

**City of Rochester Planning Board**  
Monday April 2, 2018  
City Council Chambers  
31 Wakefield Street, Rochester, NH 03867  
*(These minutes were approved on April 16, 2018)*

Members Present

Nel Sylvain, *Chair*  
Dave Walker, *Vice Chair*  
Matthew Kozinski, *Secretary*  
Mark Collopy  
A. Terese Dwyer  
Mark Sullivan

Members Absent

Tim Fontneau, excused  
Robert May, excused

Alternate Members Present

Joyce Bruckner  
James Gray  
Donald Hamann

Staff: James B. 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.)

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Mr. Walker called the meeting to order at 7:00 p.m.

The Planning Secretary conducted the roll call.

**III. Seating of Alternates**

Ms. Bruckner voted in place of Mr. May and Mr. Hamann voted in place of Mr. Fontneau.

**IV. Communications from the Chair**

There were no communications from the Chair.

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**V. Approval of Minutes**

A motion was made by Mr. Walker and seconded by Ms. Dwyer to approve the March 19, 2018 meeting minutes. The motion carried unanimously.

## **VI. New Applications:**

### **A. Farmington Associates, LLC – 60 Farmington Road**

Mr. Sylvain announced that the application has been postponed to the April 16<sup>th</sup> workshop meeting.

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## **VII. Extensions / Continued Applications:**

### **A. Makris R.E. Development, LLC – Chesley Hill Road & Donald Street**

Mr. Campbell said the applicant is requesting a six month extension.

*A motion was made by Mr. Walker and seconded by Mr. Starkweather to approve the extension as requested to October 2, 2018. The motion carried unanimously.*

### **B. J & L Terra Holdings, Inc. – 685 Salmon Falls Road**

Attorney Justin Pasay said they were first before the Board in the spring of 2017 with a proposed 40-Lot subdivision and is now a proposed 33-Lot subdivision. He said they are looking for approval of the subdivision as well as the Conditional Use Permit; adding the Conservation Commission gave support for approval of the Conditional Use Permit.

Christian Smith of Beals Associates explained they have attended a couple more TRG meetings as well as the Conservation Commission. He said the Commission is not interested in putting the land into conservation but suggested extending the lots at the rear of the subdivision.

Mr. Smith went on to explain the changes made to the plans including realigning the proposed road that will be across from the entrance to Tara Estates, sizing driveway culverts at the request of Public Works

Mr. Sylvain opened the public hearing.

Ed Cote of 706 Salmon Falls Road said at the last meeting it was discussed that the Planning Board didn't want any more curb cuts along Salmon Falls Road and they are still proposing them and lot one doesn't even show where a driveway would go. He went on to say that from lot one to the existing home there are 13 storm drains, and on the Tara there are six; the road along the front lots doesn't have any storm drains except on the corners. Mr. Cote asked what will happen to the trees along the front of the when they dig for the retention ponds.

Gary Ruel of 684 Salmon Falls Road said he lives directly across from one of the proposed entrances and asked if the developer will be doing anything about headlights from cars that will be shining in his windows. He spoke about the amount of water that comes from that parcel and how the road floods every winter.

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

Mr. Campbell said staff suggests the Board accept the application as complete, approve the Conditional Use Permit, waiver requests and subdivision approval.

Mr. Walker said the number of lots is still too many and there is still the same number of curb cuts along Salmon Falls Road.

There was a discussion regarding the two house lots that would need curb cuts along Salmon Falls Road as well as the drainage on the interior roads and who will be responsible.

Ms. Dwyer said reducing the number of lots was discussed at the last meeting and asked why that wasn't looked at before coming back to the Board. Mr. Smith said it was looked at but a lot of the discussion was because the Laredo Lane development had a lot of green space to the abutting property and added that the commentary that this development doesn't fit in with existing surroundings is incorrect.

Ms. Dwyer said she respectfully disagrees because most of the homes that are on Salmon Falls Road except for some of the newer developments were built 30 to 40 years ago when Salmon Falls Road was meant to be a country road and now in the 21<sup>st</sup> century developers are trying to get as many homes into a little space and it seems very crowded with very little privacy.

Mr. Pasay said the development meets the Zoning Ordinance and Subdivision Regulations and they are planning within the guidelines.

Mr. Sylvain reminded the applicant the Board has final say and they don't want to see anyone get hurt.

Mr. Collopy said he agrees with Ms. Dwyer, that the project doesn't match the integrity of the road and it doesn't match the tone of the area.

There was further discussion regarding the number of lots and curb cuts along Salmon Falls Road.

Mr. Hamann suggested absorbing the two lots that front Salmon Falls Road into each of the corner lots.

*A motion was made by Mr. Sullivan and seconded by Mr. Kozinski to accept the application as complete. The motion carried. Mr. Walker and Mr. Hamann opposed.*

Mr. Sylvain asked that the applicant check the drainage again because he isn't sure there's enough to push the water back to the retention ponds.

*A motion was made by Mr. Sylvain and seconded by Mr. Walker to continue the application to the May 7, 2018 meeting. The motion carried unanimously.*

### **C. Quantum Real Estate Group, LLC – 156 Old Dover Road**

Attorney FX Bruton said they have followed up with Public Works and don't believe there are any further issues. He said they have had continuing discussions with staff regarding sidewalks; saying staff has encouraged the applicant to give a voluntary contribution.

Mr. Bruton said they are working with NHDES and have received positive feedback.

Mr. Sylvain opened the public hearing.

Todd & Michelle Bourasso of 12 Laura Drive said they have walked their property and have found all four water ways that drain onto the applicant's property and shared a video of the running water. Ms. Bourasso said the drainage needs to be looked at again and suggested a third party review be done. Mr. Bourasso said they are concerned about the water problems that will happen if the homes are built.

Hank & Taryn Decken of 162 Old Dover Road said they attended the Conservation Commission meeting for the applicant and the only thing that was discussed was the stream crossing, not the whole project. Ms. Decken went on to say she took offense to Mr. Bruton's comments about abutting properties have almost clear cut their lots. She they have hundreds of trees on their property.

Ms. Decken said one of her biggest concerns about the project is that they will take all the trees and said she would like to see the majority of them saved on each lot.

Mr. Decken asked if they in fact do put a house on lot 17 that it be set further back because both of their businesses are only 45 feet from the line.

Ms. Decken suggested having a third party review for wetlands. Lastly, Mr. Decken pointed out to the Board that it has been 15 months since the applicant has purchased the property but according to the tax map it is the new owners of the subdivided parcel that is listed as the owner of the whole parcel.

Cliff Newton of 168 Old Dover Road the concerns the Board had with the property are still there and haven't been addressed. He said the Board can ask the developer for an extension in order to conduct a site walk and if they don't want to grant the extension the Board can deny the application.

Mr. Newton said there's a problem with the zoning that was passed because developers are putting large developments in because zoning says they can, and believes the elderly are being preyed upon by developers. He went on to say as a tax payer he's concerned about who will take care of and pay for the maintenance, and asked if it's in the best interest of the City.

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

Mr. Campbell reminded the Board they have already accepted the application as complete and the applicant isn't requesting any waiver. He said the Board can continue discussion and talk about whether or not they want to have another site walk.

The Board discussed it and concluded there will be a site walk held on April 7<sup>th</sup> at 9:00 a.m.

Mr. Bruton asked that they be able to come back for the workshop meeting and not have to wait an additional month.

He said Staff's comments addressed the issues Public Works had as far as the drainage that is most prevalent with the abutters.

Mr. Bruton said he doesn't want the Board to have the impression that the big bad developer is snubbing its nose to the City or abutters because they are not. He said it's very easy for someone to come up and say there's a lot of problems with the project so just don't do it, or to even cast doubt on the applicant for no reason doesn't make any sense. Mr. Bruton said there was a comment made about one of the other abutters that has not been present at meetings; he read an email from those abutters in support of the project and thanking the developer for making adjustments to the plan in order for them to keep their privacy.

Mr. Newton called a point of order; asking if the public hearing was still open because Mr. Bruton isn't answering questions the Board is asking, he's making statements after the public hearing has been closed.

Mr. Bruton objected, saying everything he has said is in direct response to things the abutters have said.

Mr. Sylvain clarified that the public hearing has not been closed.

Mr. Sylvain asked the developer what he intends to do as far as the trees on the lots. Mr. Stowell said one of the appealing things about the property is that it's wooded and construction of the houses will incorporate the trees that the developer deems appropriate. He went on to say they have no desire to restrict the cutting of trees beyond what the Ordinance allows.

Mr. Sylvain asked again if they intend to clear cut the property. Mr. Stowell said they are not.

There was a brief discussion with the applicant regarding third party inspections; Mr. Sylvain told Mr. Stowell he wants Public Works to receive a weekly copy of the inspection report.

The applicant will be back before the Board on April 16<sup>th</sup>.

Mr. Sylvain called a recess at 8:27pm

Mr. Sylvain called the meeting back to order at 8:34pm

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## **VIII. Other Business**

### **A. Surety Appeals**

#### **1. Chesley Farm Estates Subdivision – Map 246 Lot 32**

Christopher Berry of Berry Surveying & Engineering representing Rose Realty Trust said Public Works did a quick and brief assessment of what the roadway needs. He said the project was approved in 2003; the road was topped in 2005 and has slowly been building homes since. Mr. Berry said Public Works is saying

additional surety is needed because there would be additional work required for the City to take over the project.

Mr. Berry said the applicants met with Mr. Friend-Gray to walk the entire roadway system, put together a more comprehensive assessment with the changes DPW would like to see made prior to potential recommendation that the City accept the road infrastructure. Mr. Berry said they put together a bond estimate that was approved by Public Works and the applicant is willing to post the additional surety.

Mr. Berry said his client was blindsided by this since money has been released over the years as the project has progressed.

He went on to say they are willing to make the changes now but asked that "goal post" not be moved again, that this be the last round of changes they will be held to.

Mr. Gray said to the best of his knowledge the City Ordinance talks about acceptance of the road, and once the road is accepted, that's when the goal post stops moving. He said if you take 20 years to build something and don't ask for that road to be accepted there are inspections done and the road has to be brought up to a particular condition at the time of the transfer.

Mr. Berry said the Ordinance also demands that the applicant finish roadways prior to building lots within the subdivision to a certain standard.

The Board discussed an ongoing issue regarding curbing. Mr. Berry explained the curbing was installed 15 years ago and has shifted over time.

Mr. Campbell said Staff is satisfied, the applicant and Public Works have worked out a figure and the road will be finished.

*A motion was made by Ms. Dwyer and seconded by Mr. Starkweather to accept the amount of \$74,580.66 and once it has been posted the applicant is able to continue with building permits. The motion carried unanimously.*

## **2. Trinity Circle & Matilda Way Subdivision – Map 259 Lot 36**

Attorney David Azarian representing Flagg Road Development, LLC said they have appealed the request to post additional surety of \$952,084 reflected in a memo dated March 1<sup>st</sup>. He said his client believes it is unreasonable, not sanctioned under any State or City Statutory scheme, and it runs contrary to and outside the scope of the original agreement with the City of Rochester.

Mr. Azarian went through the original Performance Guarantee, original construction cost estimate, a time line of the projects progression, and an excerpt of meeting minutes from May 5<sup>th</sup> and 6<sup>th</sup>, 2014.

Mr. Azarian said the City pulled the bond and completed the improvements and is now coming back and requiring a new surety. He said he doesn't believe there is statutory authority to support it and asked that the appeal be granted and the request for a new bond be withdrawn.

Mr. Sylvain clarified to Mr. Azarian exactly why the surety had been pulled. He said the project isn't complete, the path, the trees and the benches are still outstanding and still part of phase I.

Mr. Azarian said he reviewed the March 31<sup>st</sup> revised estimate from Mr. Campbell which is approximately \$200,000 but there are items that are entirely new and weren't a part of the original agreement and believes is not appropriate.

Mr. Campbell said in 2008 the Planning Board allowed phasing of the development that staff wasn't aware of. He said there hasn't been any real discussion however; Mr. Friend-Gray is willing to visit the site with Mr. Goldstein and go through everything.

He further explained that in 2014 Ms. Young was asking for an additional \$16,000 to just finish the road and fix the pump station so the City could accept the street and residents could get city services.

Mr. Gray said the Board has received a large amount of information from the applicant's attorney and it should be reviewed by the City's attorney before any decisions are made by the Board.

Mr. Azarian said he understood but it's important that his client gets a decision before leaving the meeting because he is being held up by this issue.

Ms. Dwyer agreed with Mr. Gray and said she would not feel comfortable making a decision without receiving advice from the City's legal counsel.

Mr. Sullivan asked Mr. Azarian if his client has any intension of building paths, benches and putting in the trees that were originally approved.

Mr. Sylvain called a recess at 9:15pm

Mr. Sylvain called the meeting back to order at 9:18pm

Mr. Azarian said after speaking to his client they are willing to schedule a review hearing in October, where he will address the issue of the trees, walking trails, and benches. In the mean time the Board allows building permits to be issued and not require any additional bond.

Mr. Campbell told the Board to consider that by October Mr. Goldstein could be done building and walk away.

Mr. Sylvain said there wouldn't be any decision made without having the City's legal counsel look at it. Mr. Campbell said the goal is to come to a reasonable conclusion that protects the City, and that has the City's best interest in mind.

*A motion was made by Ms. Dwyer and seconded by Mr. Walker to have the discussion continued to the April 16, 2018 meeting after the City's Legal Counsel is able to review material and advise the Board. The motion carried unanimously.*

### **3. Kelmar Subdivision – Map 203 Lot 25**

Representing Kelmar, LLC Mr. Berry explained the project was originally approved in 2006 and revised in 2008 at which time construction started. He said they built out phase IA and posted a bond for the remainder of the cul-de-sac; since then they have stopped building because of economy over the last ten years. Mr. Berry said there has been a significant investment and they do not want the project taken away from them and they are asking that the decision be reversed.

Mr. Berry said he knows there have been claims that his client hasn't been taking care of certain things but said he has been assured that they are taken care of in all seasons.

Mr. Sylvain asked why he's been getting calls during the middle of the night because the street hasn't been plowed. Mr. Berry said he can't attest to it one way or another because he doesn't drive out there to look, but he said his client is honorable. Mr. Sylvain said when he drove out there was between 12 to 14 inches of snow that had not been touched.

There was discussion regarding whether or not the Board should go through with revoking the subdivision approval.

Mr. Gray suggested not revoking the approval just yet to give the applicant a change to get a revised plan together and show how he's going to meet the surety for that revised plan.

The Board briefly discussed the amount of surety the City is holding. Mr. Campbell said the Board shouldn't consider pulling the surety until they are sure they want to revoke the subdivision approval.

Ms. Dwyer said she understands about the economy and would hate to see someone that wants to develop the property have it taken away, however the Board should limit the amount a time for the developer to get going.

Mr. Berry asked that the Board grant a 60 day extension in order to allow them to apply for State permits.

*A motion was made by Mr. Sylvain and seconded by Ms. Dwyer to grant a 60 day extension. The motion carried unanimously.*

## **IX. Adjournment**

*A motion was made by Ms. Dwyer and seconded by Mr. Walker to adjourn at 9:50 p.m. The motion carried unanimously.*

Respectfully submitted,

Crystal Galloway,  
*Planning Secretary*