

175.00  
30.24  
205.24 PL CK 4487

**APPLICATION FOR APPEAL  
TO: BOARD OF ADJUSTMENT  
CITY OF ROCHESTER**

**DO NOT WRITE IN THIS SPACE**

CASE NO. 2015-14

DATE FILED 4-15-15

ZONING BOARD CLERK [Signature]

Phone No (603) 964-7151

Name of applicant Westridge Building and Development Corp.

Address P.O. Box 863, Rye, NH 03870

Owner of property concerned Raaf-Mitchell Anchor Club Real Estate of Rochester  
(if the same as applicant, write "same") NH LLC

Address 312 South Road Brentwood, NH 03833  
(if the same as applicant, write "same")

Location of property 66 Rochester Hill Road

Map No. 239 Lot No. 30 Zone R-2

Description of property 50 1587 250  
(give length of lot lines frontage side rear lines)

Proposed use or existing use affected Proposed 40 unit multi-family  
townhouse development.

**APPEAL OF AN ADMINISTRATIVE DECISION**

The undersigned alleges that an error has been made in the decision determination or requirement

of Rochester Planning Board on 3-16-15  
name of enforcement officer date

to See Administrative Appeal in relation to Article See Attached  
Attached

Section Attached of the Zoning Ordinance and hereby appeals said decision.

Signed Anthony R. Charamita, President  
(Applicant)

# The Law Office of Scott E. Hogan

66 Lee Road  
P.O. Box 33  
Durham, New Hampshire 03824

Phone: 603-969-1183

hoganlaw@comcast.net

Fax: 603-659-9092

## APPEAL OF ADMINISTRATIVE DECISION PURSUANT TO RSA 676:5

TO: Rochester Zoning Board of Adjustment

FROM: Westridge Building & Development Corp.,  
74 Rochester Hill Road, Rochester, NH 03867  
P.O. Box 863, Rye, NH 03870

BY: Scott E. Hogan, Esq.

DATE: April 15, 2015

RE: March 16, 2015 Planning Board Approval of Proposed Indian Ridge  
Development (Quantum Real Estate Group, LLC), 66 Rochester Hill Road, Map  
239 Lot 30

### Nature of the Appeal

On March 16, 2015 the Rochester Planning Board granted approval to the proposed Indian Ridge Development. That approval violates the Rochester Zoning Ordinance in the ways enumerated below. Each of these issues was presented to the Planning Board before it granted approval.

### Violations of the Zoning Ordinance

The subject lot has only 50 feet of road frontage, where 100 feet is required by the Zoning Ordinance. This issue was raised to the Planning Board, but no documentation was produced of any variance relief obtained from the Rochester Zoning Board of Adjustment for this condition.

Chapter 42 - the Conservation Overlay District requires a buffer of 50 feet to the edge of jurisdictional wetlands consisting of poorly drained soils (42.12 c). Wetlands less than ½ acre in size are exempt from the Conservation Overlay, District (42.12 e). Buffers are applied irrespective of lot lines (42.12 g) according to the zoning. Wetlands consisting of very poorly drained soils shall not count towards density requirements (42.12 n). Since it appears that

wetlands exist on the property immediately adjacent to the abutting property line, uplands located on the abutting property should be encumbered by the 50 foot buffer according to sections 42.12 c and 42.12 g of the Conservation Overlay District.

The density or number of dwelling units has been calculated irrespective of very poorly drained soils. Rochester Zoning Ordinance Chapter 42.2 b.165 and 166 as well as 42.12 n. prohibit very poorly drained soils from being used to fulfill the required minimum land area per dwelling unit. Chapter 42.12 f.7. states "Very poorly drained soil" as defined High Intensity Soil Maps for New Hampshire Standards sponsored by the Society of Soil Scientist of Northern New England Special Publication No. 1, Sept. 2002. Instead of using the prescribed criteria by the ordinance the applicant elected to perform a Site Specific Soil Survey. This was performed in accordance with the "Society of Soil Scientist of Northern New England Special Publication No. 3. Site Specific Soil Mapping Standards for New Hampshire and Vermont December 2004". Therefore, High Intensity Soil Mapping of the property is needed to determine if there are any very poorly drained soils. These soils, if existing, must be located and excluded from any density calculations.

Supplemental proposed parking areas do not conform to the Rochester Zoning Ordinances Chapter 42.5 b.2 A and C. In accordance with these regulations, parking areas shall not be located forward of the front façade of any building and shall only be located in the side or rear. Currently all visitor spaces on the proposed plan show parking areas forward of each proposed building façade. The additional required resident parking spaces are also in the front of each building façade. Full screening from abutters of all parking areas is also required and not depicted on the plan.

Conditional Use Approval is being sought by the applicant to construct a sewer line bisecting the entire length of the sites' wetlands. The City of Rochester Chapter 42.12 Conservation Overlay District i. provides for this. However, specific criteria must be met before granting such approval. It must be demonstrated by the applicant that "That there is no feasible alternative route....." and that "Economic advantage is not the sole reason...". Although it has been realized that the Rochester Hill Road Sewer Line is near or at capacity the applicant has not presented a feasibility study of upgrading the Rochester Hill Road Sewer line to accommodate the proposed increase in flow the applicant is proposing. Upgrading the Rochester Hill Road sewer line would benefit the community and other property owners that do not have access to the "rail road sewer line". Therefore, it can only be concluded that the applicant is proposing this disruption of wetlands through Conditional Use Approval for expediency and economic advantage which is specifically prohibited in granting Conditional Use Approvals.

## CONCLUSION

For the reasons described above, the March 16, 2015 Planning Board approval violates the Rochester Zoning Ordinance, and must be reversed.

Respectfully submitted,



Scott E. Hogan, Esq.

66 Lee Road

P.O. Box 33

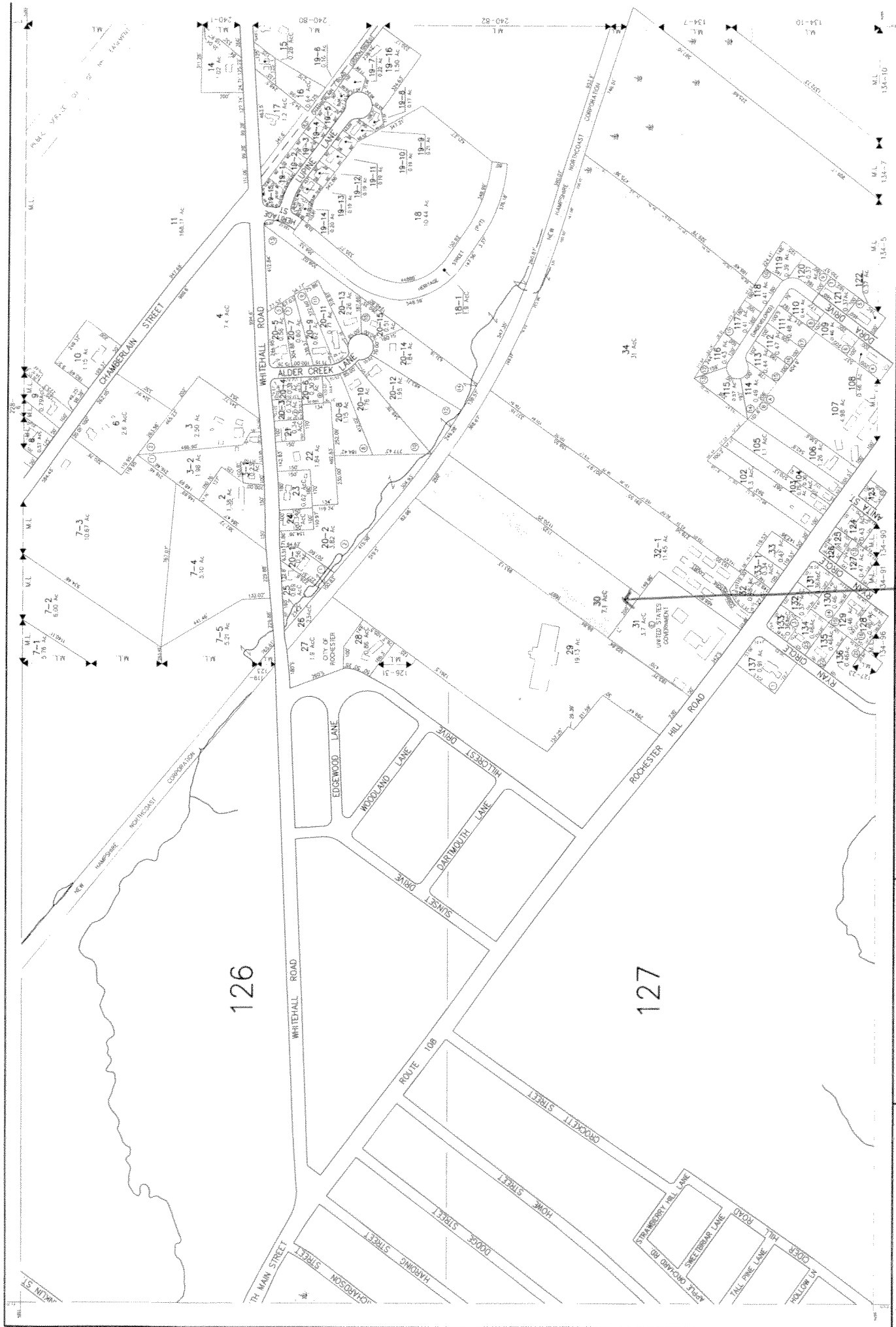
Durham, NH 03824

603-969-1183

[Hoganlaw@comcast.net](mailto:Hoganlaw@comcast.net)

NH Bar ID#: 10542





THIS MAP IS FOR ASSESSMENT PURPOSES IF IS NOT VALID FOR LEGAL DESCRIPTION OR CONVEYANCE	THE HORIZONTAL DATUM IS THE NEW HAMPSHIRE STATE PLANE COORDINATE SYSTEM	APRIL 28, 1990
		PHOTOGRAPHY DATE
		JUNE 30, 1992
		COMPLETION DATE

**CAI Technologies**  
10000 W. 16th Ave. Suite 200  
Denver, CO 80202  
Tel: 303.751.1000  
Fax: 303.751.1001  
E-Mail: [info@cai.com](mailto:info@cai.com)  
Web: [www.cai.com](http://www.cai.com)

**LEGEND**

AREA SURVEYED	AC
AREA CALCULATED	ACC
RESIDING DIMENSION	100'
SCALD DIMENSION	100'S
MATCH LINE	M.L.
WATER	WATER

ESCAPE PROPOSED  
SUBSTATION LOT  
BUILDING  
RIGHT OF WAY  
COMMON OWNERSHIP  
WETLANDS

PROPERTY MAPS  
**ROCHESTER**  
NEW HAMPSHIRE

INDEX	DIAGRAM	MAP NO.
	239	





**PROPERTY LOCATION**  
No 66 Alt No Direction/Street/City  
ROCHESTER HILL RD ROCHESTER

**OWNERSHIP**  
Owner 1: RAAF MITCHELL ANCHOR CLUB REAL  
Owner 2: ESTATE OF ROCHESTER NH LLC  
Owner 3:  
Street 1: 312 SOUTH RD  
Street 2:

**PREVIOUS ASSESSMENT**  
Tax Yr Use Cat Bldg Value Yrd Items Land Size Land Value Total Value Asses'd Value Notes Date  
2014 342 FV 94,300 6,700 7.1 63,800 164,800 164,800 Year End Roll 9/29/2014  
2013 342 FV 131,600 6,700 7.1 63,800 202,100 202,100 Year End Roll 9/4/2013  
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**SALES INFORMATION**  
Grantor Legal Ref Type Date Sale Price V Tst Verif Assoc PCL Value Notes  
CARBOL L MICHAEL 3068-267 1 9/15/2004 250,000 No No 4  
DOUGLASS CLYDE 1354-370 1 11/16/1987 225,000 No No 4  
DOUGLAS NEILLIE 905-286 2 5/26/1972 Fam/Friends No No 4

**ACTIVITY INFORMATION**  
Date Result By Name  
1/29/2014 CORRECTION RL RUTH  
10/30/2009 MEAS-INSPCTD TM TOM  
12/19/2005 OWN ADD CHG VW VIRGINIA  
9/24/2004 DEED CHANGE VW VIRGINIA

**PREVIOUS ASSESSMENT**  
Parcel ID 0239-0030-0000  
Total Card 94,300 6,700 7.1 63,800 164,800  
Total Parcel 94,300 6,700 7.1 63,800 164,800  
Source: (Market Adj) Cost Total Value per SQ unit (Card): 87.61 (Parcel): 87.61

**IN PROCESS APPRAISAL SUMMARY**  
Use Code Building Value Yard Items Land Size Land Value Total Value  
342 94,300 6,700 7.1 63,800 164,800

**Legal Description**  
Entered Lot Size  
Total Land: 7.1  
Land Unit Type: AC

**USER ACCT**  
27778  
GIS Ref  
GIS Ref  
Insp Date

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**City of Rochester Planning Board**  
**Monday March 2, 2015**  
**City Council Chambers**  
**31 Wakefield Street, Rochester, NH 03867**  
*(These minutes were approved on March 16, 2015)*

**C. Quantum Real Estate Group, LLC, 66 Rochester Hill Road**

FX Bruton said he is representing Quantum Real Estate Group, LLC. He went on to say they are proposing 40 townhouse style units that they brought before the Board in September as a preliminary site plan. Attorney Bruton said they took the comments from that meeting and made the changes to the site plan. He went on to say the project went before the Conservation Commission for the conditional use permit at which time the abutter stated he had some concerns regarding the wetlands and the Conservation Commission thought it would be a good idea to have a third party soil scientist review the property.

Bob Stowell of Trittech Engineering explained the layout is the same as proposed in September, and they have been to TRG 3 more times since then. He said there had been an issue with the sprinkler system and how it would be separated from the main water supply, but that has been worked out with the fire department. Mr. Stowell went on to explain the elevations and said they worked with City Staff regarding the look of the buildings.

NH Certified Wetlands Scientist Thomas Sokoloski of Schauer Environmental Consultants, LLC told the Board he reviewed the areas not delineated earlier and explained to the Board the areas he took samples from and investigated. He went on to say the methodologies require the presence of indicators for the three parameters: hydric soils, hydrophytic vegetation and evidence of hydrology at or near the surface for 14 days during the growing season need to be present. Mr. Sokoloski said overall the majority of the vegetation on site typically grows in upland rather than wetland settings. He said he also found a large amount of bittersweet which is not found in wetland areas. He went on to explain all 12 soil probes conclusively exhibited characteristics of non-hydric soils, explaining poorly drained soil would be black or very dark brown mineral surface layers underlain by gray subsoil layers. He said most of the subsoil layers observed in the 12 probe locations had bright colors which indicate that they do not experience extended periods of saturation.

Mr. Sylvain opened the public hearing.

Attorney Jerry Grossman stated he was there representing Frank Chiaramitaro who owns the abutting property. Attorney Grossman said his client isn't against the project he just has concerns such as wetland and wetland buffer delineations; incomplete and potentially inaccurate density calculations; non-conformance of parking areas; no proposed recreation areas or facilities; fire safety and municipal water supply; inadequate side line buffers to abutting property; flow of untreated storm water to abutting property; unsubstantiated request for wetlands disruption; and inadequate and inappropriately located snow storage locations.

Mr. Sylvain said there are serious issues. He went on to say the Board will need time to review the materials given by both the applicant and the abutter.



Mr. Sylvain stated a lot of the issues brought up by the abutter have been addressed by staff. Mr. Leonard suggested both Attorneys' review the material.

Mr. Willis asked if the units would be condo's with owners or rentals. Mr. Stowell said they will be both, it would depend on the economy but they will be starting out as rentals. Mr. Willis asked if there will be a manager on site. Mr. Stowell said no, they will be using a management company in town.

Mr. Sullivan said there had been 66 points made in the City Engineers memo and asked if those items have been addressed. Mr. Campbell informed the Board those issues have been addressed.

Mr. Willis asked if there would be a master meter for the utilities. Mr. Stowell said that was one of the issues still being worked out.

Mr. Gray suggested City Staff investigate the abutters concerns. Mr. Grassie said he would like the Board to get a memo from staff with their determination and recommendations.

Mr. Walker asked how long it would take the Planning Staff to address the issues. Mr. Campbell said staff should have answers within 2 weeks.

Mr. Sylvain asked if the Mr. Chiaramitaro has a copy of the plans. Mr. Stowell said the plans are on file with the Planning Department.

*A motion was made by Mr. Walker and seconded by Mr. Willis to accept the application as complete. The motion carried unanimously.*

*A motion was made by Mr. Sylvain and seconded by Mr. Walker to continue to the March 16, 2015 meeting. The motion carried unanimously.*

**City of Rochester Planning Board**  
Monday March 16, 2015  
City Council Chambers  
31 Wakefield Street, Rochester, NH 03867  
*(These minutes were approved on April 6, 2015)*

**B. Quantum Real Estate Group, LLC, 66 Rochester Hill Road**

FX Bruton of Bruton and Berube Law Firm. He explained they were before the Board two weeks prior seeking approval, however there were some issues and concerns brought up by an abutter. Attorney Bruton explained they drafted a memo stating most of the concerns had been discussed at length with the Board, TRG and Planning Staff.

Mr. Sylvain opened the public hearing.

Frank Chiaramitaro who Cornerstone Court located at 74 Rochester Hill Road reminded the Board they were presented a list of his concerns at the last meeting. He went on to explain the packet he handed out at this meeting contains correspondence to Mr. Campbell regarding the staff recommendations; correspondence to the Planning Board; and correspondence from his Attorney addressing additional concerns.

Mr. Chiaramitaro said he never heard from the Planning Staff and a meeting was never held.

Mr. Sylvain clarified if a meeting was necessary one would be held.

Mr. Chiaramitaro went on to read the correspondence contained in hand out to the Planning Board from his new Attorney, Scott Hogan.

Mr. Sylvain said every issue that had been raised by Attorney Grossman at the last meeting had been answered by the Planning Staff. Mr. Chiaramitaro said Mr. Campbell stated at the last meeting the information would be available within a week, however he said it wasn't made available to him until late today. Mr. Sylvain asked if his Attorney had been to the Planning Department. Mr. Chiaramitaro said no, his Attorney had not, however he himself went to the Planning office last Wednesday.

Mr. Campbell said staff did put a response together addressing all the concerns and was sent out to all the Board members. He said it did take longer than expected but it was done and available in the Planning Office.

Mr. Sylvain said one of the issues brought up by Attorney Hogan is the fact there is only 50' of road frontage where 100' is required. Mr. Campbell informed the Board that issue was brought up early on and discussed with Mr. Grant, Director of Building, Zoning and Licensing Services. He went on to say Mr. Grant referred to the Non Conforming section of the Zoning Ordinance.

Mr. Sylvain expressed his displeasure of the letter from Attorney Hogan to Mr. Chiaramitaro, saying he took it as threatening. Mr. Chiaramitaro said they had thought they would have had an opportunity to review the documents from the Planning Department.

Mr. Sylvain clarified as long as the public hearing is still open and they have not taken a formal vote on a project the Board hasn't done anything illegal.

Mr. Sullivan told Mr. Chiaramitaro that he's read and re-read the information from the Soil Scientists, as well as his correspondence, and now the issue is that the Planning Department hasn't gotten back to him in a timely manner; however he's still not sure what the argument is. Mr. Chiaramitaro said the runoff and flooding is the issue regarding the wetlands.

Mr. Sylvain said the Board will go through each of the concerns as stated in Mr. Chiaramitaro's letter with the developer. Mr. Chiaramitaro thanked Mr. Sylvain and said he appreciated a fair deliberation. He went on to say he hired Attorney Hogan only when he couldn't get the Planning Staff to provide information.

Discussion continued with Mr. Chiaramitaro, Mr. Gray said he didn't think it would matter how many Soil Scientists were brought in, the issue is mitigation. He went on to say the issue is the developers drainage plan and whether or not it's sufficient and if it will keep the runoff off from his property. Mr. Gray said the Board hasn't seen anything from Mr. Chiaramitaro's Wetland Scientists saying the developer's drainage plan is bad.

Mr. Chiaramitaro said he asked the Planning Department for copies of the drainage report several times throughout the course of the project in order to review it and it was never provided. Mr. Campbell interrupted to inform the Board Mr. Chiaramitaro did in fact get a copy of the drainage report and reminded Mr. Chiaramitaro that he took the report out of the Planning Office to make the copy, however he did not ask for a copy of the Stormwater Management, Maintenance and Inspection Plan which was in the file that he was reviewing. Mr. Campbell expressed his displeasure about repeatedly being told his office is trying to hide information.

Mr. Gray brought up the issue regarding the dissolution of the LLC and said he would like it added as a condition to the notice of decision who the record holder of the property is.

The Board went into a discussion about having a third party Soil Scientist. Mr. Campbell explained the applicant has hired two separate Soil Scientists that have concluded the same findings and yet the abutter still disagrees.

Attorney Bruton reminded the Board the abutters were notified in mid January as the applicant was originally supposed to be at the February meeting but was postponed due to weather. Attorney Bruton went on to say there are conflicting delineations between the Soil Scientists and went on to point out the only stamped plans were provided by the applicant.

Attorney Bruton went on to address the issue of the dissolution of the LLC. He explained the law to the Board and said he spoke to the abutter's attorney and explained the law to him as well. Mr. Willis asked who the actual owner of the property is. Attorney Bruton said Raaf-Mitchell Anchor Club Real Estate of Rochester NH, LLC is the owner and Quantum Real Estate Group, LLC is the applicant.

The Board discussed hiring a third party Soil Scientist. Mr. Fontneau asked Ms. Hale if she was okay with the drainage plan. Ms. Hale said the applicant had addressed the majority of her concerns and they are working to resolve the last few issues.

After discussion it was the consensus of the Board not to hire a third party Soil Scientist.

Bob Stowell of Tritech Engineering addressed the Board and assured them they will continue to work with Ms. Hale on the remaining drainage issues.

The Board went through the list of issues that were brought up by the abutter. There was discussion of having recreation facilities. Mr. Creighton said there had been discussion early on with TRG however each unit will have a small back yard so it really wasn't a concern. Mr. Stowell added that most parents don't want their children going to a playground because of safety concerns. Mr. Sylvain said there could also potentially be problems in obtaining insurance coverage.

Mr. Sylvain asked the Board if the responses provided by staff were acceptable. The members were in agreement they were.

*A motion was made by Mr. Walker and seconded by Mr. Willis to close the public hearing. The motion carried unanimously.*

The Board went on review the design of the buildings. Mr. Fontneau suggested using a variety of earth tone colors for the buildings. Mr. Sylvain asked that the applicant work with Planning Staff on the colors.

*A motion was made by Mr. Walker and seconded by Mr. Willis to approve the Condition Use Permit. The motion carried unanimously.*

*A motion was made by Mr. Walker and seconded by Mr. Healey to approve the application with the stipulations as stated. The motion carried unanimously.*



# O' Abutters List Report

Rochester, NH  
April 15, 2015

175  
30.24  
205.24

## Subject Property:

Parcel Number: 0239-0030-0000  
CAMA Number: 0239-0030-0000  
Property Address: 66 ROCHESTER HILL RD

Mailing Address: RAAF MITCHELL ANCHOR CLUB REAL  
ESTATE OF ROCHESTER NH LLC  
312 SOUTH RD  
BRENTWOOD, NH 03833-6308

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## Abutters:

Parcel Number: 0239-0020-0002  
CAMA Number: 0239-0020-0002  
Property Address: 51 WHITEHALL RD

Mailing Address: HOUDE DAWN L  
51B WHITEHALL RD  
ROCHESTER, NH 03867-1720

Parcel Number: 0239-0020-0010  
CAMA Number: 0239-0020-0010  
Property Address: 15 ALDER CREEK LN

Mailing Address: SPAYD RANDALL A & RACHEL E  
15 ALDER CREEK LN  
ROCHESTER, NH 03867

Parcel Number: 0239-0020-0012  
CAMA Number: 0239-0020-0012  
Property Address: 19 ALDER CREEK LN

Mailing Address: TYLER RICHARD A & AUDRA N  
19 ALDER CREEK LN  
ROCHESTER, NH 03867-1707

Parcel Number: 0239-0029-0000  
CAMA Number: 0239-0029-0000  
Property Address: 62 ROCHESTER HILL RD

Mailing Address: SUN HEALTHCARE GROUP % SB OF  
ROCHESTER  
62 ROCHESTER HILL RD  
ROCHESTER, NH 03867-3216

Parcel Number: 0239-0031-0000  
CAMA Number: 0239-0031-0000  
Property Address: 70 ROCHESTER HILL RD

Mailing Address: US GOVERNMENT HQ'S 94TH US ARM  
Y RESERVE %AFRC-CMA-EN-B  
118 JACKSON RD  
AYER, MA 01432-4473

Parcel Number: 0239-0032-0001  
CAMA Number: 0239-0032-0001  
Property Address: 74 ROCHESTER HILL RD

Mailing Address: WESTRIDGE BUILDING &  
DEVELOPMENT COR % FRANK  
P O BOX 863  
RYE, NH 03870-0863



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4/15/2015

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