**City of Rochester Planning Board**

Monday December 19, 2016

City Council Chambers

31 Wakefield Street, Rochester, NH 03867

*(These minutes were approved on January 9, 2017)*

*Members Present*

Dave Walker, *Vice Chair*

Matthew Kozinski, *Secretary*

Rick Healey

Robert Jaffin

Robert May

Mark Sullivan

Tom Willis

*Members Absent*

Tim Fontneau, excused

Deborah Shigo, excused

Nel Sylvain, excused

*Alternate Members Present*

James Gray – arrived at 7:11p.m.

Staff: James Campbell, Director of Planning & Development

 Crystal Galloway, Planning Secretary

(These are the legal minutes of the meeting and are in the format of an overview of the meeting. A recording of the meeting will be on file in the City clerk’s office for reference purposes. It may be copied for a fee.)

Mr. Walker called the meeting to order at 7:01p.m.

The Planning Secretary conducted the roll call.

**III. Seating of Alternates**

The alternate was not present for the meeting.

**IV. Communications from the Chair**

There were no communications from the Vice Chair.

**V. Opening Discussion/Comments**

 **A. Public Comment**

 No one from the public present to speak.

**B. Discussion of general planning issues**

There were no issues to be discussed.

**VI. Approval of minutes**

*A motion was made by Mr. Jaffin and seconded by Mr. Healey to approve the November 21, 2016 amended meeting minutes. The motion carried unanimously.*

*A motion was made by Mr. Healey and seconded by Mr. Kozinski to approve the December 5, 2016 meeting minutes. The motion carried unanimously.*

**VII. Continued Applications**

 **A. Caler & Real Estate Advisors Inc., 151 Franklin Street & 24 Jeremiah Lane - LLR**

Christopher Berry of Berry Surveying & Engineering said they have not made any changes to the plan since the time they were before the Board. Mr. Berry said this lot line revision is attached to the larger development for Jeremiah Lane. He said the Board did not decide to grant the Conditional Use Permit at the last meeting and they would ask that the Board discuss and finalize that portion of the application as it pertains to how the driveway access for the remaining lot will be taken. He said access needs to be taken off Portland Street and not off the new Evelyn Drive as proposed in the subdivision as it would be the safest position for that particular house.

Mr. Walker opened the public hearing. No one was present to speak so he brought the discussion back to the Board.

Mr. Campbell said staff recommends not approving the application at this time because the lot line revision and the subdivision for Jeremiah Lane go hand in hand. He went on to say if the Board would like, staff could draft a notice of decision for the next meeting that would make it contingent upon the approval of the subdivision.

There was a brief discussion between the Board members to clarify what exactly that would mean however, there were no objections.

Mr. Campbell said he will have the draft notice of decision for the next meeting on January 9, 2017.

**B. Real Estate Advisors Inc., 24 Jeremiah Lane**

Mr. Berry said they are hoping to get through a number of highly technical comments while at the meeting. He said with the comments from the Board it will allow them to finalize staff comments, finalize any revisions that need to be made, as well as drainage and traffic in order to present a plan that is in hopes an approvable project back to the Board.

Mr. Berry said the biggest discussion that took place at the last meeting was access into the project from Jeremiah Lane. He said being part of the original process to get Jeremiah Lane accepted as a city street he knew the plan note added to the plan by the members of the Planning Board at that time. The Board at that time stated they didn’t want a developer coming in thinking they would utilize Jeremiah Lane as its main access point; because it’s not wide enough, and the surfacing is not proper.

Mr. Berry said the note cautioned land owners that have frontage on Jeremiah Lane if looking to subdivide.

Mr. Berry said there was a proposal of a gate to allow access in the event of an emergency however they have been told by staff it would possibly be illegal and certainly not preferred.

He went on to reference a memo provided by the City Attorney which sights Ordinance 15.9 saying the ordinance is applicable to the developer and cannot be waived by the Planning Board. Mr. Berry said what is not mentioned in the Attorney’s review of Section 15.9 is that any new development trying to connect to an existing street that infrastructure be brought up to subdivision regulation standards. He said they disagree with the City Attorney’s opinion that the Board cannot weigh in on infrastructure improvements on Jeremiah Lane.

Mr. Berry said after discussions with the applicant and the Chief Planner they have submitted an application for a waiver for the 1200 foot roadway length restriction. He said they are trying to give the Board another avenue to allow the applicant to move forward with the project. Mr. Berry said there are other ways around road length that doesn’t require a waiver; and showed a plan which eliminated the cul-de-sacs and went to a loop road which he said is allowed under the subdivision regulations; but added that it undermines all the work that has been done over the last several months.

Mr. Walker opened the public hearing.

Joyce Metayen of 21 Jeremiah Lane said she is representing the street when she says they don’t want Jeremiah Lane used. She said there are four houses currently on Jeremiah Lane and if another 60 to 70 homes, that’s a lot of added traffic and said it is unacceptable.

Jim Benton of 579 Portland Street said he had a copy of the TRG summary from July as well as a copy from Berry Surveying & Engineering’s response from September. He said it really isn’t clear if there will be a phasing plan as previously stated. Mr. Benton said several of the proposed house lots will affect the wetland buffer and pointed out that the TRG asked that those lots be eliminated or changed in size.

Mr. Benton went on to ask about the maintenance of rain gardens and what rights he would have as a property owner. He said every spring there are issues with flooding and is concerned that the proposed 24” culvert won’t be enough.

Mr. Benton went on to talk about the right-of-way and said having it cross properties will not work. He said for at least one of the houses, the owner won’t be able to park a car in front of the garage because the right-of-way goes right in front of where the house is. He added that it just doesn’t make sense.

Al Benton of 585 Portland Street said he was there representing Leo and Evelyn Huppey. He said the residents of Jeremiah Lane spent over $2,000.00 to represent them when the City took over Jeremiah Lane and the “hammer head” at the end. He said he has asked numerous times where the hammer head is and what it looks like and he hasn’t gotten an answer yet. Mr. Benton went on to say he’s been told that the agreement with the city is that there is to be no development if Jeremiah Lane stays the way it is.

He asked that Mr. Campbell give him a copy of the home owner’s association documents, and asked if it’s a 501C3, and how much power they will have. Mr. Benton said he spoke to the Huppey’s again and they are adamant about keeping the right-of-way as it has always been since the 1980’s and they expect to have the 30’ right-of-way without any interference from the various homes and lots.

There was no one further from the public present to speak; Mr. Walker brought the discussion back to the Board.

Mr. Walker read the memo from the City Attorney, which is on file in the Planning Department. Mr. Campbell said staff has always discussed using Jeremiah Lane as a second means of egress and if so it would need to be brought up to city standards. Mr. Campbell went on to say the City Attorney has issued the opinion and he believes the road needs to be brought up to city standards as well. He said his discussion with the applicant earlier in the day centered around the Board entertaining a waiver from the 1,200 foot limit for the cul-de-sac. Mr. Campbell said if the Board was to grant that waiver the applicant would be willing to not use Jeremiah Lane for the subdivision.

Mr. Sullivan asked how many feet they would be looking at. Mr. Berry said it would be an additional 1000 feet. Mr. Walker said he believes a project of this size with 2,200 feet of new road needs to have 2 access points. Mr. Berry said that’s not what the rule says; he said it states a cul-de-sac cannot be longer than 1,200 feet.

Mr. Jaffin said the Board has learned from past problems and is in full agreement with Mr. Walker; and went on to say he is less comfortable with the project each time it comes before the Board.

Mr. Berry said the Board has the Attorney’s opinion on the matter; however the Board has the power to make its own decision. He went on to say he asked for the waiver so there is a way to move forward with the project. Mr. Walker informed Mr. Berry that the Board is not in the habit of going against the City Attorney’s opinion on a matter.

Mr. Willis said if there were to be a vote on the project as it is now he would vote no. He said the reasons are because there is only one point of access; the only proposed access to the development comes out on one of the most dangerous intersections in the city; traffic will be increased by roughly 1/3; the area in 2006 and 2007 was a major source of flooding and flooding downstream on Franklin Street and Portland Street.

Mr. Gray said if a waiver has been requested then the Board needs to take a formal vote. Mr. Berry asked that the Board not vote on the waiver yet. He said the applicant is hearing what the Board has for concerns.

Mr. Healey said according to the Attorney General the Board has no authority to approve the waiver. He went on to say if the development is redesigned the applicant may be able to find a way around the waivers.

Mr. Berry asked for a continuation in order to mitigate some of the questions the Board has.

*A motion was made by Mr. Healey and seconded by Mr. Willis to continue the application to the February 6, 2017 meeting. The motion carried unanimously.*

**VIII. New Applications**

 **A. Farmington Associates, LLC, 60, 68, 76 Farmington Road - Amendment**

Ken Mavrogeorge of Tighe & Bond said he is representing Farmington Associates, LLC. He said they are seeking approval to modify the project to include phasing; the first would be to allow cutting of approximately 2.3 acres of trees. He said it would be out of DES, EPA, and the Army Corp of Engineers jurisdictional areas. Mr. Mavrogeorge said they are simply looking to cut some trees; they will leave the stumps in the ground and there will not be any earth removal at this time.

Mr. Mavrogeorge went on to say a portion of the cutting would occur across the DOT right-of-way and said they will need approval in order to cut.

Mr. Walker opened the public hearing. No one was present to speak so he brought the discussion back to the Board.

Mr. Campbell said a condition of approval would be that the applicant provide a letter from the National Heritage Bureau as well as not allowing the applicant to cut within the NHDOT right-of-way until approval is granted from NHDOT.

Mr. Willis asked why they are looking to phase the project. Doug Richardson of Waterstone Retail said they have a major national cinema as well as a major national restaurant that are willing to come to the site. He said in order to show the site in January it needs to be cleared so the prospective tenant is able to see the visibility.

Mr. Campbell asked where the access would be for the cutting phase. Mr. Mavrogeorge said they will be using the driveway for the existing buildings.

*A motion was made by Mr. Kozinski and seconded by Mr. May to approve the amendment with the conditions as stated. The motion carried unanimously.*

**IX. Release of Surety**

 **A. Jarvis – Map 215 Lot 59**

City Engineer, Owen Friend-Gray said the project has been completed and they are asking for the $19,631.00 of surety to be returned.

*A motion was made by Mr. Sullivan and seconded by Mr. Healey to release the $ 19,631.00 plus interest. The motion carried unanimously.*

 **B. Family Dollar – Map 210 Lot 48&50**

Mr. Friend-Gray said the project has been complete for a while however; they had a small punch list of items to take care of such as landscaping and removing the silt fencing. He said everything has now been completed and they are requesting the surety be released.

*A motion was made by Mr. Sullivan and seconded by Mr. Jaffin to release the $7,200.00 plus interest. The motion carried unanimously.*

**X. Review of November 2016 Surety and Inspections**

Mr. Campbell told the Board there hasn’t been any changes to the surety. No one from the Board had any questions or comments.

**XI. Other Business**

No one had any other business to discuss.

**XII. Adjournment**

*A motion was made by Mr. Kozinski and seconded by Mr. Healey to adjourn at 8:19 p.m. The motion carried unanimously.*

Respectfully submitted,

Crystal Galloway,

*Planning Secretary*