the Board that the land to be subdivided is of such a character that it can be used for the intended purposes without undue adverse impact on public health or safety, or the environment or, neighboring properties or the rural and historic character of the community as outlined in the regulations. Subdivision plats shall conform to the zoning regulations, any interim zoning, subdivision regulations, and other applicable statutes, ordinances, bylaws and/or regulations. In addition, subdivision plans should be in general accordance with Stowe's Municipal Plan. The Applicant proposes to relocate the internal property lines of the parcels located at 990 Taber Ridge Road; 1254 Taber Ridge Road; and 1938 Taber Hill Road. The lots are previously developed with single-family dwellings and related appurtenances.

Conclusion: The Board concludes proposed reconfigured parcels can be used for the intended purposes without undue adverse impact on public health or safety, or the environment or, neighboring properties or the rural and historic character of the community.

10. **Section 5.1(2) – Natural and Scenic Features:** All subdivisions shall be designed to prevent undue adverse impact on: brooks, streams, water bodies, ground water resources and wetlands; prime agricultural soils, farmland resources and scenic meadowland; important forest resources; aesthetic resources and scenic vistas, including views onto and arising from subject property. In order to preserve natural and scenic features, the Board is authorized to:

- a) Establish or limit the building site or other improvements to avoid the parcelization, isolation, or destruction of natural features;
- b) Require setbacks from property boundaries or identified natural features greater than specified in the Zoning Regulations in order to create buffer zones and prevent degradation to significant natural features;
- c) Establish preserve areas where development is restricted or prohibited, and specific land management techniques are employed to protect or enhance significant natural features.

The Applicant proposes to relocate the internal property lines of the parcels located at 990 Taber Ridge Road; 1254 Taber Ridge Road; and 1938 Taber Hill Road. The lots are previously developed with single-family dwellings and related appurtenances. Revised Lot 20 also includes an existing 75' conservation easement running parallel of the former property line of 1938 Taber Hill.

Conclusion: The Board concludes the proposed boundary line adjustment has been designed to prevent undue adverse impact on natural and scenic features as noted under Section 5.12(C) of the town's subdivision regulations.

11. **Section 5.1(3) – Protection of Significant Wildlife Habitat and Natural Communities:** All mapped significant wildlife habitat areas are required to be shown on subdivision site plans. If any portion of a proposed subdivision is within an identified significant wildlife habitat area the Board may require the submission of a wildlife habitat assessment, prepared by a wildlife biologist or comparable professional, to identify potentially impacted habitat and provide recommended management strategies. Vermont Fish and Wildlife Department staff may also be consulted to provide guidance with this review. The Applicant proposes to relocate the internal property lines of the parcels located at 990 Taber Ridge Road; 1254 Taber Ridge Road; and 1938 Taber Hill Road. The lots are previously developed with single-family dwellings and related appurtenances. Staff provided an ANR Natural Resources Atlas map showing fragile areas, amphibian and reptile crossings, rare threatened endangered species, uncommon species, deer wintering areas, and natural communities, none of which appears to be located on any of the involved parcels.

Conclusion: The Board finds the proposed boundary line adjustments will not have an undue adverse impact on significant wildlife habitat and natural communities.

12. **Section 5.1(4) – Historic Resources and Community Character:** Subdivisions are required to minimize undue adverse impact on historic sites and the rural character of the Town. Subdivisions in rural areas shall result in minimum undue adverse impact on the rural landscape as characterized by open fields, forested mountains and hillsides. The rural character exists due to the scenic vistas, large uninterrupted forested areas, open fields along public roads, and limited

development along roads. Individual lots and building zones shall be delineated so as to mitigate the visual impact of new development on views from existing roadways, adjacent properties, and offsite vantage points. No historic features are shown to exist on the subject parcels.

Conclusion: The Board concludes that there are no known historical resources located on the parcels and the boundary line adjustments have been designed to minimize undue adverse impact on rural character of the area.

13. **Section 5.1(5) – Reserved Strips:** No privately owned reserved strip which controls access to any part of the subdivision or to any other parcel of land from any street or from any land dedicated to public use shall be permitted. No reserved strips are proposed.

Conclusion: This provision is not applicable.

14. **Section 5.1(6) – Screening and Landscaping:** The DRB is authorized to require the planting or preservation of trees or other vegetation to provide visual screening of development or to otherwise soften and/or lessen the impact of development on natural features and scenic vistas. Street trees along public or private roadways may also be required in order to establish a canopy effect in developed areas and where existing street trees are already present in the vicinity. The size, type, or location of such trees shall depend on the particular land parcel. Section 4.6 (Landscaping Standards) of the Zoning Regulations shall be used as a guideline for any required landscaping. A maintenance plan of all existing and proposed landscaping shall be prepared and submitted for review. Such a plan shall address specific measures to be taken to ensure the survival, and if necessary, replacement, of designated landscaping during and after the construction; parties to be responsible for ongoing maintenance; and any Town obligations for maintenance. The Applicant proposes to relocate the internal property lines of the parcels located at 990 Taber Ridge Road; 1254 Taber Ridge Road; and 1938 Taber Hill Road. The involved parcels contain existing mature landscaping and screening. No changes to the existing landscaping or screening are proposed under this application.

Conclusion: This provision is not applicable. The lots are previously developed with single-family dwellings and related appurtenances. No changes to the existing landscaping or screening are proposed under this application.

15. **Section 5.1(7) – Pedestrian Access:** The Board is authorized to require rights-of-way to facilitate pedestrian circulation within the subdivision and to ensure access to adjoining properties or uses. The Applicant is not proposing any pedestrian access improvements under this application. The Applicant proposes to relocate the internal property lines of the parcels located at 990 Taber Ridge Road; 1254 Taber Ridge Road; and 1938 Taber Hill Road – all of which are previously developed with a single-family dwelling and related improvements.

Conclusion: This provision is not applicable.

16. **Section 5.1(8) – Traffic:** The regulations require traffic to be generated by the proposed subdivision not to create unreasonable traffic congestion or cause unsafe conditions regarding use of existing roadways. To satisfy this standard, the Board is authorized to request the preparation of a traffic impact study to address all concerns relative to traffic impact and safety. The Applicant proposes to relocate the internal property lines of the parcels located at 990 Taber Ridge Road; 1254 Taber Ridge Road; and 1938 Taber Hill Road. The involved parcels are previously developed and contain single-family dwellings and related improvements.

Conclusion: This provision is not applicable. Any future proposal to develop the reconfigured lots will require review under the Regulations in effect at time of application.

17. **Section 5.1(9) – Municipal Facilities:** No municipal department review forms returned indicated that the proposed boundary line adjustment would have any adverse impact on their respective departments.

Conclusion: The project will not create an undue burden on the Town’s existing or planned facilities or services.

18. **Section 5.1(10) – Lot Configuration:** Flag lots, elongated lots, and other odd shaped lots which include narrow strips of land are prohibited unless the Board finds the configuration is appropriate given the existing topography and natural features, existing development, or the existing configurations of internal or adjacent lots. The Applicant proposes to relocate the internal property lines of the parcels located at 990 Taber Ridge Road; 1254 Taber Ridge Road; and 1938 Taber Hill Road. The proposed property lines are straight with the exception of the proposed property boundary between 990 Taber Ridge Lot and Revised Lot 20- 1254 Taber Ridge Road which involves eight (8) iron pins. During the hearing the Applicant testified that the proposed property boundary between 990 Taber Ridge Lot and Revised Lot 20- 1254 Taber Ridge Road has been designed to follow an existing fence line and avoid fragmentation the forest block.

Conclusion: The Board finds the amended lot configuration is of regular shape, avoids flag and elongated lots, and contains sufficient buildable area.

19. **Section 5.1(11) – Building Zone:** The Board must find that the proposed subdivision provides adequate building sites for each proposed lot. Such sites may be restricted to a specific building zone, to be depicted on the plat, located and sized to ensure compliance with all of the provisions of Section 5 of the regulations. The parcels located at 990 Taber Ridge Road and 1938 Taber Hill Road were created in 1993. Given their size of greater than 20 acres, the regulations in effect at the time exempted subdivisions resulting in lots greater than 20 acres; the lots therefore do not have a designated building zone. Lot 20- 1254 Taber Ridge Road shows a building zone. Based on information provided by the Applicant, the building zone on Lot 20 was enlarged under DRB decision #4791 in 2013. No changes to building zones are proposed under this application.

Conclusion: The Board concludes the revised lots are adequate for their intended purpose and existing uses.

20. **Section 5.1(12) – Fire Protection Facilities:** The regulations require adequate water storage or distribution facilities for fire protection to be available. This may include the installation of ponds and dry fire hydrants and the extension of public water with fire hydrants. Where practicable, or where required by the Board, fire hydrants shall be installed by the subdivider. Construction of driveways and roads shall be in general compliance with the Stowe Fire Department Construction Standards where applicable. All lots shall be designed to allow for reasonable access by emergency vehicles to the building zones. The Applicant proposes to relocate the internal property lines of the parcels located at 990 Taber Ridge Road; 1254 Taber Ridge Road; and 1938 Taber Hill Road. All lots are previously developed with a single-family dwelling and related improvements. No changes to fire protection facilities are proposed under this application.

Conclusion: This provision is not applicable. Any future proposal to develop the reconfigured lots will require review under the Regulations in effect at time of application, including fire protection facilities.

21. **Section 5.1(13) – Disclosure of Subsequent Development Plans:** Whenever a subdivider submits a proposal for development on only a portion of a parcel, the Board is authorized to require a general indication of the intended uses of the remaining portion of land. Such an indication shall include access, type of use, intensity of use, and phasing. The Board is authorized to require the execution of a development agreement between the applicant and Town which ensures the ongoing integration of future development with each phase of subdivision or may require a note on the plat restricting future development of the remaining land without further review by the Board.

Conclusion: This provision is not applicable. Any future proposal to develop the reconfigured lots will require review under the Regulations in effect at time of application.

22. **Section 5.1(14) – Private Enforcement Mechanisms:** As a condition of subdivision approval, the Board may require the formation of a homeowner’s association, consisting of the owners of all properties within the subdivision, to ensure the continual maintenance of shared driveways and other shared facilities. The Board shall require that such enforcement mechanisms be recorded before any zoning permits are issued. The lots are currently in common ownership.

Conclusion: This provision is not applicable.

23. **Section 5.2 – Prominent Hillsides and Ridgelines (RHOD)-** All subdivisions located within the RHOD shall conform to the submission requirements, standards, and guidelines of Section 9 of the Stowe Zoning Regulations. Portions of the subject parcels are within the RHOD. The Applicant proposes a boundary line adjustment among three (3) parcels currently in common ownership. No development (i.e. construction of buildings or structures) is proposed under this application. No changes to clearing limits are proposed under this application.

Conclusion: The Board finds the proposed boundary line adjustment meets the applicable requirements of Section 5.2.

24. **Section 5.3 – Open Space and Cluster Development:** Except for exemptions granted under Section 5.3(6), the Board shall, in subdivisions having lots or potential dwelling sites for five (5) or more family dwelling units (excluding accessory apartments), and for all Planned Residential Developments (PRDs), require that the subdivision plat designate one (1) or more areas of character, size, shape and location suitable to be used as open space, park or playground. The Applicant proposes to relocate the internal property lines of the parcels located at 990 Taber Ridge Road; 1254 Taber Ridge Road; and 1938 Taber Hill Road. The Applicant stated in the project narrative the primary goal of the boundary line adjustment is to allow Lot 20 to contain sufficient acreage to be eligible to enroll in the State’s Current Use Program, which will allow the family to continue with the existing forest management plan that has been in place for a number of years.

Conclusion: The Board concludes the boundary line adjustment has been designed to incorporate and allow for open space under the State’s Current Use Program, in conformance with Section 5.3.

25. **Section 5.4 – Road Standards and Coordination with Public Highways:** All proposed public and private roads shall be designed to ensure the safe and efficient movement of vehicles. Roads shall be logically related to topography so as to produce usable lots and reasonable road grades and

shall be in harmony with existing and proposed public highways. Wherever extensions of proposed roads could rationally provide public access to adjacent properties or connection to existing public State or Town highways, a right of way across the subdivider's property may be required. No new road or driveways are proposed under this application.

Conclusion: The Board concludes no changes to the existing access road/driveway are proposed under this application.

26. **Section 5.5 – Utilities and Stormwater Management:** All subdivisions shall make adequate provisions for stormwater and required utilities. No changes to stormwater or utilities are proposed under this application.

Conclusion: The Board concludes no additional utilities and stormwater management improvements are proposed under this application.

DECISION

Based upon the foregoing Findings of Fact, in RE: **5938** the Board finds (6-0) the requested boundary line adjustment meets the Town of Stowe Subdivision Regulations (as amended through July 16, 2012) subject to the following conditions of approval:

1. This project shall be completed according to the plans hereby approved. Any change to the plans or the proposed use of the property shall be brought to the Zoning Administrator's attention, prior to its enactment, for a determination if an amendment is required.
2. All conditions of previous approvals, except as amended herein, remain in full force and effect.
3. The subdivision survey plat 'Lot Line Adjustment Site Plan Linda Post '990 Taber Ridge Road; 1254 Taber Ridge Road; 1938 Taber Hill Road' Sheet 1 of 1, prepared Grenier Engineering PC, dated 12/12/2018, shall be submitted for recording in the land records of the Town of Stowe within 180 days of the date of this approval, or the approval shall expire. The Applicant shall file two (2) paper copies of said plat the Zoning Administrator.
4. The Applicant shall file the Mylar plat, signed by the Chair or other authorized representative of the Development Review Board, with the Stowe Town Clerk in accordance with the requirements of 27 V.S.A. Chapter 17 and the Stowe Subdivision Regulations. No land development associated with this subdivision shall be commenced until such time as the survey plat has been duly signed and filed in the Land Records.
5. The final survey plat as recorded shall carry the following notation:

"This plat is subject to the terms and conditions of subdivision approval by the Stowe DRB per the Subdivision Regulations of the Town of Stowe. The terms and conditions of the approval and related information are on file in the Stowe Zoning Office".

6. These conditions of approval shall run with the land and are binding upon and enforceable against the permittee and his successors. By acceptance of a permit, the permittee agrees to allow authorized representatives of the Town of Stowe to access the property subject to this approval, at reasonable times, for purposes of ascertaining compliance with the conditions of approval.

Voting favor: D. White, D.Clymer, T. Hand, P.Aumand, P. Roberts, T.Mumley

Voting to deny: None

Dated at Stowe, Vermont this the 29 day of January 2019

By: *Douglas White*
Douglas White, Chair

NOTICES:

1. In accordance with 24 V.S.A. § 4449(e), applicants are hereby notified that state permits also may be required prior to land subdivision or construction. The applicant should contact the DEC Permit Specialist for District #5 (802-505-5367) to determine whether state permits are required.
2. The applicant or another interested person may request reconsideration of this decision by the Development Review Board, including associated findings and conditions, within 30 days of the date of this decision by filing a notice of appeal that specifies the basis for the request with the Secretary of the Development Board. Pursuant to 24 V.S.A. § 4470, the board may reject the request within 10 days of the date of filing if it determines that the issues raised on appeal have already been decided or involve substantially or materially the same facts by or on behalf of the appellant.
3. This decision may also be appealed to the Environmental Division of the Vermont Superior Court by the applicant or another interested person who participated in the proceeding before the Development Review Board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Division Court Proceedings.
4. In accordance with 24 V.S.A. § 4455, on petition by the municipality and after notice and opportunity for hearing, the Environmental Division may revoke a permit based on a determination that the permittee violated the terms of the permit or obtained the permit based on misrepresentation of material fact.