

PHILLIP J. STILES

ATTORNEY AT LAW

(Admitted NH, ME)

July 23, 2019

Mr. Jim Grant, Director
Building, Zoning, and Licensing Services
City of Rochester
31 Wakefield Street
Rochester, NH 03867

Re: Special Exception for Contractor's Storage Yard, 89 Milton Road, 0210-0050-0000

Dear Mr. Grant,

I represent We Dig It Excavating & Trucking, LLC. We are seeking a special exception for the above property. We have submitted a preliminary narrative to the Planning & Development Department and have been advised by them that the next step is application to the Zoning Board.

Enclosed please find the following:

- 1) Authorization for representation by my client.
- 2) Special Exception Application.
- 3) A Narrative or explanation of the requested special exception.
- 3) In lieu of a sketch, I have provided copies of the recorded subdivision plan, with the lot in question as a "detail" blow-up. There are no buildings on the lot.
- 4) A photograph of the lot, taken from the southern sideline, looking north.
- 5) An abutters list generated by your department.
- 6) A check in the amount of \$199.00 as application fee and certified mailing costs.
- 7) 10 copies of the application package. A pdf will be supplied by email.

Please advise if we have missed any requirement.

Thank you for your attention to this matter.

Sincerely yours,



Phillip J. Stiles, Esq.

Hand Carried--Enclosures



City of Rochester, New Hampshire

Department of Building, Zoning and Licensing Services
33 Wakefield Street * Rochester, NH 03867
(603) 332-3508

Special Exception Application

TO: BOARD OF ADJUSTMENT
CITY OF ROCHESTER



DO NOT WRITE IN THIS SPACE

CASE NO. 2-19-21

DATE FILED 7-23-19

Julia Libby
ZONING BOARD CLERK

Applicant: PHILLIP J. STILES

E-mail: STILES.LAW@METROCAST.NET Phone: 603 948-1116

Applicant Address: PO BOX 1637, ROCHESTER NH 03866

Property Owner: WE DIG IT EXCAVATING & TRUCKING LLC

Property Owner Address: 25 SALMON FALLS RD, ROCHESTER

Variance Address: 89 MILTON ROAD

Map Lot and Block No: 0210-0050-0000

Description of Property (give length of lot lines): 1.43 ACRE LOT, 177 FT. FRONTAGE

Proposed use or existing use affected: CONTRACTORS STORAGE YARD

The undersigned hereby requests a special exception as provided in Article 42, Section 22 of the

Zoning Ordinance _____

The undersigned alleges that the following circumstances exist which prevent the proper enjoyment of his land under the strict terms of the Zoning Ordinance and thus constitute grounds for a variance:

SPECIAL EXCEPTION

Signed: _____

Date: 7/18/2019

42.22 Special Exception Sheet

(a) General Provisions

- (1) Certain uses, structures, or conditions are designed as Special Exceptions (E) in this ordinance. Upon application, the Board of Adjustment may, subject to the appropriate conditions and safeguards, grant a permit for these special exceptions and no others.
- (2) Special Exceptions, for which conformance to additional standards is required, may be permitted in their respective districts, subject to the satisfaction of the requirements and standards set forth in this section 42.22, in addition to all other requirements of this ordinance. All such uses are hereby declared to possess such special characteristics that each shall be considered as an individual case.
- (3) The Board of Adjustment may require that a site plan for development for a proposed special exception be submitted showing the location of all buildings, parking areas, traffic access, open spaces, landscaping, and any other pertinent information that may be necessary to determine if the proposed special exception is in harmony with the intent of this ordinance.

(b) Considerations Governing Granting Special Exceptions: In acting upon an application for a special exception, the Board of Adjustment shall take into consideration whether:

- (1) The specific site is an appropriate location for the proposed use or structure. ☒ Yes ☐ No
Reasoning: USE IS PERMITTED (WITH SPECIAL EXCEPTION) IN THIS HIGHWAY COMMERCIAL ZONE
- (2) The proposal is detrimental, injurious, obnoxious, or offensive to the neighborhood. Yes ☐ No ☒
Reasoning: VEHICLE STORAGE AREA TO BE FENCED
- (3) There will be undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off street parking. Yes ☐ No ☒
Reasoning: EXISTING DRIVEWAY SHARED WITH ADJUTING RETAIL STORE
- (4) Adequate and appropriate facilities and utilities will be provided to ensure the proper operation of the proposed use or structure. ☒ Yes ☐ No
Reasoning: SCREENINGS AND OTHER ISSUES TO BE ADDRESSED IN SITE REVIEW
- (5) The proposed use or structure is consistent with the spirit of the ordinance and the intent of the Master Plan. ☒ Yes ☐ No
Reasoning: COMMERCIAL USE IN HIGHWAY COMMERCIAL ZONE

Please check section 42.22 of the Zoning Ordinance for any additional specific conditions that apply to your Special Exception request.

NARRATIVE FOR APPLICATION FOR SPECIAL EXCEPTION

We Dig It Excavation & Trucking, LLC purchased a 1.43 Acre Lot located at 89 Milton Road in the Highway Commercial Zone on June 13, 2018.

Steven P. Lemay, Managing Member of the LLC anticipated using the property for equipment storage and possible retail sales of soil products such as sand and loam.

Mr. Lemay was unaware of the zoning requirements governing this use and received a Notice of Violation from the Department of Building, Zoning & Licensing Services dated April 29, 2019. By letter dated July 5, 2019, we were advised by the Planning Board that "The described proposed use is a 'contractors storage yard.' This use is only allowed by Special Exception (Zoning Board application) in the Highway Commercial zone."

Mr. Lemay is eager to bring his property into compliance with Rochester zoning laws and asked me to do what needed to be done toward that end.

We feel that the requested Special Exception is appropriate for the following reasons: This use is permitted in this zone with a Special Exception; We anticipate fencing off the vehicle storage area. This is not an intensive use. It should result in no increase of traffic. No curb cuts are permitted, so access is through the parking lot of the now closed Family Dollar Store by virtue of a deeded easement. The property is also subject to the following deed restriction, substantially restricting its use in neighborhood with many discount stores.

SUBJECT TO A RESTRICTIVE COVENANT whereby the grantee, and its heirs, successor and assigns, shall not erect, construct or operate upon the property known as Map 210 Lot 50 any improvements to be operated as a variety store, variety discount store, discount department store, dollar store, liquidation or close-out store, thrift store, any store selling used clothing, or any store similar to the Family Dollar Store, in operation or merchandising.

Assuming the Special Exception is granted, our next step will be Site Review with the Planning Board. We assume that appropriate plans for screening and any other concerns will be addressed through that proceeding. Fundamentally, this is an appropriate commercial use in a commercial zone.

Respectfully submitted,

WE DIG IT EXCAVATION and TRUCKING, LLC


By: Phillip J. Stiles, its attorney

PHILLIP J. STILES

ATTORNEY AT LAW

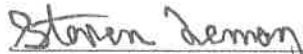
(Admitted NH, ME)

AUTHORIZATION

To whom it may concern, I hereby authorize Phillip J. Stiles of Stiles Law Office to make application and represent me at hearings with the City of Rochester on my behalf with regard to the following matter:

Special Exception request for 89 Milton Road, Rochester, Tax ID #0210-0050-0000.

We Dig It Excavating & Trucking, LLC



Stephen P. Lemay, Member

Dated: 7-19-19

FAZEKAS, ANNA TRUSTEE
760 PORTLAND STREET
ROCHESTER, NH 03867-8414
TAX MAP 210, LOT 46
S.C.R.D.: BOOK 3864, PAGE 65

23
ROCH
TAX #
S.C.R.D.:

1" IRON PIPE
~FND~ +1'
SHOT AT BASE

STEEL STAKE
~FND~

N/F FAZEKAS ERVIN REV. TRUST &
FAZEKAS KATHLEEN A. REV. TRUST
141 WAKEFIELD STREET
ROCHESTER, NH 03867-1303
TAX MAP 210, LOT 47
S.C.R.D.: BOOK 4020, PAGE 762

EDGE OF POC
DRAINED JURISDICTION
WETLANDS (T
BY: PETER W. SP
CWS)

FIRE
HYDRANT

NET
85/2
-S/2

52" PINE TREE

N89°12'40"E
198.98'

50' WETLAND
BUFFER (TYP.)

TAX MAP
210, LOT 50
62,474 Sq.Ft.
1.43 Ac.

BUILDING
SETBACK
LINE (TYP.)

SEE S.C.R.D. PLAN #106-22
FOR EASEMENT THAT BENEFITS
TAX MAP 210, LOT 50

BS&E IRON BOUND
~FND~ FLUSH

1X1 IRON ROD
~FND~ -.5'

S87°20'26"W 240.36'

BS&E IRON BOUND
~FND~ +.7'

105.84'
S62°18'40"W

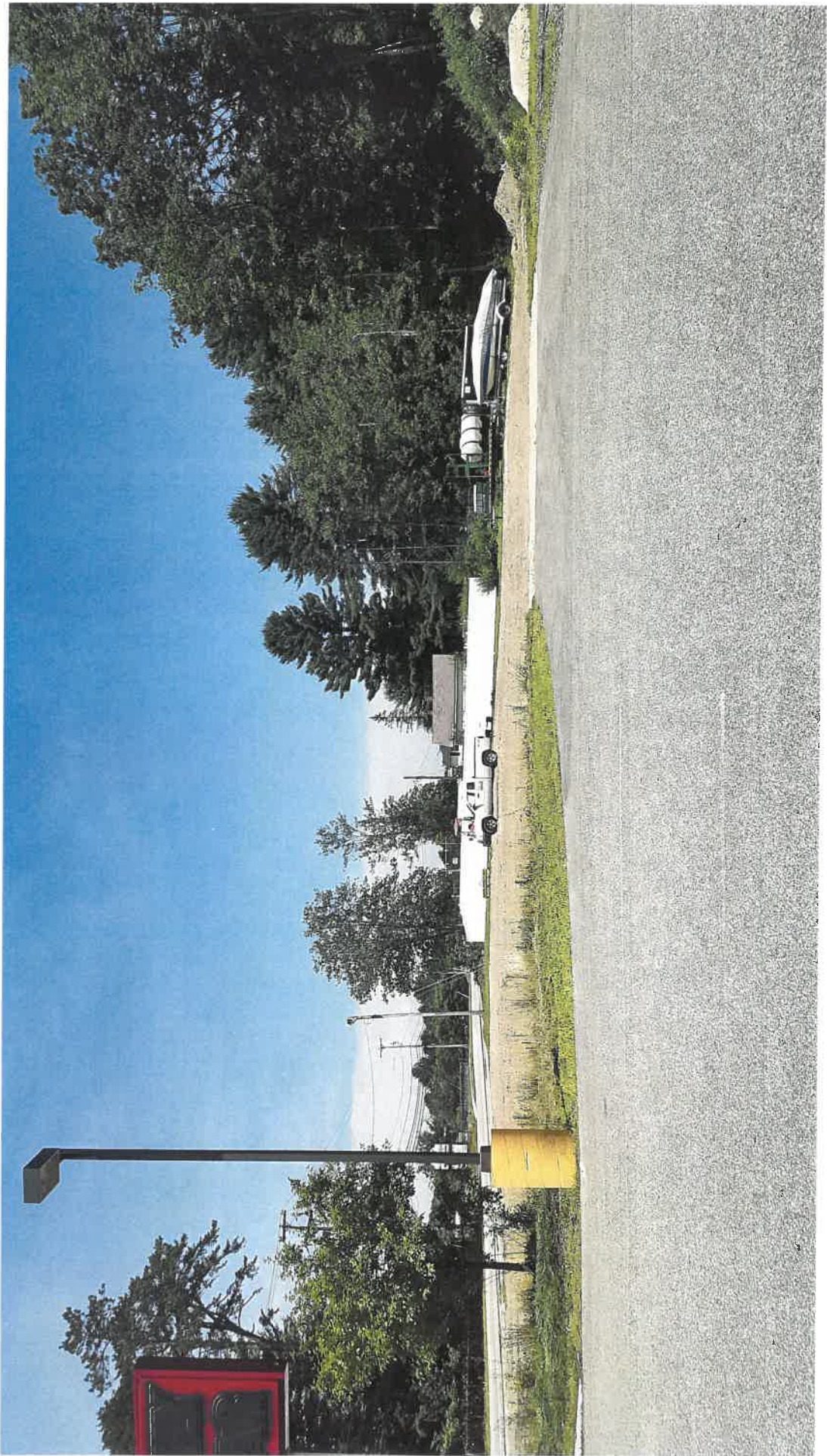
BS&E IRON BOUND
~FND~ +.3'

PROPOS
RELOCA
BOUND.

BUILD
SETB.
LINE

N/F GTM INVESTMENTS
31 EXETER ROAD
HAMPTON FALLS, NH 03844-2003
TAX MAP 210, LOT 48

DETAIL PLAN 114-002



B. Agricultural building, reuse of existing. An agricultural building that is more than 50 years old, no longer proposed for agricultural use, and not situated in an R1 or R2 District may be converted to a nonresidential use subject to the following standards:

- (1) The nonresidential activity shall occur completely within the agricultural building and there shall be no outside storage of material, equipment, or products.
- (2) The essential exterior architectural character of the building shall be maintained.

C. Contractor's storage yard. Minimum setbacks from all property lines shall be 25 feet or as specified in Table 19-C, Dimensional Standards - Industrial Districts, whichever is greater. No structures or stockpiled materials related to the storage yard operation shall be situated within these setbacks. Heavy vehicles or equipment in working order may be parked within the setbacks provided that none is parked within 15 feet of a property line (see the corresponding section on contractor's storage yards in the Site Plan Regulations). A contractor's storage yard shall not be established in a floodplain as defined in Article 13, Flood Hazard Overlay District (FHOD).

D. Earth excavation. New earth excavation projects shall be permitted only subject to meeting the following criteria/conditions, insofar as these additional standards are not superseded by RSA 155-E:

- (1) Additional criteria to be met, beyond those stated in RSA 155-E:
 - (a) It will not cause unreasonable soil erosion or a reduction in the capacity of land to hold water during the operation.
 - (b) It will not adversely impact the quality of the groundwater or of any underlying aquifer.
 - (c) It will not cause unsafe conditions on or excessive use of nearby roads.
 - (d) It will not have an undue adverse effect on the scenic or natural beauty of the area, other aesthetic values, historic sites, or rare and irreplaceable natural areas.
 - (e) Appropriate bonding for the reclamation of an excavation site shall be required prior to the start of any permitted earth excavation operation.
- (2) Regulations. No person shall perform earth excavation except in compliance with the provisions of RSA 155-E as amended, this chapter, and the Site Plan Regulations applicable to earth excavation.
- (3) Existing operation. Any existing excavation activity operating under a permit issued prior to the date of adoption of this chapter may continue until the expiration of the permit, except that any expansion or change in operation not covered by that permit shall be in compliance with the provisions of this subsection.
- (4) Buffers. The following buffers/setbacks are established. No excavation, processing, or removal of vegetation may occur within the buffer. Where the buffer has been removed or is not adequate, the Planning Board may stipulate reestablishment of the buffer, as appropriate.
 - (a) A fifty-foot buffer along every lot line.
 - (b) A seventy-five-foot buffer from any perennial stream or wetland.
 - (c) Buffers specified in Article 12, Conservation Overlay District.
 - (d)

PROPERTY LOCATION

No	Alt No	Direction/Street/City
89		MILTON RD, ROCHESTER

OWNERSHIP

Owner 1:	WE DIG IT EXCAVATING &
Owner 2:	TRUCKING LLC
Owner 3:	
Street 1:	25 SALMON FALLS RD
Street 2:	
Town/City:	ROCHESTER
St/Prov:	NH
Postal:	03868-8620
Unit #:	
Own Occ:	N
Type:	

PREVIOUS OWNER

Owner 1:	FAZEKAS ERVIN REV TRUST & -
Owner 2:	FAZEKAS KATHLEEN A REV TRUST -
Street 1:	141 WAKEFIELD ST
Town/City:	ROCHESTER
St/Prov:	NH
Postal:	03867-1303

NARRATIVE DESCRIPTION

This Parcel contains 1.43 AC of land mainly classified as COM DEV LAND

OTHER ASSESSMENTS

Code	Descrpt/No	Amount	Com. Int

PROPERTY FACTORS

Item	Code	Descrpt	%	Item	Code	Descrpt
Z	HC	HIGHWAY	100	U	4	NONE
				t	4	NONE
				l	4	NONE
				Exempt		
D	RO	ROCHESTER		Topo	1	LEVEL
s				Street	10	NONE
t				Traffic	1	NONE

LAND SECTION (First 7 lines only)

Use Code	Description	LUC	No of Units	Depth / Price/Units	Unit Type	Land Type	LT	Factor
390	COM DEV LA		0.6		PRIMARY A UNDEVELOPE		1.0	
390	COM DEV LA		0.4		EXCESS AC EXCESS		1.0	
390	COM DEV LA		0.43		WASTE AC F WASTE		1.0	

IN PROCESS APPRAISAL SUMMARY

Use Code	Building Value	Yard Items	Land Size	Land Value	Total Value
390			1.430	164,200	164,200
Total Card			1.430	164,200	164,200
Total Parcel			1.430	164,200	164,200
Source:	Market Adj Cost	Total Value per SQ unit /Card:	N/A	/Parcel: N/A	Land Unit Type: AC

PREVIOUS ASSESSMENT

Tax Yr	Use	Cat	Bldg Value	Yrd Items	Land Size	Land Value	Total Value	Asses'd Value	Notes	Date
2018	390	FV		0	1.43	71,300	71,300	71,300	Year End Roll	9/19/2018
2017	390	FV		0	6.09	215,900	215,900	215,900	Year End Roll	9/7/2017
2016	390	FV		0	6.09	215,900	215,900	215,900	Year End Roll	9/8/2016
2015	390	FV		0	6.09	215,900	215,900	215,900	Year-end	10/1/2015
2014	390	FV		0	6.09	215,900	215,900	215,900	Year End Roll	9/29/2014
2013	130	FV		0	6.37	22,300	22,300	22,300	Year End Roll	9/4/2013
2012	130	FV		0	6.37	22,300	22,300	22,300	Year End Roll	9/20/2012
2011	130	FV		0	6.37	22,300	22,300	22,300	Year End Roll	9/27/2011

SALES INFORMATION

Grantor	Legal Ref	Type	Date	Sale Price	V	Tst	Verif	Assoc PCL Value	Notes
FAZEKAS ERVIN R	4575-441	1	6/12/2018	55,000	No	4			OWNER FINANCED 2018 V833
FAZEKAS ERVIN R	4466-109	2	3/22/2017	2,667	No	4			
FAZEKAS ANNA RE	4460-387	3	3/1/2017	2,667	No	4			
FAZEKAS JOSEPH	3864-68	3	9/16/2010	2,667	No	4			1/2 INTEREST
FAZEKAS JOS E	1585-466	2	12/6/1991		No	4			
SMITH WILLIAM G	1015-510		5/26/1978		No				

BUILDING PERMITS

Date	Number	Descrpt	Amount	C/O	Last Visit	Fed Code	F. Descrpt	Comment

ACTIVITY INFORMATION

Date	Result	By	Name
5/6/2019	CORRECTION	JR	JON
6/15/2018	DEED CHANGE	DM	DARCY
4/12/2018	MAPPING CHG	JR	JON
4/3/2017	DEED CHANGE	DM	DARCY
3/6/2017	DEED CHANGE	DM	DARCY
12/6/2013	MAPPING CHG	TM	TOM
8/5/2013	PROP LOC CHG	TM	TOM
6/9/2011	CORRECTION	TM	TOM
5/25/2011	EXT ONLY	TG	THERESA

Sign: VERIFICATION OF VISIT NOT DATA

Appraised Value	Alt	%	Spec	J	Fact	Use Value	Notes
161,040						161,000	
1,000						1,000	
2,150						2,200	

Total AC/Ha: 1.43000	Total SF/SM: 62290.80	Parcel LUC: 390	COM DEV LAND	Prime NB Desc	COMMERCIAL
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Disclaimer: This Information is believed to be correct but is subject to change and is not warranted. Database: AssessPro

Total: 164,190	Spl Credit	Total: 164,200
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deem



Patriot Properties Inc.

USER DEFINED

Prior Id # 1:	
Prior Id # 2:	
Prior Id # 3:	
Prior Id # 1:	
Prior Id # 2:	
Prior Id # 3:	
Prior Id # 1:	
Prior Id # 2:	
Prior Id # 3:	
ASR Map:	
Fact Dist:	
Reval Dist:	
Year:	
Land Reason:	
Bid Reason:	

PAT ACCT.

611



Abutters List Report

Rochester, NH

July 19, 2019

Subject Property:

Parcel Number: 0210-0050-0000
CAMA Number: 0210-0050-0000
Property Address: 89 MILTON RD

Mailing Address: WE DIG IT EXCAVATING & TRUCKING
LLC
25 SALMON FALLS RD
ROCHESTER, NH 03868-8620

Abutters:

Parcel Number: 0210-0008-0000
CAMA Number: 0210-0008-0000
Property Address: 94 MILTON RD

Mailing Address: CASTELLANO STEPHEN C &
CASTELLANO KATHERINE M
434 W 163RD ST APT 8
NEW YORK, NY 10032-4449

Parcel Number: 0210-0039-0009
CAMA Number: 0210-0039-0009
Property Address: 23 KODIAK CT

Mailing Address: SOUCY MARTHA M & BERTSIMAS
NICHOLAS G
23 KODIAK CT
ROCHESTER, NH 03868

Parcel Number: 0210-0046-0000
CAMA Number: 0210-0046-0000
Property Address: 93 MILTON RD

Mailing Address: FAZEKAS ERVIN REV TRUST &
VESSELS SUSANNA
51 ESSEX ST
SANFORD, ME 04073-3229

Parcel Number: 0210-0047-0000
CAMA Number: 0210-0047-0000
Property Address: 91 MILTON RD

Mailing Address: FAZEKAS ERVIN REV TRUST &
FAZEKAS KATHLEEN A REV TRUST
141 WAKEFIELD ST
ROCHESTER, NH 03867-1303

Parcel Number: 0210-0048-0000
CAMA Number: 0210-0048-0000
Property Address: 87 MILTON RD

Mailing Address: GTM INVESTMENTS LLC
438 COMMONS DR
BRIDGTON, ME 04009-4445

Parcel Number: 0210-0050-0000
CAMA Number: 0210-0050-0000
Property Address: 89 MILTON RD

Mailing Address: WE DIG IT EXCAVATING & TRUCKING
LLC
25 SALMON FALLS RD
ROCHESTER, NH 03868-8620

Parcel Number: 0210-0064-0000
CAMA Number: 0210-0064-0000
Property Address: 20 FLAT ROCK BRIDGE RD

Mailing Address: FAZEKAS ERVIN REV TRUST &
FAZEKAS KATHLEEN A REV TRUST
141 WAKEFIELD ST
ROCHESTER, NH 03867-1303



www.cai-tech.com

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7/19/2019

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Abutters List Report - Rochester, NH