

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



**PROJECT:** 6070

**SUBJECT PROPERTY:** 0 Stowe Hollow Road (#07-157.010)

**PROPERTY OWNER & APPLICANT:**

Stowe Hollow Road LLC/Nick Donahue  
474 Stowe Hollow Road  
Stowe, VT 05672

**APPLICATION:**

The Applicant, Stowe Hollow Road LLC [Nick Donahue] (herein referred to as the "Applicant"), requests final subdivision approval to subdivide the ±13.97-acre parcel located at 0 Stowe Hollow Road (#07-157.010) into nine (9) lots as follows:

Lot 1, consisting of ±1.40 acres; Lot 2, consisting of ±0.86 acres; Lot 3, consisting of ±1.13 acres; Lot 4, consisting of ±1.89 acres; Lot 5, consisting of ±3.71 acres; Lot 6, consisting of ±1.33 acres; Lot 7, consisting of ±1.11 acres; Lot 8, consisting of ±1.19 acres; and Lot 9, consisting of ±1.40 acres.

As proposed, Lots 1-9 are intended for future residential development with each lot containing a single-family dwelling, associated parking, and related improvements. Lots 6-9 are proposed to contain nine (9) individual wastewater disposal mound systems to serve Lots 1- 9 and are encumbered by utility, road, and stormwater maintenance easements. As proposed, each lot is to be served by an individual on-site potable water supply. A 100' perimeter greenbelt setback is shown along the outer northern, eastern, and southern property boundaries.

The undeveloped parcel is located within the VIL-PUD zoning district and is served by Stowe Hollow Road, a Class 2 Town Highway. The application was reviewed by the Development Review Board as a major subdivision under the Town of Stowe Subdivision Regulations (effective through July 16, 2012). The Applicant received preliminary approval (Project 6015) from the Board in a written decision dated 6/17/2019. 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 final subdivision review was filed by Applicant Nicholas Donahue on July 18, 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 August 20, 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 August 1, 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 August 20, 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:

- Tyler Mumley, Mumley Engineering PC, 454 Mountain Road, Stowe, VT 05672
- Nick Donahue, 474 Stowe Hollow Road, Stowe, VT 05672

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

- Town of Stowe Development Application, dated 7/1/2019;
- Project Narrative, Project 18045 from Mumley Engineering (4 pages), dated 7/15/2019;
- Stowe Village PUD Zoning District- Density Bank Analysis, dated 7/11/2019;
- Visual Analysis prepared by Mumley Engineering, no date;
- Emails from Ari Rockland Miller, Senior Agricultural Development Coordinator, dated 3/8/2019;
- Email from Noel Dodge, dated 3/12/2019;
- Email to Shannon Morrison, dated 11/8/2018;
- Email from Yvonne Basque, Historic Resources Specialist, dated 3/1/2019;
- Topographic Wetland Sketch, Sheet SK-I, prepared by Ruggiano Engineering Inc., dated 11/06/2018;
- Stowe Hollow Road Stormwater Modeling, prepared by Ruggiano Engineering (6 pages), dated 7/11/2019;
- Draft- Declaration of Covenants, Conditions, and Restrictions of Stowe Hollow Road LLC Subdivision Stowe, VT (6 pages), no date;
- Email from Harry Sheppard, RE: Donahue, dated 7/25/2019;
- Email from Kyle Walker, RE: Reminder- Fire Dept. & DPW Comments of Stowe Hollow 9-Lot Subdivision Project, dated 8/7/2019;
- Proposed Subdivision Layout, Sheet C-1, prepared by Mumley Engineering Inc, Sheet 1 of 9, dated 7/15/2019;
- Proposed Site Plan, Sheet C-2, prepared by Mumley Engineering Inc, Sheet 2 of 9, dated 7/15/2019;
- Partial Site Plan, Sheet C-3, prepared by Mumley Engineering Inc, Sheet 3 of 9, dated 7/15/2019;
- Partial Site Plan, Sheet C-4, prepared by Mumley Engineering Inc, Sheet 4 of 9, dated 7/15/2019;
- Roadway Plan & Profile, Sheet C-5, prepared by Mumley Engineering Inc, Sheet 5 of 9, dated 7/15/2019;
- Landscape Plan, Sheet C-6, prepared by Mumley Engineering Inc, Sheet 6 of 9, dated 7/15/2019;
- Wastewater Systems, Sheet C-7, prepared by Mumley Engineering Inc, Sheet 7 of 9, dated 7/15/2019;
- Details, Sheet C-8, prepared by Mumley Engineering Inc, Sheet 8 of 9, dated 7/15/2019;
- Details, Sheet C-9, prepared by Mumley Engineering Inc, Sheet 9 of 9, dated 7/15/2019;
- Viewshed analysis prepared by Mumley Engineering Inc. (5 pages), dated 8/14/2019;
- Proposed Subdivision Layout, Sheet C-1, prepared by Mumley Engineering Inc, Sheet 1 of 9, last revised 8/14/2019;
- Proposed Site Plan, Sheet C-2, prepared by Mumley Engineering Inc, Sheet 2 of 9, last revised 8/14/2019;
- Partial Site Plan, Sheet C-3, prepared by Mumley Engineering Inc, Sheet 3 of 9, last revised 8/14/2019;
- Partial Site Plan, Sheet C-4, prepared by Mumley Engineering Inc, Sheet 4 of 9, last revised 8/14/2019;
- Roadway Plan & Profile, Sheet C-5, prepared by Mumley Engineering Inc, Sheet 5 of 9, last revised 8/14/2019;
- Landscape Plan, Sheet C-6, prepared by Mumley Engineering Inc, Sheet 6 of 9, last revised 8/14/2019;
- Wastewater Systems, Sheet C-7, prepared by Mumley Engineering Inc, Sheet 7 of 9, last revised 8/14/2019;
- Details, Sheet C-8, prepared by Mumley Engineering Inc, Sheet 8 of 9, last revised 8/14/2019;
- Details, Sheet C-9, prepared by Mumley Engineering Inc, Sheet 9 of 9, last revised 8/14/2019;

The Board continued the hearing to a time and date certain, September 17, 2019 to allow additional time for review. The Board conducted a public site visit at 4:00 PM immediately prior to the continued hearing on September 17, 2019. The following additional materials were submitted in support of the application and entered into the hearing record:

- Letter from Fran Sladyk, Professional Forester, dated 9/11/2019;
- Email from Noel Dodge- State of VT Wildlife Biologist, Re: Project #18045- Donahue, Stowe, dated 9/6/2019;
- Updated Draft- Declaration of Covenants, Conditions, and Restrictions of the Ridge at Stowe Hollow, Stowe, VT (6 pages), no date;
- Proposed Subdivision Layout, Sheet C-1, prepared by Mumley Engineering Inc, Sheet 1 of 9, dated 9/11/2019;
- Proposed Site Plan, Sheet C-2, prepared by Mumley Engineering Inc, Sheet 2 of 9, dated 9/11/2019;
- Partial Site Plan, Sheet C-3, prepared by Mumley Engineering Inc, Sheet 3 of 9, dated 9/11/2019;
- Partial Site Plan, Sheet C-4, prepared by Mumley Engineering Inc, Sheet 4 of 9, dated 9/11/2019;
- Roadway Plan & Profile, Sheet C-5, prepared by Mumley Engineering Inc, Sheet 5 of 9, dated 9/11/2019;
- Landscape Plan, Sheet C-6, prepared by Mumley Engineering Inc, Sheet 6 of 9, dated 9/11/2019;
- Wastewater Systems, Sheet C-7, prepared by Mumley Engineering Inc, Sheet 7 of 9, dated 9/11/2019;
- Details, Sheet C-8, prepared by Mumley Engineering Inc, Sheet 8 of 9, dated 9/11/2019;
- Details, Sheet C-9, prepared by Mumley Engineering Inc, Sheet 9 of 9, dated 9/11/2019;
- Proposed Viewshed, prepared by Mumley Engineering Inc, Sheet V-1, Sheet 1 of 2, dated 9/11/2019;
- Proposed Viewshed, prepared by Mumley Engineering Inc, Sheet V-2, Sheet 2 of 2, dated 9/11/2019;
- Existing View Point #1, Stowe Hollow Road LLC, prepared by Mumley Engineering Inc, Sheet V-3, dated 9/11/2019;
- Existing View Point #2, Stowe Hollow Road LLC, prepared by Mumley Engineering Inc, Sheet V-4, dated 9/11/2019;
- Proposed View Point #2, Stowe Hollow Road LLC, prepared by Mumley Engineering Inc, Sheet V-5, dated 9/11/2019.

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 final subdivision approval was reviewed by the Stowe Development Review Board (DRB) for conformance with applicable requirements including the following:

Town of Stowe Zoning Regulations (as adopted October 9, 2018)

- Section 2- Administration and Enforcement
- Section 3- General Regulations
- Section 4- Specific Use Standards
- Section 5- Zoning Districts
- Section 6- Uses, Dimensional Requirements and Density
- Section 13.8- Stowe Village PUD

Town of Stowe Subdivision Regulations (effective through July 16, 2012)

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

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

1. **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.

- a. The Applicant proposes to subdivide the ±13.97-acre parcel into nine (9) lots, each intended for future residential development. The lots are proposed to be served by 16' wide private road with individual and shared driveways.
- b. The parcel to be subdivided contains very steep slopes in excess of 25%. The Board conducted a public site visit on September 17, 2019 in which very steep slopes (>15-25%) were evident over much of the parcel.
- c. The Applicant did not provide an independent geotechnical analysis of slope stability or any technical evidence that the slopes on the subject parcel could support and sustain the proposed development.
- d. The parcel to be subdivided contains mapped Class II wetlands and associated wetland buffers. These wetlands and wetland buffers are located on the lower portion of the parcel.
- e. As proposed, the lots are to be served by individual wastewater disposal mound systems and individual potable water sources. Each lot is to be served by an individual on-site potable water supply. The Applicant did not provide a copy of the State of Vermont Wastewater System Permit (i.e. WW permit) or evidence that the proposed systems have been designed in accordance with adopted State of Vermont technical design standards. During the hearing, the Applicant testified that although municipal water and sewer lines are located in the general project vicinity, it was not financially feasible to connect to the municipal systems.
- f. Three (3) significant natural drainages run underneath Stowe Hollow Road, a Class 2 Town Highway, and generally east to west throughout the subject parcel. These drainages are shown on the provided plans and were evident during the Board's public site visit on September 17, 2019.
- g. The parcel to be subdivided is located adjacent to and on lands that perch above the historic village center. The village center is a historic district as listed on the National Register of Historic Places and is protected under Section 10 of the town's adopted zoning regulations.

2. **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.

- a. The undeveloped parcel to be subdivided is forested and contains wetlands, natural drainages, prime agricultural soils (statewide) [portions], and scenic and aesthetic views of the historic village.
- b. There are no mapped streams, ponds, or other surface water sources shown on the ANR Natural Resources Map, however during the hearing the Applicant testified that the parcel contains three (3) unmapped drainage ditches. These drainage ditches generally run east-west through the parcel and were evident during the Board's public site visit on September 17, 2019.
- c. The Applicant provided a letter from Fran Sladyk, a State of Vermont licensed forester. The letter outlined the different tree species and the existing condition of the trees. Area 1, as outlined in the letter, contains softwoods- primarily dense white pines with minimal crowns. The letter states the dense overstory has caused lower branches to die due to lack of sunlight. The forester estimated that 10-20% of the trees have died due to disease. Given the extensive excavation and grading required to construct the road, driveways, and building lots, the forester recommends Area 1 to be

cleared of all softwoods. Area 2 consists of a 100-foot buffer along Stowe Hollow Road. The letter notes that this area was likely once pastured sugarbush and contains few large maples with large spreading crowns. Recommendations for Area 2 included individual tree selection removal in conjunction with clearing to remove trees with any health concerns.

- d. The Applicant provided a proposed viewshed analysis. The analysis depicts a cross-sectional view of public vantage points throughout town. Two prominent viewpoints along Mountain Road were shown to include the existing and proposed improvements. The viewshed analysis from the two (2) highlighted viewpoints documents the visibility of the upper four (4) lots once developed and the access road serving the development. The analysis of these two (2) viewpoints relies on and depicts existing landscaping and tree canopies located throughout the village on lands that are not owned or controlled by the Applicant.

3. **Section 5.1(4) – Historic Resources and Community Character:** Subdivisions are required to minimize undue adverse impact on historic sites and the character of the Town. Subdivisions in or adjacent to existing village areas, including Stowe Village, Lower Village, Moscow and designated commercial growth centers, shall be designed to reflect traditional village settlement patterns characterized by an appropriate scale of development, an interconnected street network with development oriented to the streetscape, a mix of land uses and pedestrian access. 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.

- a. The parcel to be subdivided is located within the Stowe Village PUD zoning district. The general purpose of the district is to enable and encourage flexibility of development of this land. Additional intentions are listed in Section 13.8. The Applicant did not request any waivers from the standard dimensional requirements.
- b. The subject parcel is located adjacent to the Stowe historic village center. No historic features are shown to exist on the parcel. The village center is a historic district as listed on the National Register of Historic Places and is protected under Section 10 of the town's adopted zoning regulations.
- c. The subject parcel is undeveloped and contains existing forest lands. During the hearing the Applicant testified the proposal requires significant clearing and grading. The provided landscape plan, Sheet C-6, shows an area of limited clearing on the lower portion of the lot. During the hearing the Applicant described the western portion of the lot near Stowe Hollow Road as a 50 ft 'no-cut zone'. The area just beyond the 'no cut zone' was described as 'limited clearing', though the Applicant was unable to describe or designate the type or extent of limited clearing and disturbance. The Applicant testified that outside of these two areas, the lot would be heavily graded with majority of existing trees removed.
- d. As noted above, the Applicant provided a viewshed analysis including a cross-sectional view of public vantage points throughout town in comparison to existing conditions and topography. Two prominent viewpoints along Mountain Road were shown to include the existing and proposed improvements. The viewshed analysis from these two (2) highlighted viewpoints documents the visibility of the upper four (4) lots once developed and access road serving the development. The analysis relies on and depicts existing landscaping and tree canopies located throughout the village on lands that are not owned or controlled by the Applicant.
- e. The provided Declaration of Covenants, Conditions, and Restrictions of the Ridge at Stowe Hollow contain provisions requiring architectural review for the construction, alteration, or exterior

remodeling of any building within the development. The document does not contain any design review standards or recommended building materials.

**Conclusion:** During the public hearings the Applicant provided a detailed overview of the proposed project. Concerns were repeatedly raised regarding the visibility of the project and the lack of proposed landscaping, screening, and/or architectural standards to mitigate the overall visibility of the project and the undoubted impacts to historic character, aesthetic resources, and scenic vistas surrounding the village. The Applicant provided a visibility analysis which relied heavily on existing landscaping and mature treelines off-site. The landscaping and mature treelines depicted in the visibility analysis are located on lands the Applicant does not own or control and are therefore not acceptable forms of mitigating the proposed visual and scenic impacts. The Board also raised repeated concerns regarding the steepness and stability of the slope and whether it could support the proposed development. The Applicant failed to provide any independent technical evidence that the slope could support the project and would not result in undue adverse impact on public health, safety, environment, and neighboring properties. During the hearing, the Applicant testified that much of the parcel would require significant grading with a substantial amount of tree removal. The Applicant failed to provide a detailed erosion and sediment control plan outlining specific measures and sequencing to control sediment and erosion during and after construction and was unwilling to delineate defined limits of disturbance. The lack of evidence prohibits the Board from finding that the development has been carefully designed to prevent soil erosion and on slopes that are not susceptible to landslides. The Stowe Town Plan (2018) specifically states "*Development on steep slopes, hillsides and ridgelines should be carefully controlled to avoid adverse impacts on scenic resources, water quality and public safety*" and emphasizes the goal of preserving and protecting Stowe's scenic landscape by "*the careful siting of residential development to avoid placement in highly visible locations on hillsides and ridgelines...*" Throughout the hearing, the Applicant was reluctant to address the Board's concerns or to incorporate mitigation measures that reduce and minimize the overall impacts of the project. While the Board recognizes that the parcel is not within the Ridgeline and Hillside Overlay District, given its prominent location perched above the historic village center, similar design considerations could be incorporated in order to minimize impacts on the character of the town and protect scenic landscapes and vistas.

Based on the above findings, information provided during the public hearings and evident during the public site visit, the Board concludes the proposed subdivision, as presented, would create an undue adverse impact on aesthetic resources and scenic vistas, including views onto and arising from subject property; the Applicant failed to present adequate mitigation measures to minimize undue adverse impact on historic sites and the character of the Town; and further, given the insufficient evidence presented, the Board is unable to positively conclude that the subject parcel is of such a character that it can be used for the intended purpose without undue adverse impact on the environment, neighboring properties, and the rural and historic character of the community. Given positive conclusions on the above regulatory provisions are fundamental to the project, as presented, the Board did not conduct a full review of all other applicable sections of the Town of Stowe Zoning Regulations and Subdivision Regulations.

## **DECISION**

The Development Review Board hereby denies (6-0) the Applicant's request for a 9-Lot subdivision of the parcel [#07-157.010] pursuant to the following applicable provisions of the Town of Stowe Subdivision Regulations (effective through July 16, 2012):

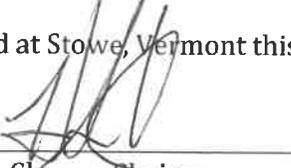
1. The Applicant failed to demonstrate that the land to be subdivided is of such a character that it can be used for the intended purposes without undue adverse impact on the environment, neighboring properties, and the rural and historic character of the community. [Section 5.1(1)]
2. The Applicant failed to demonstrate the proposed subdivision would not create an undue adverse impact on aesthetic resources and scenic vistas, including views onto and arising from subject property. [Section 5.1(2)]

3. The Applicant failed to demonstrate adequate mitigation measures to minimize undue adverse impact on historic sites and the character of the Town. [Section 5.1(4)]

Voting to deny: D. Clymer, P. Aumand, A. Volansky, P. Roberts, C. Walton, M. Diender

Voting in favor: None

Dated at Stowe, Vermont this the 26 day of September 2019

By:   
Drew Clymer, 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.

