

**Modification to Approved Project**  
**City of Rochester, New Hampshire**

Case # 140-73-R1-17 Property Address Hayes Hill Road Subdivision

Type of project: Site Plan \_\_\_\_\_; Subdivision X; Line Adjustment \_\_\_\_\_; Other \_\_\_\_\_

Project name Hayes Hill Road Subdivision

Date of original Planning Board approval May 15, 2018, as amended

Description of modification: Request City determine that subdivision is vested per  
RSA 674:39 from Impact Fee Ordinance, and "waive" impact fees per Section  
275-27.3(G)(2). See also letter filed herewith.

Name of applicant or agent filling out this form James P. Shannon, Esq.

Mailing Address PO Box 1018, Rochester, NH 03866-1018

Phone Number: 603-231-3548 Email Address: jim@jimshannonlaw.com

Please check box: Applicant ☐ Agent ☒

Signature of person completing form: *James P. Shannon* Date: 12/22/2020

Signature of property owner (if different): *Jim Clapp, President* Date: 12/22/2020  
NEW STYLE HOMES, INC.

**Please note:** Modifications are reviewed by the Planning Board but no public hearing is held and no notices are required. (In contrast, projects, which are considered to have a potential impact upon abutters, are considered amendments for which notice and a public hearing is required.) There is a \$125.00 fee for a modification. For very simple matters ("administrative modifications") approved by staff, there is no fee.



## **Application for Waiver from Regulation**

**City of Rochester, New Hampshire**

Project Name: Hayes Hill Road Subdivision, situated off Old Dover Road

Case # 0140 - 73 - R1 - 17

Subdivision: X Lot Line Revision:      Site Plan:      Minor Site Plan:     

Section and subsection of the Subdivision Regulations from which the waiver is required (include identifying number, title, description, provision):

Section 6.10, Impact Fees

Or, Article, section, and subsection of the Site Plan Regulations from which the waiver is requested (including identifying number, title and description of provision):

Section 9 - Impact Fees

**Reason/justification(s) for waiver request:** This subdivision predates enactment of the Impact Fee ordinance and is exempt from such fees pursuant to RSA 674:39 as developer completed active and substantial development prior to enactment of impact fees. See also letter filed herewith.

Name of applicant or agent filing out this form: James P. Shannon, Esq

Applicant?      Agent? X Today's date: 12/22/2020

Mailing Address PO Box 1018, Rochester, NH 03866-1018

Phone Number: 603-231-3548 Email Address: jim@jimshannonlaw.com

Please check box: Applicant ☐ Agent ☒

Office use below

Waiver approved:      Waiver denied:     

Comments:     

Signature:      Date

**JAMES P. SHANNON**  
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December 21, 2020

Seth Creighton, Planner  
City of Rochester Planning Dept.  
33 Wakefield Street  
Rochester, NH 03867

**RE:** *Application for Vesting of Subdivision from Impact Fees*  
**Applicant:** *New Style Homes, Inc.*  
**Subdivision:** *"Hayes Hill Road Subdivision" / Map 140, Lot 73 et seq.*

Dear Mr. Creighton,

Please be advised that this office represents New Style Homes, Inc., the "Developer" of the above-identified Hayes Hill Road Subdivision (the "Subdivision") off of the Old Dover Road.

On behalf of the Developer I am submitting this letter with attachments in order to request that the Planning Department determine that the Subdivision is vested under NH RSA 674:39 from the Impact Fee Ordinance of the City.

As a prelude, I am attaching both the "Application for Waiver from Regulation" form and the "Modification of Approved Project" form as per the city's apparent policy. However, I believe that this process involves neither a "waiver" nor a "modification," as those words are generally understood in the legal domain, as the Impact Fee Ordinance does not, as a matter of law (RSA 674:39) and as provided by the Ordinance at § 275-27.3(E)(2), apply to this Subdivision because the Ordinance was not in affect when it was approved. I would respectfully suggest that a different form be generated for a developer to "certify vesting" as opposed to requesting a waiver or modification when neither word appropriately describes the nature of the request. I realize that the Ordinance provision we are applying under, to wit § 275-27.3(G), is entitled "Waivers", but since "waivers" are defined in Black's Law Dictionary as " the voluntary relinquishment or abandonment of a legal right..." and the city has no right to impose impact fees upon this subdivision as a matter of law (provided that "active and substantial development" has occurred), I respectfully submit that usage of the word "waiver" is inapposite.

As a final matter before addressing the application, please note that the subdivision Approval did require that the Developer pay an "impact fee" fee for off-site improvements in the amount of \$10,000 (See NOD at General and Subsequent Conditions # 7), which impact fee was paid on July 1, 2019. Vesting against future impact fees is further supported by the fact that the NOD contained such an impact fee.

Seth Creighton, Planner

**RE: *Application for Vesting of Subdivision from Impact Fees***

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As to the applications, the following facts are submitted in support of the same:

1. This subdivision was approved by the Planning Board with the final "Amended Notice of Decision" issued on May 15, 2018. (See Exhibit A)
2. That after an application to extend the deadline for completion of Precedent Conditions was granted, and all such Precedent Conditions were met, the City granted to the Developer a "Final Approval" for the subdivision on or about April 15, 2019. (See Exhibit B)
3. That in July, 2019, the Developer and the City conducted the final pre-construction meeting at which (a) the developer committed to completing subdivision infrastructure improvements valued at \$925,986.60, (b) executed and Escrow Agreement to post adequate surety per City guidelines, and (c) posted a cash surety in the amount of \$95,768.00. (See Exhibits C, D and E)
4. That between July, 2019 and December, 2019, when the Developer sought to procure its first four (4) building permits, the Developer actively and substantially developed the property, such as cutting trees and grubbing the roadway and numerous building lots, installing underground water lines serving the four homes, rough grading of the entire roadway with finish gravel and binder paving of seven hundred feet (700') of the roadway, installing most of the drainage systems, etc. The city approved granting the building permits on December 23, 2019. (See permits at Exhibit F).
5. Binder course of road paving was installed in November, 2019. (See Exhibit G)
6. As another step in the substantial development of the project, the Developer paid to Eversource the sum of \$34,646.08 on September 26, 2019 for installation of underground electric lines. (See Exhibit H)
7. Payment of the \$10,000 fee for off-site improvements was made on July 1, 2019. (See Exhibit I.)

For the foregoing reasons, the Planning Department and Board have more than sufficient factual information to determine that the developer had completed active and substantial development of the project and it was therefore fully vested against the imposition of impact fees pursuant to RSA 674:39. Accordingly, the Developer requests that the City find with finality that the Subdivision is exempt from further impact fees under RSA 674:39 and Ordinance § 275-27.3(G).

Seth Creighton, Planner

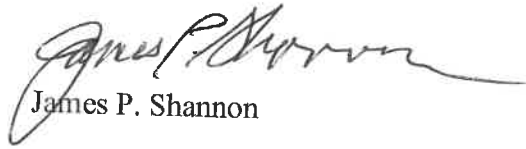
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Of course, should you have any comments or questions regarding this matter, please do not hesitate to contact me. I appreciate in advance your anticipated cooperation in this matter, and look forward to your response.

Very truly yours,

A handwritten signature in dark ink, appearing to read "James P. Shannon", with a long, sweeping horizontal line extending to the right.

James P. Shannon

JPS/slf

cc: Dennis Allfrey, Pres.