

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



**PROJECT:** 5962

**SUBJECT PROPERTY:** 0 Points North Road, Lot 8B; #03-096.070  
[e911 number to be determined]

**PROPERTY OWNER:** Thomas & Dianne Trueb  
105 Pinnacle Road  
Ellington, CT 06029

**APPLICANT:** George McCain, Jr. P.E.  
McCain Consulting Inc.  
93 South Main Street, Suite 1  
Waterbury, VT 05676

**APPLICATION:**

The Applicant, George McCain, Jr. P.E. of McCain Consulting Inc. on behalf of property owners Thomas & Dianne Trueb (herein referred to as the "Applicant"), has requested amended subdivision review to remove a prior condition of subdivision approval and to establish a residential driveway and building zone on the undeveloped parcel #03-096.070 located at 0 Points North Road, Lot 8B [e911 number to be determined]. The Applicant proposes to 'rough in' a residential driveway along a former woods road and establish a building zone. No limits of clearing or disturbance are proposed under this application, nor does the Applicant seek approval to construct a dwelling or any other structures. Additional review, including review under the Ridgeline and Hillside Overlay District (RHOD), will be required prior to any clearing and the construction of any structures or buildings.

The subject parcel is owned by Thomas & Dianne Trueb and located 0 Points North Road, Lot 8B (#03-096.070) in the Rural Residential 5 (RR5) zoning district and the Ridgeline and Hillside Overlay District (RHOD). The parcel is accessed via 50' right-of-way over the adjacent Lot 8A, connecting to Points North Road, a privately owned and maintained road. The subject ±5.4-acre parcel (Lot 8B) is part of the 2-Lot David O'Rourke Final Subdivision approved by the Stowe Planning Commission in 2002 under S-01-25. The recorded plat was signed by the Chair of the Planning Commission on March 4, 2002. The associated Planning Commission decision includes a condition of approval (#2) as follows "*Before any development occurs on Lot #8B, the Applicant needs to return to the Planning Commission for additional review, in order to satisfy Section 5.1(4) as to access.*" The subdivision regulations in effect at time of Planning Commission decision, effective December 6, 1999, Section 5.1(4) states "*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.*" 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 amended subdivision 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 amended subdivision review was filed by Applicant George McCain, Jr. P.E. of McCain Consulting Inc. on March 5, 2019. 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 April 2, 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 March 14, 2019. 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 April 2, 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:

- Applicant - George McCain, Jr. P.E., McCain Consulting Inc., 93 South Main Street, Suite 1, Waterbury, VT 05676

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

- Town of Stowe Development Application (2 pages); dated 03/04/2019;
- Cover letter from McCain Consulting, dated 3/4/2019;
- List of Abutters, no date;
- Series of Google Earth images depicting project site to designated vantage points, (3 pages), no date;
- Site Plan 'Thomas & Dianne Trueb- Proposed Building Envelope in RHOD, Sheet C-3, prepared by McCain Consulting, dated 2/1/2019; [last revised 3/12/2019]
- Notice of Town of Stowe Planning Commission Decision, S-01-25, dated 2/15/02; (staff)
- Town of Stowe Planning Commission Meeting Minutes, 1/22/2002; (staff)
- Section 5.1(4)- Town of Stowe Subdivision regulations in effect of time of Planning Commission decision, effective December 6, 1999; (staff)
- Town of Stowe Land Records, Quitclaim Deed, Vol. 933, Page 019; (staff)
- Recorded Subdivision Plat 'Subdivision of Property of Points North Estates-Lot 8, prepared by Daniel Mulligan, filed 2/4/2002 (staff);
- [Email] Comments from David Kresock, Director of Operations at Stowe Electric, dated 3/28/2019.

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 amended subdivision review 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. **Zoning District.** The subject parcel is within the Rural Residential 5 (RR5) zoning district and the Ridgeline and Hillside Overlay District, as shown on the Official Town of Stowe Zoning Map (as adopted on October 9, 2018).
2. **Lot Area, Lot Width.** The Applicant proposes an amendment to a previously approved subdivision. No new lots are proposed under this application. No changes to the existing lot area or lot width are proposed under this application.
3. **Setbacks.** Setback requirements in the RR5 district are 70 feet front and 75 feet sides and rear, as measured from the property line to nearest portion of structure on the lot. The provided drawings show a building zone sited to meet the minimum required setbacks.
4. **Maximum Building Coverage.** Prior to the issuance of a zoning permit, the Applicant will be required to demonstrate compliance with the maximum building coverage requirements in effect at the time of application. Under the existing regulations, there is no maximum building coverage required in the RR5 district.
5. **Use.** No uses are proposed under this application; however, the application materials indicate that it is the Applicant's intent to market the property as a residential lot.
6. **Height.** No buildings or structures are proposed under this application. Prior to the issuance of a zoning permit, the Applicant will be required to demonstrate compliance with the maximum height requirements in effect at the time of application.

## **SUBDIVISION REGULATIONS**

### **SECTION 5.1 – GENERAL PLANNING STANDARDS:**

7. **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 requests to amend a prior subdivision approval to provide access to a designated building zone. The lot was created in 2002 under S-01-25 with the condition that *"Before any development occurs on Lot #8B, the Applicant needs to return to the Planning Commission for additional review, in order to satisfy Section 5.1(4) as to access."* No new lots are proposed under this application.

**Conclusion:** This provision is not applicable. See Section 5.1(5)- Reserved strips.

8. **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 requests to amend a prior subdivision approval to provide access to a designated building zone. According to the ANR Natural Resources Atlas map there are no mapped wetlands or deer wintering areas on the parcel. There are no identified natural or scenic features. The proposed building zone is sited to meet the minimum setback requirements. The proposed residential driveway will follow a former woods road.

**Conclusion:** The Board concludes the Applicant's request for access and to designate a building zone 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.

9. **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 requests to amend a prior subdivision approval to provide access to a designated building zone. No wildlife habitat or natural communities are shown on the provided plan. Staff provided a copy of ANR Natural Resource Atlas. The ANR Natural Resources Atlas shows the subject parcel containing a lower priority habitat block. No rare, threatened, or endangered species, deer wintering areas, or significant natural communities are shown on the parcel.

**Conclusion:** The Board finds the proposed access and building zone will not have an undue adverse impact on significant wildlife habitat and natural communities.

10. **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 lot. Section 5.1(4)(b)(i-vi) outlines methods for preserving rural character, including prohibiting building zones in visually prominent areas, requiring vegetated buffer to provide screening, among others.

**Conclusion:** The Board concludes that there are no known historical resources located on the parcel and the proposed building zone has been designed to minimize undue adverse impact on rural character of the area.

11. **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. The lot was created in 2002 under S-01-25 with the condition that *"Before any development occurs on Lot #8B, the Applicant needs to return to the Planning Commission for additional review, in order to satisfy Section 5.1(4) as to access."* Staff provided a copy of the Planning Commission decision and meeting minutes. The Planning Commission minutes indicate that the condition required the Applicant to provide a legal right-of-way to the subdivided lot. The Quit Claim deed states the following....

Also conveyed to Grantees herein, and their heirs, successors and assigns in and to Lot 8B is a 50' foot wide right of way for ingress, egress and utility line installation, repair and maintenance over under and across the right-of-way to be constructed by the owner of Lot 8A to the so-called "New Drive" as set forth on the survey and continuing in the general direction of the so-called "unimproved road" as set forth on the survey. The costs of installation, repair and maintenance of the right of way and utility lines from the so-called "New Drive" to the boundary of Lot 8A and 8B shall be the obligation of the owner of Lot 8B. This right of way was Excepted and Reserved by the Grantor herein and his heirs, successors and assigns to Lot 9 and 8B in the above mentioned warranty deed of David G. O'Rourke to Jason Hackwell, dated March 8, 2002.

**Conclusion:** The Board concludes the Applicant provided adequate information to demonstrate access to the subdivided lot via 50' legal right-of-way to serve Lot 8B.

12. **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. No landscaping is shown on the plan however based on aerial images, the lot contains mature connected forested blocks.

**Conclusion:** No clearing, landscaping or screening is proposed under the application. Any future plan to develop or clear the lot will require review under the Regulations in effect at time of application.

13. **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.

**Conclusion:** This provision is not applicable.

14. **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. No new lots are proposed.

**Conclusion:** This provision is not applicable.

15. **Section 5.1(9) – Municipal Facilities:** The Board must find that the proposed subdivision will not create an undue burden on municipal facilities or create an unreasonable demand for municipal services. Staff requested comments on the proposal from respective Town departments including the Department of Public Works, Fire Department, Stowe Electric, Police Department, EMS, and Parks and Recreation.

David Kresock, Director of Operations at Stowe Electric, provided comments dated 3/28/2019 indicating that Stowe Electric has underground primary and can service the new building.

No Municipal Department review forms returned indicated that the proposed development would have any adverse impact on municipal facilities and services.

**Conclusion:** The Board concludes the proposal will not create an undue burden on the Town's existing or planned facilities or services.

16. **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. No changes to lot size, shape, or configuration are proposed under this application.

**Conclusion:** This provision is not applicable.

17. **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. A building envelope is shown on the subject lot [Lot 8B]. As mentioned above, the building envelope on the subject lot appears to meet the required setbacks. The regulations define Building Zone as *'The area designated on a plat within which shall be located the principal building and/or house site.'*

**Conclusion:** The Board concludes the subject lot contains an adequate building site for the intended purpose.

18. **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 is proposing a residential driveway connecting to the building zone. The Fire Department did not provided comments on this application.

**Conclusion:** The Board finds the proposed driveway is designed in general compliance with the Stowe Fire Department Construction Standards where applicable and provides reasonable access by emergency vehicles to the building zone.

19. **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. No future development plans are proposed under this application.

**Conclusion:** The Board concludes any future proposal to develop the lot will require review under the Regulations in effect at time of application.

20. **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 subject lot is served by a shared driveway off a privately-owned and maintained road- Points North Road. The quit claim deed references the shared maintenance responsibilities for the shared driveway.

**Conclusion:** The Board finds the existing lot contain deeded shared maintenance requirements for the shared portion of the access. No further information is required.

21. **Section 5.2 – Prominent Hillside and Ridgelines (RHOD)-** The subject lot is within the RHOD. The Applicant proposes to ‘rough in’ a residential driveway along a former woods road and establish a building zone. No limits of clearing or disturbance are proposed under this application, nor does the Applicant seek approval to construct a dwelling or any other structures. Additional review, including review under the Ridgeline and Hillside Overlay District (RHOD), will be required prior to any clearing and the construction of any structures or buildings.

**Conclusion:** The Board concludes the proposed driveway will require limited clearing. As a condition of approval, the Applicant will be required to obtain additional review prior to any additional clearing and prior to the construction of any buildings or structures.

22. **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.

**Conclusion:** This provision is not applicable.

23. **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. The subject lot, Lot 8B, is accessed via 50’ wide right-of-way centered on drive and woods road over Lot 8A, connecting to Points North Road- a privately owned and maintained road. Section 3.1(1)

requires rights-of-way serving not more than three (3) family dwelling units or lots be a minimum of 25' feet wide.

**Conclusion:** The Board concludes the subject lot has access via shared driveway connecting to Points North Road.

24. **Section 5.5 – Utilities and Stormwater Management:** All subdivisions shall make adequate provisions for stormwater and required utilities.

The DRB is authorized to require the underground installation of power and telephone lines wherever it is appropriate to maintain and protect the visual character and property values of an area or neighborhood. In addition, the DRB may place restrictions on the location and design of utility transformers, translosures, meter boards and related equipment in order to minimize adverse visual impact. The provided subdivision plan does not show the location of power and telephone lines to serve the proposed lots.

The DRB is authorized to require the installation of street lighting in any subdivision in the Stowe Village or commercial areas. Lighting shall be installed in accordance with the Stowe Zoning Regulations. The subject parcel is in the RR5 district. This provision does not apply.

All stormwater management activities required by the Town shall adhere to current State of Vermont erosion prevention and sediment control standards and to the requirements of Section 3.12 of the Stowe Zoning Regulations. The site plan shows erosion control details for the stone lined ditch and check dam. An 18" HDPE driveway culvert is shown on the adjacent lot.

Monuments shall be placed on all subdivided parcels in conformance with the Rules of the Board of Land Surveyors. No change in lot dimensions or boundaries are proposed under this application.

**Conclusion:** The Board concludes the proposal provides adequate provisions for stormwater and required utilities. Additional review is required prior to any clearing or development of the lot.

## **DECISION**

Based upon the foregoing Findings of Fact, in RE: **5962** the Board finds (5-0) the proposal meets and 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 prior approvals, except as amended herein, remain in full force and effect.
3. Prior to the development or clearing of the lot, the Applicant shall obtain all necessary zoning permit(s), including but not limited to the Ridgeline and Hillside Overlay District (RHOD) review, required under the Town of Stowe Zoning Regulations in effect at the time of application.
4. The Applicant shall submit 'Thomas & Dianne Trueb- Proposed Building Envelope in RHOD, Sheet C-3, prepared by McCain Consulting, dated 2/1/2019; [last revised 3/12/2019]' on mylar



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. Two paper copies of said plan shall be submitted to the Zoning Administrator.

5. The recorded plan shall reserve space for the signature of the DRB Chair and contain the following notation:

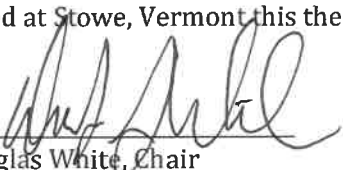
*"This plat is subject to the terms and conditions of subdivision approval by the Stowe DRB per the Subdivision Regulations of the Town of Stowe. The terms and conditions of the approval and related information are on file in the Stowe Zoning Office".*

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 this approval, the Applicant 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, T. Hand, P.Aumand, C.Walton, A. Volansky

Voting to deny: None

Dated at Stowe, Vermont this the 16 day of April 2019

By:   
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.

