



**Notice of DRB Decision**  
**Town of Stowe Zoning Office**  
**PO Box 730**  
**Stowe VT 05672**

Your DRB project listed below was recently denied by the Development Review Board. Attached is a copy of the DRB decision for your records.

Please contact the Planning and Zoning Office at 253-6141 if you have any questions.

**APPLICATION INFORMATION**

<b>Project Number</b>	6322	<b>Tax ID</b>	02132-100
<b>Application Date</b>	7/24/2020		
<b>Physical Location</b>	127 MOUNTAIN RD		
<b>Map ID</b>	7A-132.010		
<b>Project Description</b>	SUBDIVIDE PARCEL INTO LOT 1A [0.13 ACRES] & LOT 1B [0.56 ACRES]		
<b>Owner</b>	HAROLD STEVENS & CAROL STEVENS 2010 FAMILY TRUST		
<b>Applicant</b>	HAROLD STEVENS & CAROL STEVENS 2010 FAMILY TRUST		
<b>Applicant Address</b>	PO BOX 1200 STOWE VT 05672		

**ACTIONS**

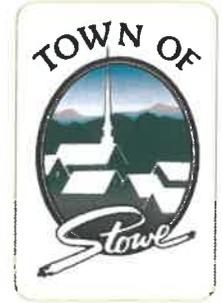
<b>Action Taken</b>	<b>Date</b>	<b>End of Appeal Period</b>	
DRB DECISION	10/2/2020	11/1/2020	DENIED WITHOUT PREJUDICE

*Sarah McShane*

Zoning Office



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



**PROJECT:** 6322

**SUBJECT PROPERTY:** 127 Mountain Rd (#7A-132.010)

**PROPERTY OWNER/APPLICANT:**

Harold B. Stevens & Carol D. Stevens 2010 Family Trust  
127 Mountain Road  
PO Box 1200  
Stowe, VT 05672

**APPLICATION:**

The Applicant/property owner, Harold B. Stevens & Carol D. Stevens 2010 Family Trust (herein referred to as the "Applicant"), requests final subdivision approval for a 2-lot subdivision involving a  $\pm 0.69$ -acre parcel (#7A-132.010). The Applicant proposes to subdivide the existing lot into two (2) parcels: Lot 1A being  $\pm 0.13$  acres [5,826 sf] and Lot 1B being  $\pm 0.56$  acres and containing the existing residence and law office building. The parcel is subject to a development agreement involving the Town of Stowe, Jed Lipsky and Annika Lipsky, and Harold B. Stevens and Carol Stevens as recorded in Book 672 Pages 167-172 in the Town of Stowe Land Records.

The subject parcel is located within the Village Commercial 10 (VC-10) zoning district and the Stowe Historic District Overlay (SHOD) and is served by Mountain Road, a Class 1 town highway. The application was reviewed by the Development Review Board under the Town of Stowe Subdivision Regulations (effective through July 16, 2012) and the Town of Stowe Zoning Regulations (effective October 30, 2018) for the purpose of final 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 final subdivision review was filed by Applicant Harold B. Stevens and received by the Zoning Director on July 24, 2020. 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 Board was scheduled for September 1, 2020 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 13, 2020. 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 September 1, 2020 with a quorum of the DRB present. No ex parte communications or conflicts of interests were reported, however Board member Diender made note that he had discussed the existing residence/law office building with the Applicant but did not discuss the application under review. The hearing was held remotely using 'Zoom' with no physical meeting space. Board members participating in the 9/1 review included: Drew Clymer, Tom Hand, Andrew Volansky, Peter Roberts, Chris Walton, Francis Aumand III, and Michael Diender.

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

- Harold B. Stevens, PO Box 1200, Stowe, VT 05672
- Harry Shepard, Town of Stowe DPW Director/Town Engineer

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

- Town of Stowe Development Application, dated 7/22/2020;
- Development Agreement as recorded in Book 672 Pages 167-172;
- 'Subdivision Survey of Lot 1' 127 Mountain Road prepared by Daniel Mulligan, State of Vermont Licensed Land Surveyor No 613, dated July 2020;
- Comments/Marked Site Plan from Harry Shepard of the Department of Public Works (DPW), (received 9/1/20).

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

The Applicant's request for final subdivision approval was reviewed by the Development Review Board (DRB) for conformance with applicable requirements including the following:

Town of Stowe Zoning Regulations (effective October 30, 2018)

- Section 2- Administration and Enforcement
- Section 5- Zoning Districts
- Section 6- Uses, Dimensional Requirements and Density

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

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

**DIMENSIONAL REQUIREMENTS:**

**1. Zoning District.**

- A. The subject parcel is located within the Village Commercial 10 (VC-10) zoning district and the Stowe Historic District Overlay (SHOD) as shown on the Official Town of Stowe Zoning Map.

**2. Lot Area, Lot Width.**

- A. The minimum lot size in VC10 is 10,000 sf. Lot Area is defined as *"The area or size of a lot, not including the land lying on the street side of the street line."*
- B. The minimum lot width in the VC-10 district is 60 ft. Lot width is defined as *"The width of a lot measured at right angles to its lot depth at the minimum front yard setback."*
- C. The Applicant proposes to subdivide the existing lot into two (2) parcels: Lot 1A being ±0.13 acres [5,826 sf] and Lot 1B being ±0.56 acres (24,393 sf).
- D. The parcel is subject to the terms of a Development Agreement involving the Town of Stowe and the adjacent Lipsky property. Per the Development Agreement (pg 2), the involved parcels "development parcel" shall constitute a single parcel of land for the purposes of compliance with the Town of Stowe regulations... as noted below.

1. The properties that are the subject of this agreement, consisting of the 5.02-acre Development Parcel, which includes the Lipsky Property, and the .71-acre Stevens Property, are and shall constitute a single parcel of land for purposes of compliance with the Town of Stowe regulations and ordinances now in effect or as they may be amended from time to time, including Zoning and Subdivision Regulations and utility ordinances. The parties agree that for the purposes of compliance with and application of Town regulations and ordinances, including Zoning and Subdivision Regulations, and utility ordinances, the Development Parcel and the Stevens Property shall continue to be regarded as a single parcel of land even if a portion thereof is conveyed to a separate owner and the buildings or condominium units within the buildings located on such property are conveyed to separate owners together with the land on which such buildings are located.

- E. The Applicant testified that since the Development Agreement treats the involved parcels [development parcel] as one, the proposed lot does not need to meet minimum lot size.

**Conclusion:** Based upon the above findings, the Board concludes the proposed subdivision does not conform to the minimum lot area requirement. However, since the Development Agreement clearly states that the involved parcels shall constitute a single parcel of land for the purposes of compliance of the Town of Stowe regulations and ordinances, the Board agrees with the Applicant and concludes that the proposed parcel is not required to meet the minimum lot area per the Development Agreement.

**SUBDIVISION REGULATIONS -SECTION 5.1 – GENERAL PLANNING STANDARDS:**

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. 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.
  - A. The Applicant proposes to subdivide the existing lot into two (2) parcels: Lot 1A being ±0.13 acres [5,826 sf] and Lot 1B being ±0.56 acres and containing the existing residence and law office building. The parcel is previously developed.
  - B. The proposed “in-fill” lot is located amongst previously developed parcels.
  - C. During the hearing, the Board heard testimony from Harry Shepard, Town Engineer/Director of Department of Public Works. Mr. Shepard testified that the development parcel contains congested utilities and water and sewer lines and that each property is required to have services that are connected to the municipal main. He reported the utilities and service lines for the proposed subdivided lot would need to be directed through a “maze” of existing utilities and service lines in order to connect to the municipal main. Mr. Shepard noted that under wastewater rules, there are separation distances and clearances that would need to be observed.
  - D. The Applicant provided a subdivision plat which appears to depict existing utilities, service lines, etc. but does not provide proposed engineering plans for the subdivided lot. Existing service lines are shown to run directly through the proposed Lot 1A conflicting with the proposed future building footprint.

- E. Mr. Shepard also reported that the development parcel contains an active watercourse that bisects the subject parcel. The watercourse drains 3 ½ acres of Cady Hill Forest. Mr. Shepard testified that deficiencies in existing drainage improvements have caused, and continue to cause, downstream drainage issues including eroding gravels and driveway materials onto Mountain Road, a Class 1 town highway.

**Conclusion:** Based upon the above findings, the Board concludes the Applicant did not meet their burden of providing sufficient evidence in the record that the proposed parcel can be used for the intended purposes without undue adverse impact on public health or safety, or the environment or, neighboring properties. While the Board recognizes that the parcel is subject to the terms of the Development Agreement and is unusual, nowhere in the Development Agreement does it exempt future development from the requirements of current subdivision regulations. Rather, paragraph #2 on page two of the development agreement specifically states *"Any further future development of the Development Parcel and/or Stevens Property shall be subject to approval under the Subdivision Regulations then in effect."*

Section 3.1(1) of the town subdivision regulations requires *"No subdivision of land shall be made, and no land in any subdivision shall be sold or offered for sale, and no street or utility construction shall be started until a subdivision plat, prepared in accordance with the requirements of these regulations, has been approved as per these regulations, and has been recorded in the office of the town clerk."* It is the Board's responsibility to review applications and determine if said application conforms to the applicable standards based on the information provided in the record. During the hearing, the Board heard testimony from the Town Engineer/Director of Department of Public Works that there are significant drainage and utility constraints and that the Applicant did not provide sufficient information to determine if the proposal satisfies the stated requirements. During the hearing, the Applicant argued that he was not proposing development of Lot 1A or any water/sewer connections, rather simply subdividing the parcel, and therefore is not required to provide detailed engineered plans. The Applicant reported that engineering plans would be provided when requesting to build on the parcel.

The Board disagrees and references paragraph #2 [page two] of the development agreement which specifically states, *"Any further future development of the Development Parcel and/or Stevens Property shall be subject to approval under the Subdivision Regulations then in effect."* While the Board recognizes that some of the subdivision standards applied to this application and conditional use standards that may be applied during the permitting of the future development of Lot 1A, are similar and/or duplicative, the Development Agreement does not exempt the Applicant from providing sufficient evidence that the application meets all applicable standards and requirements pertaining to the subdivision application under review. Although it may be possible for the proposed lot to be used for the intended purposes without undue adverse impact on public health or safety, or the environment or, neighboring properties, the Board is unable to positively draw that conclusion based on the information provided in the record.

- 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 Applicant proposes to subdivide the existing lot into two (2) parcels: Lot 1A being ±0.13 acres [5,826 sf] and Lot 1B being ±0.56 acres and containing the existing residence and law office building.
  - B. The parcel is located within the Village Commercial 10 zoning district amongst a mix of residential and commercial uses.
  - C. There are no mapped brooks, streams, water bodies, ground water resources and wetlands; prime agricultural soils, farmland resources and scenic meadowland; important forest resources; or aesthetic resources and scenic vistas documented on the parcel.

- D. Although not mapped, during the hearing the Town Engineer testified that the parcel contains an active watercourse that bisects the subject parcel and drains 3 ½ acres of Cady Hill Forest. The existing watercourse runs directly through the proposed building footprint on Lot 1A. The watercourse flows heavily off the hill and is intercepted by a deficient drainage element.
- E. No stormwater or other drainage improvements are proposed under this application.

**Conclusion:** Based upon the above findings, the Board concludes the Applicant did not meet their burden of providing sufficient evidence in the record that the proposed subdivision will not have an undue adverse impact natural and scenic features, most notably the active watercourse that bisects the property and runs directly through proposed Lot 1A. Again, while the Board recognizes that the parcel is subject to the terms of the Development Agreement and is unusual, nowhere in the Development Agreement does it exempt applications from the requirements of current subdivision regulations.

- 3. **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 DRB 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.
  - A. The Applicant proposes to subdivide the existing lot into two (2) parcels: Lot 1A being ±0.13 acres [5,826 sf] and Lot 1B being ±0.56 acres and containing the existing residence and law office building. The parcel is previously developed.
  - B. The parcel is located within the Village Commercial 10 zoning district amongst a mix of residential and commercial uses.
  - C. According to the ANR Natural Resources Atlas and Town of Stowe Town Plan Significant Wildlife Habitat & Natural Communities Map the parcel does not contain any wildlife habitat areas.

**Conclusion:** Based on the above findings, the Board concludes the proposal will not impact any identified significant Wildlife Habitat and Natural Communities.

- 4. **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.
  - A. The subdivision regulations define village areas as: *Area, Village: All areas within the VC, VR, MRV, MCR, LVC, and MC Zoning Districts.* The parcel is located in the VC-10 district, a village area.
  - B. The Applicant proposes to subdivide the existing lot into two (2) parcels: Lot 1A being ±0.13 acres [5,826 sf] and Lot 1B being ±0.56 acres and containing the existing residence and law office building. The parcel is previously developed.
  - C. The Applicant proposes an “in-fill” lot amongst previously developed parcels containing a mix of office, residential, and lodging uses.

- D. The parcel is located within the Village Commercial 10 zoning district amongst a mix of residential and commercial uses. The subject parcel is in close proximity to the village and existing pedestrian sidewalks and the Stowe Rec Path.

**Conclusion:** Based on the above findings, the Board concludes the proposal is in conformance with Section 5.1(4), Historic Resources and Community Character and has been designed to reflect traditional village settlement patterns.

- 5. **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.

- A. The subject parcel has access to Mountain Road, a Class 1 town highway, via existing 25' wide easement to access Cluster # 2 (Law Centre of Stowe LLC) and Stevens Lots 1 & 2. During the hearing the Applicant testified that the easement is 50' wide where it meets Mountain Road and reduces in width as it enters the parcel and serves the proposed lot.
- B. As shown on the provided plan, Lot 1B will reserve a right-of-way across Lot 1A over shared gravel access drive. Lot 2 also maintains a right-of-way access over existing drive on Lot 1A & 1B to be shared in common.

**Conclusion:** Based on the above findings, the Board concludes the proposed subdivision does not involve any reserved strips as noted under Section 5.5.

- 6. **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.

- A. The Applicant proposes to subdivide the existing lot into two (2) parcels: Lot 1A being ±0.13 acres [5,826 sf] and Lot 1B being ±0.56 acres and containing the existing residence and law office building. The parcel is previously developed.
- B. The Applicant proposes an “in-fill” lot amongst previously developed parcels. The lots contain existing landscaping and mature trees.
- C. No additional landscaping is proposed.
- D. The Applicant testified that he is not proposing development of Lot 1A but reported his intention to construct an office building which would be applied for under a separate application.

**Conclusion:** Based upon the above findings, the Board concludes the Applicant did not meet their burden of providing sufficient evidence that no additional landscaping is required to provide visual screening of the proposed subdivision. While the Board recognizes that screening and landscaping would also need to be reviewed for the future commercial development of the lot, landscaping and screening is also a required general planning standard.

- 7. **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.

- A. No pedestrian improvements are proposed under this application.
- B. Public sidewalks exist along Mountain Road and connect to the village. The Stowe Rec Path is within close proximity.

**Conclusion:** Based on the above findings, the Board concludes the proposed lot will have adequate access to existing pedestrian improvements.

8. **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.

- A. Lot 1A is not proposed to be developed under this application.
- B. The proposed subdivision will have no impact on traffic.

**Conclusion:** Based on the above findings, the Board concludes the proposal will not create unreasonable traffic congestion or cause unsafe conditions regarding use of existing roadways

9. **Section 5.1(9) – Municipal Facilities:** The Applicant must demonstrate that the proposed subdivision will not create an undue burden on municipal facilities or create an unreasonable demand for municipal services.

- A. Municipal water and sewer serves this portion of town.
- B. The parcel is served by a Class 1 town-highway.
- C. 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.
- D. Dave Kresock of Stowe Electrical Department provided the following comments:  
*"Project #6322: Property owner's electrician will need to provide load data for new building so SED can determine if existing transformer is suitable or will need to be upgraded."*
- E. As noted above, during the hearing, the Board heard testimony from Harry Shepard, Town Engineer/Director of Department of Public Works. Mr. Shepard testified that the development parcel contains congested utilities and water and sewer lines and that each property needs to have services that are connected to the municipal main. The utilities and service lines for the proposed subdivided lot would need to be directed through a "maze" of existing utilities and service lines in order to connect to the municipal main. Mr. Shepard noted that under wastewater rules, there are separation distances and clearances that would need to be observed.
- F. Mr. Shepard also reported that the development parcel contains an active watercourse that bisects the subject parcel. The watercourse drains 3 ½ acres of Cady Hill Forest. Mr. Shepard testified that deficiencies in existing drainage improvements have caused, and continue to cause, downstream drainage issues including eroding gravels and driveway materials onto Mountain Road- a Class 1 town highway.
- G. No additional municipal comments were received.
- H. The Applicant did not provide information engineering plans pertaining to the future development of Lot 1A.

**Conclusion:** Based upon the above findings, the Board concludes the Applicant did not meet their burden of providing sufficient evidence in the record that the proposed subdivision will not create an undue burden on municipal facilities or create an unreasonable demand for municipal services. Although it is

possible that municipal services could be provided without undue burden, the Applicant failed to provide sufficient information as requested by the Board.

10. **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.

A. The proposed lot is of regular polygon shape.

**Conclusion:** Based on the above finding, the Board concludes the proposed lot configuration is of regular shape, avoids flag and elongated lots, and contains sufficient buildable area.

11. **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. No building zone is proposed or shown on the proposed subdivision plan.

B. The parcel is subject to a Development Agreement involving the Lipsky property and the Stevens Property as recorded in Book 672 Pages 167-172 in the Town of Stowe Land Records.

C. As noted within the Development Agreement:

a. The Town will determine compliance with requirements regarding the distance structures must be set back from property lines on the basis of the perimeter boundaries of the entire property subject to this Agreement as set forth on the above Plan.

D. The proposed lot is an interior lot which does not contain any lands on the outer perimeter of the involved parcels subject to the Development Agreement. Given the proposed lot is an interior lot, no setbacks are required under the Development Agreement.

**Conclusion:** Based on the above findings, the Board concludes the proposal is subject to a Development Agreement which governs the setbacks and future development of the involved parcels. As such, no building zone is proposed or required under the Development Agreement.

12. **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.

A. Comments from the Fire Chief were requested.

B. No changes to existing fire protection facilities or accesses are proposed.

C. The proposed parcel will have access to Mountain Road, a Class 1 town highway, via an existing 25' wide easement which provides access to Cluster # 2 (Law Centre of Stowe LLC) and Stevens Lots 1 & 2.

**Conclusion:** Based on the above findings, the Board concludes no changes to existing fire protection facilities or driveway accesses are proposed.

13. **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.

- A. A building footprint is shown on Lot 1A but is not being requested or reviewed under this application. No additional development plans are noted in the application materials.
- B. During the hearing, the Applicant testified that he is seeking the right to subdivide the parcel for the purpose of title and conveying interest in the property. The proposed development of Lot 1A will be sought under a separate application.

**Conclusion:** Based on the above findings, the Board concludes the Applicant provided the intended use of Lot 1A, a building containing an office/residence however failed to provide sufficient evidence that the proposed subdivision conforms with applicable subdivision requirements.

14. **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.

- A. The proposed parcel will have access to Mountain Road, a Class 1 town highway, via an existing 25’ wide easement which provides access to Cluster # 2(Law Centre of Stowe LLC) and Stevens Lots 1 & 2.
- B. During the hearing the Applicant testified that the subject lot has covenants with Lot 2 regarding uses and shared maintenance. When subdivided Lot 1A would also be subject to the Development Agreement.
- C. DPW Director testified that the development parcel contains an active watercourse that bisects the subject parcel and that deficiencies in existing drainage improvements have caused, and continue to cause, downstream drainage issues including eroding gravels and driveway materials onto Mountain Road.
- D. The Applicant did not provide any assurances on how existing stormwater improvements on the development parcel are maintained by common owners.

**Conclusion:** Based upon the above findings, the Board concludes the Applicant did not meet their burden of providing sufficient evidence in the record that the shared improvements, including access and stormwater improvements, will be adequately maintained in accordance with Section 5.1(14).

15. **Section 5.2 – Prominent Hillside and Ridgelines:**

- A. The subject lot is not within the RHOD.

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

16. **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.

- A. The Applicant proposes to subdivide the existing lot into two (2) parcels: Lot 1A being ±0.13 acres [5,826 sf] and Lot 1B being ±0.56 acres and containing the existing residence and law office building. Lot 1B is previously developed.
- B. No additional development of either parcel is proposed under this application.

**Conclusion:** The provision does not apply.

17. **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. Section 5.3(3) further requires that *"All access shall meet the requirements of Section 3.1 (Access Management and Frontage Requirements) of the Stowe Zoning Regulations."*

- A. The Applicant proposes to subdivide the existing lot into two (2) parcels: Lot 1A being ±0.13 acres [5,826 sf] and Lot 1B being ±0.56 acres and containing the existing residence and law office building. The parcel is previously developed.
- B. The proposed parcel will have access to Mountain Road, a Class 1 town highway, via an existing 25' wide easement which provides access to Cluster # 2 (Law Centre of Stowe LLC) and Stevens Lots 1 & 2.
- C. The proposed lot will utilize existing access improvements. No road or driveway improvements are proposed.
- D. The Development Agreement does not address access or road improvements. Under Section 3.1 of the town zoning regulations, accesses which serve 4 or more dwelling units, or lots are required to have a 50' right-of-way and are defined as a 'street' or 'road'.
- E. The easement serving the existing and proposed lot is 25'. During the hearing, the Applicant testified that the easement is 50' wide where it meets Mountain Road and reduces in width as it enters the parcel and serves the proposed lot.

**Conclusion:** Based upon the above findings, the Board concludes the Applicant did not meet their burden of providing sufficient evidence in the record that the proposed subdivision conforms to Section 5.4 – Road Standards and Coordination with Public Highways.

18. **Section 5.5 – Utilities and Stormwater Management:**

- A. Section 5.5 requires *"All subdivisions shall make adequate provisions for stormwater and required utilities"* and further *"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."*
- B. The Applicant proposes to subdivide the existing lot into two (2) parcels: Lot 1A being ±0.13 acres [5,826 sf] and Lot 1B being ±0.56 acres and containing the existing residence and law office building.

- C. The Applicant proposes to utilize the existing access to serve the lot. No increases in impervious surfaces are proposed under this application.
- D. No stormwater improvements are proposed under the application.
- E. During the hearing, DPW Director testified that the development parcel contains an active watercourse that bisects the subject parcel and that deficiencies in existing drainage improvements have caused, and continue to cause, downstream drainage issues including eroding gravels and driveway materials onto Mountain Road.
- F. As noted above, during the hearing, the Board heard testimony from Harry Shepard, Town Engineer/Director of Department of Public Works. Mr. Shepard testified that the development parcel contains congested utilities and water and sewer lines, and that each property needs to have services that are connected to the municipal main. The utilities and service lines for the proposed subdivided lot would need to be directed through a “maze” of existing utilities and service lines in order to connect to the municipal main- none of the engineering details were provided by the Applicant. Mr. Shepard noted that under wastewater rules, there are separation distances and clearances that would need to be observed.
- G. Existing service lines are shown to run directly through the proposed Lot 1A conflicting with the proposed future building footprint.

**Conclusion:** Based upon the above findings, the Board concludes the Applicant did not meet their burden of providing sufficient evidence in the record that the proposed subdivision conforms to Section 5.5. During the hearing, the Board heard testimony from the Town Engineer/Director of Department of Public Works that there are significant drainage and utility constraints and that the Applicant did not provide sufficient information to determine if the proposal satisfies the stated requirements. The Applicant argued that since he was not proposing development of Lot 1A or any water/sewer connections he is not required to provide engineered plans. He reported that detailed plans would be provided when requesting to build on the parcel. The Board disagrees and again references paragraph #2 [page two] of the development agreement which specifically states, “*Any further future development of the Development Parcel and/or Stevens Property shall be subject to approval under the Subdivision Regulations then in effect.*” While the Board recognizes that some of the subdivision standards and conditional use standards are similar and/or duplicative, the Development Agreement does not exempt the Applicant from providing sufficient evidence that the application meets all applicable standards and requirements pertaining to the subdivision application under review. Further Section 4.1(1)(f & k) specifically require plans to show the existing and proposed utilities and stormwater improvements.

**DECISION**

The Development Review Board hereby denies (6-0-1) without prejudice the Applicant’s request for final subdivision approval for the proposed 2-lot subdivision of (Project 6322) of parcel #7A-132.010 as described in the application dated 7/22/2020 and associated supporting materials pursuant to the following applicable provisions of the Town of Stowe Subdivision Regulations (effective July 16, 2012):

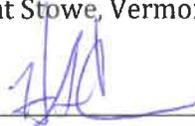
1. The Applicant failed to provide documentation and assurances that the proposed subdivision conforms to General Planning Standards: Section 5.1(1) – Character of Land for Subdivision; Section 5.1(2) – Natural and Scenic Features; Section 5.1(6) – Screening and Landscaping; Section 5.1(9) – Municipal Facilities; Section 5.1(14) – Private Enforcement Mechanisms; Section 5.4 – Road Standards and Coordination with Public Highways; and Section 5.5 – Utilities and Stormwater Management.

Voting to deny: Drew Clymer, Tom Hand, Andrew Volansky, Chris Walton, Francis Aumand III, and Michael Diender.

Voting in favor: None

Abstain: Peter Roberts

Dated at Stowe, Vermont this the 2<sup>nd</sup> day of October 2020

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.