



PLANNING & DEVELOPMENT DEPARTMENT

City Hall - Second Floor

31 Wakefield Street

Rochester, New Hampshire 03867-1917

(603) 335-1338 - Fax (603) 335-7585

Web Site: www.rochesternh.net

Planning & Zoning
Community Development
Conservation Commission
Historic District Commission
Arts & Culture Commission

APPLICATION FOR REHEARING

TO: BOARD OF ADJUSTMENT
CITY OF ROCHESTER

Phone No. 603-743-6300

Name of applicant Route 202, LLC

Address 210 Commerce Way, Suite 300, Portsmouth, NH 03801
(if same as applicant, write "same")

Address _____
(if same as applicant, write "same")

Location of property Labrador Drive

Map No. 130 Lot No. 43 & 43.1 Zone R-1

Proposed use or existing use affected commercial development

MOTION FOR A REHEARING UNDER RSA 677:2 AND 677:3

On (date) May 10, 2013 in relation to Article 42.14 Section Table 1(B)(1), (6), (9)

Of the City's Zoning Ordinance and hereby request a rehearing because of the following reasons:

The undersigned alleges that an error has been made in the decision determination or requirements
(explain error) please refer to attached Motion for Rehearing

OR

There is new information that was not available at the time of the hearing (explain new information)

Report from Peter Knight and information concerning ZBA member disqualification

Signed

James H. Schulte
(Applicant)

CITY OF ROCHESTER, NH
ZONING BOARD OF ADJUSTMENT

ROUTE 202, LLC

Case No. 2013-10

MOTION FOR REHEARING

NOW COMES Route 202, LLC, by and through its attorney, James H. Schulte, and submits this Motion for Rehearing, as follows:

1. The applicant filed for a variance to allow commercial use of its two abutting lots located on Route 202 at the intersection with Labrador Lane. This property is located within the commercial areas located at Exit 13 of the Spaulding Turnpike.
2. At the meeting of the Rochester Zoning Board of Adjustment held on April 10, 2013, the ZBA voted to deny the request for variance. That action was contrary to the provisions of the zoning ordinance, was contrary to the provisions of New Hampshire law, was unreasonable and unlawful.
 - A. The Zoning Board of Adjustment improperly determined that the relevant “neighborhood” was only the 17 residential properties which are located near to the applicant’s property and did not include other properties which are designated as abutters under the zoning ordinance and did not include the entire neighborhood in which this property is located.
 - B. The Zoning Board of Adjustment improperly determined that because the applicant’s property is located in the R-1 Zone, it would not qualify for a variance for any use that is not permitted in the R-1 Zone.
 - C. The Zoning Board of Adjustment improperly failed to consider that the entire character of this neighborhood has changed into one of the largest commercial districts in the City of Rochester, that this change was promoted by the City itself, and that the applicant’s proposed project would be a minor supplement to the existing commercial uses in the neighborhood.
 - D. The Zoning Board of Adjustment improperly determined that the applicant’s small commercial project would adversely affect neighboring property values when the uncontradicted evidence from all parties was that the existing commercial mall located across the street (which is 10 times the size of the

applicant's proposed development) has existed since 2007 and has had no adverse impact on property values.

- E. The Zoning Board of Adjustment improperly determined that the applicant's project would cause a substantial change in the character in the neighborhood and failed to acknowledge that the neighborhood has already changed to a major commercial destination with the construction and occupation of a 300,000 square foot mall and construction of other commercial uses at this same turnpike intersection.
 - F. The Zoning Board of Adjustment improperly failed to acknowledge that because of the prior changes to the neighborhood to make this predominantly a commercial area, that because of roadway changes to increase the roadway from 2 lanes to six lanes with a signalized intersection, that because the applicant's property is not screened from the highway or from the large commercial mall while the nearby residences are so screened, that it is not feasible to develop the applicant's land for residential use.
 - G. The Zoning Board of Adjustment's decision to deny this variance because this project was located near to a residential neighborhood was contrary to other recent ZBA granted variances for other properties in this neighborhood for commercial projects which directly abut residential neighborhoods and is contrary to the City's Master Plan intending zone boundaries for rear property boundaries, not street frontage.
 - H. The Zoning Board of Adjustment failed to apply the correct standards to the criteria for considering a variance.
- 3. The applicant's property consists of two vacant lots which contain a total of approximately 16 acres. Each lot has frontage on Route 202 and each lot also has frontage on Labrador Lane.
 - 4. The applicant's property is located directly across Route 202 from Rochester Crossing, which is the largest commercial development in the City of Rochester. Access to the applicant's property is located at the traffic signal which also provides access to Rochester Crossing.
 - 5. Rochester Crossing contains more than 300,000 square feet of commercial space, including retail stores, restaurants, offices, professional offices, and personal service businesses.
 - 6. The other properties located at the easterly side of Exit 13 include retail and office uses, including Staples, Shell gasoline, and similar uses.

7. The development of Exit 13 is the result of the deliberate actions by the City of Rochester to develop the entire Exit 13 area as the primary commercial destination on the Spaulding Turnpike.
 - A. The Planning Board and City Council have re-zoned 3 corners of Exit 13 for commercial uses.
 - B. The Planning Board has approved commercial projects in this area containing between 350,000 and 400,000 square feet of space.
 - C. The Zoning Board of Adjustment has granted variances to allow commercial development which otherwise could not have occurred in this neighborhood.
 - D. As recently as March 13, 2013 the ZBA granted variances to allow for development of 20,000 square feet of retail and office space on Washington Street which will replace existing housing and which will directly abut residential neighborhoods.
 - E. As recently as April 15, 2013, the Planning Board approved that same commercial project which is part of the intended expansion of the commercial development of Exit 13.
 - F. The Planning Board and the City Council are proposing to re-zone additional land at Exit 13 for commercial purposes, including changing the zoning along the southerly side of Route 202 from the Rochester Crossing Mall to Chesley Hill Road and to similarly commercially re-zone the land which abuts the applicant's land to the west. Except for the 17 homes on Florence Drive and Pine Street, the applicant's land will be surrounded by commercially zoned land.
 - G. The City of Rochester has cooperated with the State of New Hampshire to vastly expand Route 202 from a 2 lane road to a six lane highway in the area which abuts the applicant's land.
 - H. The City and the State cooperated to close the entrance from Route 202 to Pine Street and Florence Drive, and to construct Labrador Lane through the middle of the applicant's property to provide a new connection for Florence Drive and Pine Street to Route 202. Prior to that time, the applicant's land did not share access with the residential properties on Florence Drive and Pine Street and the only access to the applicant's land was directly from Route 202.

8. In the past 10 years, the character of this neighborhood has changed dramatically as a result of the actions by the City to induce or compel that change.
9. The only findings which were approved by the full Zoning Board were those contained in the motion to deny the variance application. Those findings were as follows:
 - The variance is contrary to the public interest because it will increase congestion in the streets, and will diminish the value of buildings
 - The spirit of the ordinance is not observed because increase congestion in the street, and will diminish the value of buildings
 - If denied, the benefit to the community as a whole outweighs (sic) any disadvantage or harm to this individual applicant
 - The value of surrounding properties will be diminished because it will be visible from the street, and will be visible from abutting properties
10. The findings adopted by the full Zoning Board of Adjustment are unlawful, unreasonable, are not supported by the evidence, and do not fairly address the statutory variance requirements.
11. At the hearing held April 10, 2013, members of the Zoning Board and residential abutters asserted that the only "neighborhood" which should be considered for purposes of the applicant's variance request was the existing 17 homes along Florence Drive and Pine Street and that no consideration should be given to the 300,000 square foot mall which is directly opposite the applicant's land. This was clear error.
12. The City's own ordinance expressly provides that the mall property is an abutter to the applicant's land, and the applicant was required to provide notice to the owner of the mall property that this variance application was pending.
13. By its ordinances, the City has conclusively determined that the relevant neighborhood for purposes of this variance application includes not only the small residential subdivision which abuts the applicant's land, but also the huge commercial mall which also abuts the applicant's land.
14. The discussion held by the members of the Zoning Board of Adjustment after the public hearing was closed demonstrates that the board members committed error when they expressly refused to consider the impact of the 300,000 square foot mall, its lighting, and its traffic.

15. The Zoning Board of Adjustment members committed error when they discussed and voted that the applicant's proposed small commercial and office project would dramatically change the character of this neighborhood.
16. The applicant submitted evidence that this neighborhood has already changed character because of the development promoted by the City itself. Further, nearly all of the residential abutters who testified at the hearing corroborated the applicant's evidence concerning the changes to the neighborhood.
 - A. The abutting residents testified that Route 202 has changed from a two lane road into a six lane road with traffic lights.
 - B. The abutting residents testified that the mall and the commercial development on the other side of the Turnpike have caused "way more" traffic than existed before, and that this traffic currently causes noise and light. One resident stated that Lowe's had destroyed the atmosphere of the area.
 - C. The abutting residents testified that the lights from the mall, as well as from Staples and Shell shine onto their land and impact them "quite a bit". Several residents testified about the lights from PetSmart which shine onto their properties, and stated that the mall illuminates the entire area.
 - D. There was evidence that the roadway changes made by the City and the State to Route 202 are sufficient to accommodate not only the existing traffic to Rochester Crossing, but also to the intended further development westerly along Route 202.
17. Compared to the changes that this area has seen over the past 10 years, the modest development proposed by the applicant will have minimal impact on the area. The expanded roadways with traffic lights are sufficient for any traffic that would come to or from the applicant's land; Labrador Lane is wide enough for such traffic and replaces a curb cut onto Route 202; all persons who testified concerning the water and sewer and other utilities agreed that those utilities are sufficient for the proposed uses.
18. Witnesses who spoke in opposition to the application acknowledged that there was no impact on their property values when the 300,000 square foot Rochester Crossing was built and occupied and when Route 202 was expanded from 2 lanes to six lanes and traffic lights were installed. One City Councilor testified that he had checked with the City Assessor who confirmed that except in extraordinary cases the addition of commercial uses near to a residential area would not cause a reduction in residential property values.
19. The Zoning Board itself has determined that the addition of commercial uses in residential areas will not cause a reduction in property values. The most recent instance of such a finding was the vote on March 13 to grant variances for a 20,000 square foot

commercial development for office and retail use in a residential neighborhood which is also on Washington Street.

20. The owners of this property have extensive experience in real estate development. Through counsel, those owners represented that although they have owned this property for many years, they have never received a viable offer for residential development of this property and that given the proximity of this property to Route 202 and to the mall at Rochester Crossing, there is no possibility of developing this land for residential use.
 - A. Unlike most of the abutting residences, both of the applicant's lots directly front onto Route 202.
 - B. Unlike most of the abutting residences which are screened by trees from Route 202 and from the large mall at Rochester Crossing, the applicant's lots have no such screening but instead look directly at the access road to the mall and to the very large buildings located at the mall.
 - C. Where this property abuts Route 202, that roadway is 6 lanes wide with access controlled by a traffic light.
 - D. The owners of the abutting residences testified that they are reluctant to invest into improvements for their homes because of the proximity of the commercial development which exists and is proposed for this area. If those residents, whose properties are screened from much of that development, are not willing to invest in improvements, then that confirms the expert opinion of this applicant that there is no possibility of residential development for the applicant's land which has a much less favorable location for residential uses. Thoughtful commercial development of the applicant's now vacant and open property would provide screening and buffer from Route 202 to the residences reducing exposure to the highway.
21. The applicant had the opportunity in 2009 to sell its land to the State of New Hampshire for a park and ride facility. City of Rochester officials intervened in the negotiations prevent the applicant's land from being used for that purpose. City officials stated in writing that the applicant's land was better suited for commercial development and that the City's interest was to have the land developed commercially.
22. In 2007, City officials required the applicant to pay to extend utility lines to connect to existing lines in the Florence Drive/Pine Street development in order to allow those lines to be looped and provide better service to those residents. The City imposed extraordinary requirements on this applicant in the expectation that the applicant's land would be developed commercially for the benefit of the entire community.
23. The ZBA failed to properly consider the evolving character of the neighborhood and

impact of City planning decisions in evaluating the criteria for granting a variance.

24. Given the very intensive commercial development of this entire neighborhood, the ZBA erred when it made the finding that granting this variance would “diminish the value of buildings”. Although no “buildings” were specified in the motion made by the board member, it is presumed that this was intended to refer to nearby residences. For the reasons stated above, the evidence was that commercial development of the applicant’s property will not affect the values of abutting properties. According to the testimony from the residential owners themselves, although the huge mall across the street from their residences has affected them by increasing traffic, noise, and light, the mall has had no effect on their property values. The applicant’s proposed use is one tenth of the size of the existing mall and will draw from the same traffic which already comes to the mall. The City Assessor has confirmed that most commercial uses will not affect nearby residential values. The ZBA has itself recently voted that a 20,000 square foot commercial development will not affect the values of adjacent residences.
25. The ZBA erred when it approved the finding that “The variance is contrary to the public interest because it will increase congestion in the streets, and will diminish the value of buildings”. Given that the mall across the street contains the same type of commercial uses as are proposed for the applicant’s property, but also given that the mall is ten times the size of the applicant’s proposed use and given that the infrastructure has already been installed to handle the increased traffic for the large mall at Rochester Crossing, there is no evidence that this variance will increase congestion in the streets. For the reasons stated above, the evidence presented to the ZBA was that this type of commercial use will have no adverse impact on property values.
26. The Zoning Board of Adjustment did not make any findings concerning hardship. Denial of this variance would result in unnecessary hardship to the applicant because the R-1 zone allows only residential use and the particular and unique circumstances of the applicant’s property prevent it from being used for residential purposes. While the abutting residences do not directly abut the 6 lane highway known as Route 202 and while those residences are screened from the Rochester Crossing mall, the applicant’s property does directly abut Route 202 and it does not have any trees to screen it from the highway or from the mall and its lights and traffic. Under RSA 674:33, a hardship exists if:
 - (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
 - (ii) The proposed use is a reasonable one.

The general public purposes of the ordinance provision is to have property uses be consistent with the predominant uses in the area. In this case, the predominant use is

commercial use, including office, retail, and restaurant use. That area usage has been changing over the past ten to fifteen years so that the residential use which once was the primary use is now a small minority of the uses in the area. This transition is experienced on both sides of Exit 13, and is most recently demonstrated by the approvals from both the ZBA and the Planning Board for a 20,000 square office and retail development nearby on Washington Street adjacent to another residential neighborhood. The City's Master Plan recognizes the unique challenge presented by drawing zoning lines along the center line of highways by recommending zoning lines be drawn at the rear of properties with highway frontage to insure compatibility of uses on both sides of the highway and allowing rear yard buffers between different uses. Given the overall commercial character of this area of the City of Rochester and the location of the subject parcel, the applicant's proposed use is reasonable, especially since residential use is not feasible.

27. Granting the variance would do substantial justice because if the variance is denied then the applicant cannot make any use of his land.^a There is no detriment to the community as a whole, since commercial development adds to the tax base and since the City's infrastructure has been improved in this area to accommodate the levels of traffic that presently go to the mall and which are anticipated for the future development along Route 202 to the west. Benefit is also provided to the immediate area by providing a developed buffer from the highway for the existing residential uses.
28. Granting the variance is not contrary to the spirit of the ordinance because the general purpose of the ordinance as a whole is to promote uses which are consistent with the context in which those uses will occur. In this case, the overwhelming context is that this area of the City is being promoted for commercial development. The City Council, Planning Board, and Zoning Board of Adjustment have all acted in concert to promote the commercial character of Exit 13 and Route 202 (Washington Street) as it intersects with the Spaulding Turnpike. The proposed use is consistent with that commercial context.
29. The applicant notes that this proposed development is very similar to a commercial development at 105 Milton Road, and the reaction and testimony of abutting residential owners is almost identical to the testimony of abutters to that development. The Milton Road property was proposed for a drug store. The property is located across the road from the Market Basket development. The proposed drug store site is located in a residential neighborhood with two dead end streets. The neighbors testified at the Planning Board that their property values would be destroyed, that traffic would be overwhelming, that they were worried about their children being abducted while they were waiting for the school bus, and that their quality of life would be destroyed even though the neighborhood had already experienced substantial change with the

^a Comments by members as summarized in the minutes of the meeting assigned neither commercial nor residential use to the property but designated the property for conservation use which is no use at all

construction of Market Basket. The Planning Board approved the development, with requirements for fencing, screening, and lighting designed to protect the residences. Once the project was approved, none of the neighbors complained during the construction process or has complained since then about any adverse impact from the drug store. The Planning Board's process of approving the details of non-residential development is designed to protect abutting properties from adverse consequences of such development, and that protection will be extended to the Florence Drive and Pine Street abutters when the applicant's property is developed.

30. The Chair of the ZBA revealed after the close of the public hearing, but before he voted, that he had pre-judged this application. The Chair announced that he had previously voted as a City Councilor to deny a change of zone for the applicant's land and that he was and is opposed to upsetting this neighborhood. The recording of that earlier City Council meeting reveals that the Chair stated that he did not see why the City was trying to accommodate this developer. Since at least one member of the Zoning Board had decided his vote before the public hearing, the entire hearing process was tainted and denied the applicant procedural and substantive due process.
31. The denial of the variance without fair hearing or consideration is done in bad faith, particularly in light of prior actions taken and representations made by the City to promote and encourage the cooperation of the applicant to, among other things: allow its land to be bisected to provide road access to the isolated residential neighborhood; extend water and sewer service to loop through the residential neighborhood; forego appropriate compensation for the taking of its land; forfeit development of the parcel as a park n ride facility; and cooperate in road improvements which transformed the parcel's frontage into a busy major highway and intersection. The City is liable in damages and attorneys' fees for its misrepresentations and bad faith.
32. The denial of the variance for the proposed commercial use of the property closes off the safety valve that prevents the zoning designation from becoming confiscatory, denies all reasonable use of the property, effectively converts it to conservation and open space use, and constitutes a taking without just compensation under the state and federal constitutions for which the City is liable in damages and fees.
33. Attached to this Motion for Rehearing is an expert report from Peter Knight, who is an expert real estate appraiser. As stated in that report, the use of the applicant's property for commercial use will not diminish the values of surrounding properties. This conclusion is confirmed by a recent sale of the residence at 8 Florence Drive for full value to a purchaser who had full knowledge of proposed rezoning and proposed development of the applicant's land. In addition, a nearby one acre parcel of land was recently sold to a commercial developer for a price that was more than 4 times the value of a one acre residential lot, which confirms that this area is commercial in nature.
34. The attached report further explains that relevant neighborhood for the applicant's

property is the commercial district which extends from Brock Street along Route 202 to Fillmore Avenue. This is the area which the City itself has promoted as a commercial district. The report further states that Route 202 in the area between the Turnpike and the mall has a daily traffic count of approximately 10,000 vehicles, and that the Applicant's proposed development will draw from existing traffic flows rather than generate new traffic.

35. The information contained in the report from Mr. Knight demonstrates that the board members erred during their discussion after the close of the hearing. The board members erroneously identified traffic congestion and diminished building value as justification for the variance denial. In addition to the contrary record evidence on these two topics by way of the applicant's testimony and reference to public records of the assessing department and the traffic studies on file with the planning department, the applicant has provided expert testimony directed specifically to these late raised, erroneous and unsupported board conclusions.
36. For the reasons stated above, the applicant respectfully requests that the members of the Zoning Board of Adjustment vote to grant a rehearing in this matter, and that following this rehearing, that the members vote to grant the variance requested by the applicant.

Respectfully submitted,

Route 202, LLC

By: 

James H. Schulte, Esq.
660 Central Avenue
Dover, NH 03820
(603) 743-6300



THE STANHOPE GROUP LLC
Appraisers and Consultants

Certified General
Appraisers

Peter E. Stanhope* May 9, 2013

G. Andrew Clear*

Peter Knight*

John Chiungos**

James Schulte, Esquire
Law Office of James Schulte
660 Central Avenue
Dover, New Hampshire 03820

Certified Residential
Appraisers

Laurie Larocque

Deborah Windemiller

Fritz Giddings

Ann Norman-Burke

Jeffrey Wood

Victoria Stanhope

David Michaud

Karen Oram

Christine Erickson

**RE: Motion for Rehearing
Denied Request for Variance
City of Rochester Zoning Board of Adjustment
Property Located at 19 & 26 Labrador Drive
Map 130 / Lot 43 & 43-1
Route 202, LLC (applicant)**

Dear Attorney Schulte,

Appraisers

Ted Graves

Peter Bride***

Michele Crepeau

On May 8, 2013 I inspected the two Labrador Drive properties, reviewed the Conceptual Site Plan prepared by Norway Plains Associates, Inc., inspected the property's location and surrounding improvements/uses, and reviewed the draft documents associated with city's Comprehensive Rezoning. The purpose of the inspections and document reviews is to provide expert opinion with respect to a Motion for Rehearing regarding the City of Rochester's Zoning Board of Adjustment denial of an application for a variance under Article 42.14 Table 1 (B)(1), (6) and (9) of the City's Zoning Ordinance.

* NH & ME
Certified

** NH & MA
Certified

*** NH
Licensed

This report is intended to convey my rationale in formulating my opinion (s) with respect to the requested variance. While you represent the client in this matter, my opinion (s) are intended for use by the Rochester Zoning Board of Adjustment. The appraiser does not intend use of this report by any other party.

This report is not an appraisal as there is no "subject property" to which an opinion of market value has been rendered. It is also not an appraisal consulting assignment. As a result, the Uniform Standard of Professional Appraisal Practice's (USPAP) requirements for the development and reporting of an appraisal or appraisal consulting assignment do not apply. Only the Ethics, Competency, and Jurisdictional Exception rules of USPAP govern this assignment and report.

FACTUAL INFORMATION

Location

After an inspection of the area, it is the appraiser's opinion the subject location consists of two components. The first component includes all properties fronting on Washington Street from the Woodland Road/Brock Street intersection to the east, and the access road to Highfield Commons (Fillmore Blvd.) to the west. The second component includes all properties fronting Florence Drive and Labrador Drive. The location is roughly ¼ mile in length and divided in half by the Spaulding Turnpike and the improvements associated with Exit 13. The Spaulding Turnpike runs in a north/south direction and has three travel lanes north and three travel lanes south. According to the NHDOT website, the 2010 average daily traffic count in both directions between Exit 12 and 13 was 31,000 vehicles. Washington Street or U. S. Route 202 runs in a northeast/southwest direction and has two travel lanes in each direction. A travel speed of 45 miles per hour is allowed on the westerly side of the Spaulding Turnpike. The only traffic count on the NHDOT website was in both directions south of Chesley Hill Road. The 2010 average daily traffic count was 7,400 vehicles. This is roughly ½ mile southwest of the subject property and is an area of low-density residential improvements. A substantially larger volume of traffic passes by the subject, but then turns into or out of Rochester Crossing heading northeast. It is the appraiser's opinion the average daily traffic count on Washington Street/Route 202 at the subject property is easily in excess of 10,000. It should be noted that some of the traffic on Washington Street/Route 202 are tractor-trailer trucks that use Route 202 as a cut through from the Spaulding Turnpike in Rochester to U. S. Route 4 in Northwood. Improvements and uses on Washington Street/Route 202 within the location are as follows:

Address	Map/Lot	Improvement
120&122 Washington St.	123/65&66	Proposed for a 20,475s.f. office/retail building of three stories
125 Washington St.	123/78	23,000s.f. commercial property with Staples and medical office
130 Washington St.	123/68	4,900s.f. Gas Station/Convenience Store/Car Wash
Rochester Crossing	130/38	300,000s.f. community shopping center with 1,521 parking spaces
174 Washington St.	130/39	960s.f. ranch style house built in 1964
176 Washington St.	130/40	1,104s.f. raised ranch built in 1973

Improvements and uses on Florence Drive and Labrador Drive are as follows:

Address	Map/Lot	Improvement
1 Florence Drive	130/53	1,547s.f. cape built in 1986
2 Florence Drive	130/44	1,100s.f. ranch built in 1970
3 Florence Drive	130/52	1,196s.f. ranch built in 1966
4 Florence Drive	130/54	1,200s.f. ranch built in 1970
5 Florence Drive	130/51	1,128s.f. split built in 1971
6 Florence Drive	130/46	1,652s.f. cape built in 1962
7 Florence Drive	123/77	1,120s.f. ranch built in 1975
8 Florence Drive	130/47	1,382s.f. ranch built in 1951
12 Florence Drive	123/72	1,700s.f. colonial built in 1978
13 Florence Drive	123/76	2,256s.f. colonial built in 1958
19 Florence Drive	123/75	1,152s.f. ranch built in 1985
21 Florence Drive	123/73	2,408s.f. log home built in 1983

500 MARKET STREET, NOBLES ISLAND UNIT 1C, PORTSMOUTH, NH 03801-3456 (603) 431-4141 FAX: (603) 431-4179

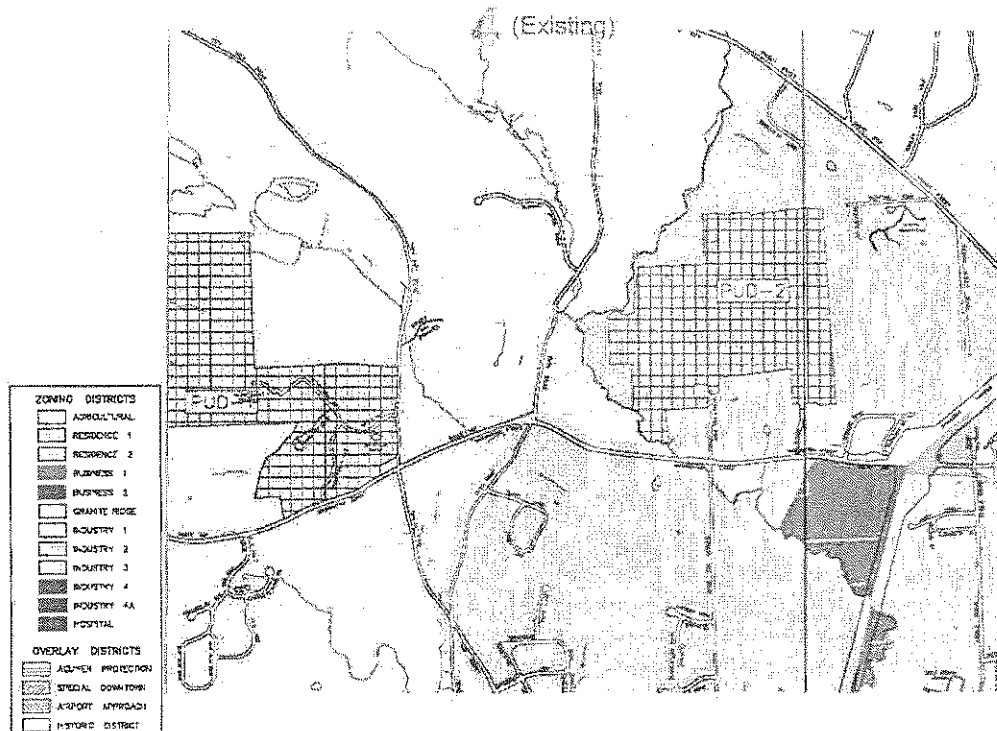
NORTH MAST PROFESSIONAL BUILDING, GOFFSTOWN, NH 03045-0233 (603) 497-4141 FAX: (877) 748-7789

www.stanhopegroup.com * 1-800-255-1452 * administration@stanhopegroup.com

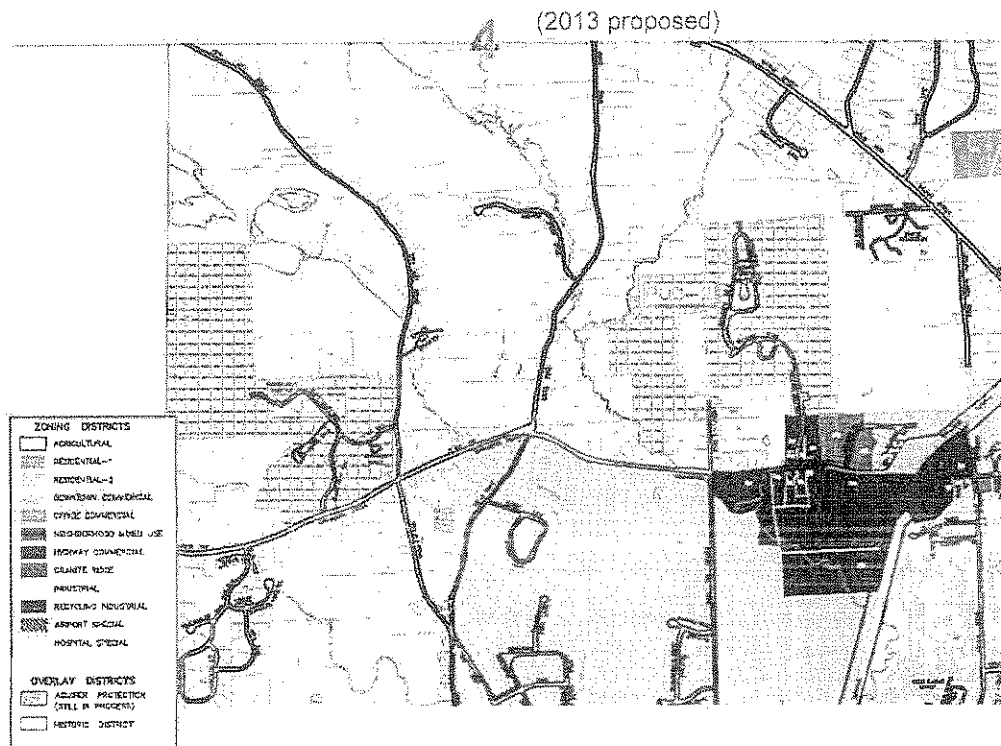
Address	Map/Lot	Improvement
40 Labrador Drive	130/49	3,296s.f. colonial built in 1996
43 Labrador Drive	130/48	1,600s.f. cape built in 1999
46 Labrador Drive	130/50	1,911s.f. garrison built in 1967
52 Labrador Drive	123/70	1,414s.f. ranch built in 1969
58 Labrador Drive	123/71	1,456s.f. cape built in 1981

Except for the colonial at 40 Labrador Drive, all of the improvements in this neighborhood are generally of a relatively modest nature.

The City of Rochester is in the midst of a comprehensive rezoning of the entire city that was a directive of the city's last Master Plan. All of the documents relative to this proposed rezoning are of public record, and on the city's website. The exhibits below show the current zoning in the location, and the proposed zoning in the location.

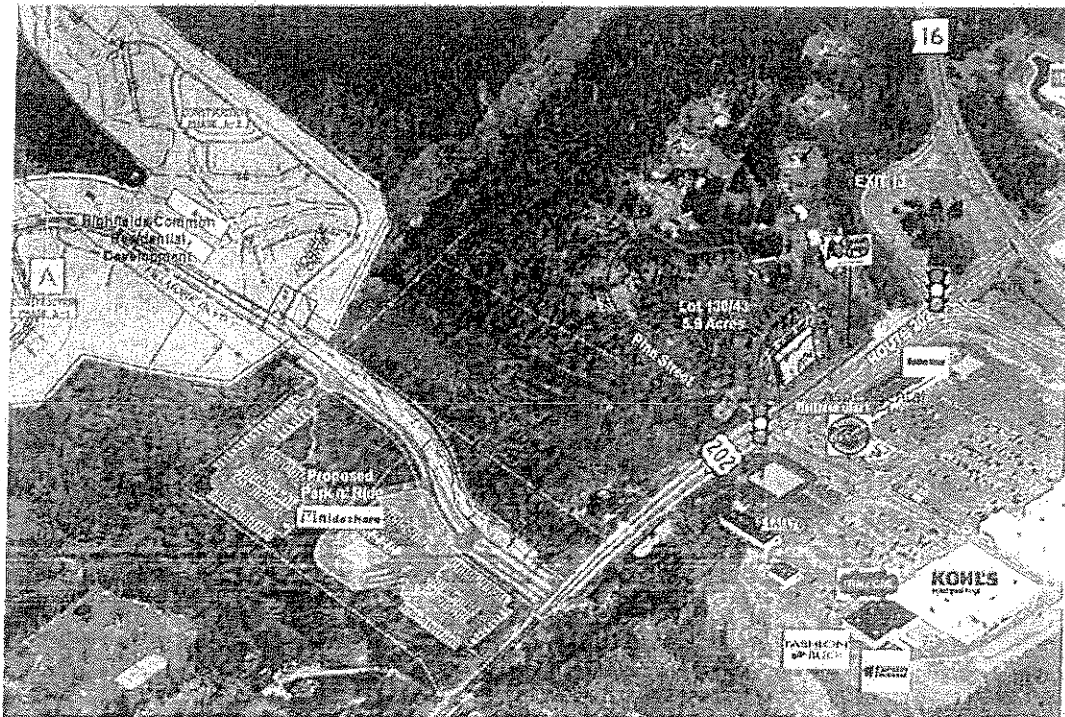


The existing zoning shows almost the entire location except for Rochester Crossing, the Staples development, and the Shell gas station/convenience store, and the corner of Washington Street and Brock Street to be Residence 1. The Residence 1 district allows single-family dwellings by right, but only a few, less intense commercial ones.



The proposed zoning is significantly different. The south side of Washington Street from the Brock Street intersection to the east and Chesley Hill Road to the west would be zoned Highway Commercial. Also on the north side, a number of parcels on both sides of Fillmore Blvd. would be zoned Highway Commercial. Most all commercial uses would be permitted by right in this zone, with no maximum building size requirement. This rezoning would allow for much more dense commercial development as the minimum lot size/minimum frontage would be only 20,000s.f./100 feet. In addition, the two parcels that are the subject of this report would be zoned Neighborhood Mixed Use. Most all commercial uses would be permitted by right, special exception, or conditional use permit. This rezoning would also allow for much more dense commercial development as the minimum lot size/minimum frontage would be only 6,000s.f./60 feet. The only caveat would be that the individual building footprint for a nonresidential use could not exceed 4,000s.f., or be longer than 75 feet. However, both of those restrictions could be waived by the planning board by conditional use. The only area not to be affected would be the Florence Drive/Labrador Drive neighborhood that would go from Residence 1 to Residential 1.

As part of this rezoning and continued conversion of residential property to commercial west of the Spaulding Turnpike, it is common knowledge the State of New Hampshire Department of Transportation plans a New Hampshire Rideshare facility on a parcel of land with frontage on the north side of Washington Street and the west side of Fillmore Blvd. It is forecast to have several hundred paved and lit surface parking spaces. That plan is shown below.



Finally, a commercial developer from Merrimack in 2010 purchased a 1.17 acre parcel fronting Washington Street and Fillmore Blvd that is Map 130 / Lot 40 and Map 237 / Lot 6-1. They paid \$162,500 for a parcel zoned Residence 1. With one-acre residential lot values in this location in the \$40,000 range, it is apparent this developer purchased the property assuming its eventual rezoning to Highway Commercial.

It is the appraiser's opinion this potential rezoning is a result of the City of Rochester's desire to see more commercial development on the west side of Exit 13 of the Spaulding Turnpike. The Neighborhood Mixed Use component on the subject property appears to be an attempt by the city to buffer the Florence Drive/Labrador Drive neighborhood with a less intense commercial use.

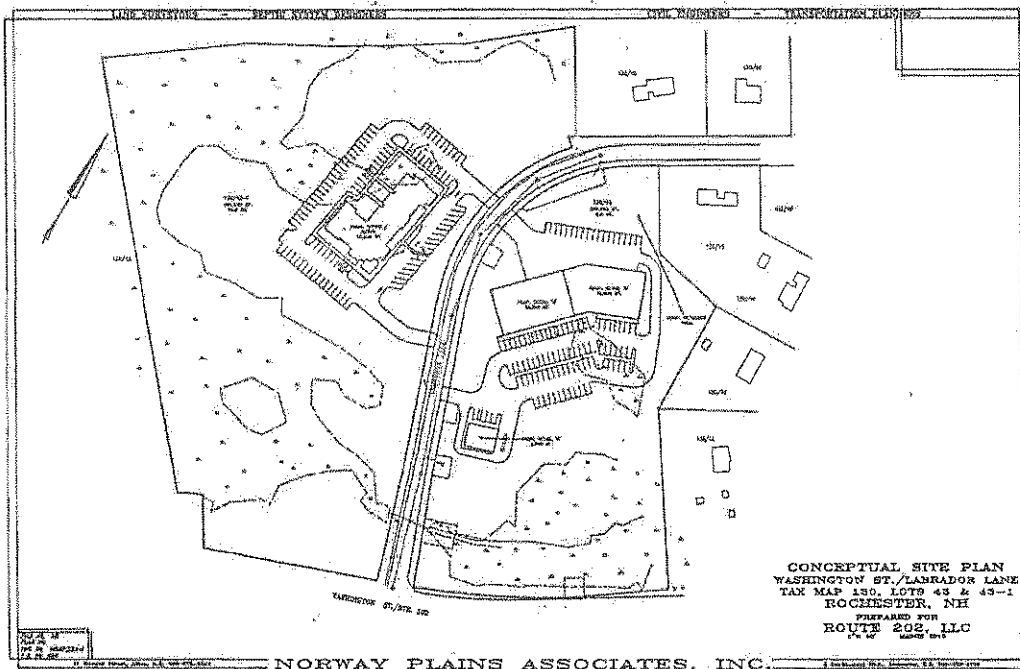
Existing Property

The subject property consists of two vacant lots of record. It was formerly one parcel. However, when the Spaulding Turnpike and Exit 13 were expanded several years ago, the off ramp on to Washington Street from the north intersected Washington Street too close to Florence Drive. As a result, the State of New Hampshire shut off access to Florence Drive from Washington Street, took a portion of the subject parcel by eminent domain, and installed a new city street, known as Labrador Drive. Now, Map 130 / Lot 43 consists of 5.9+/- acres on the easterly side of Labrador Drive. It has 434+/- feet of frontage on Washington Street and 913+/- feet on Labrador Drive. Map 130 / Lot 43-1 consists of 10.7+/- acres on the westerly side of Labrador Drive. It has 296+/- feet of frontage on Washington Street and 850+/- feet on Labrador Drive. Both parcels slope

slightly upward from Washington Street and have poorly drained soils along Washington Street. The parcels are zoned Residence 1.

Proposed Development

Given where the applicant is in the engineering and permitting/approval process, the appraiser was provided only a conceptual plan showing the site's potential development capacity. That plan is below, and the opinion in this letter is based upon only this plan.



The applicant proposes to improve the 5.9+/- acre easterly site with 22,000+/-s.f. of retail space and the required amount of surface parking. The improvements will be single-story. Access will be via two curb cuts from Labrador Drive. The applicant proposes to improve the 10.7+/- acre westerly site with 12,000+/-s.f. of office/retail space and the required amount of surface parking. The improvements will be single-story. Access will be via two curb cuts from Labrador Drive.

REQUEST FOR VARIANCE

The applicant is seeking a variance under Article 42.14 Table 1 (B)(1), (6) & (9) of the City of Rochester's Zoning Ordinance to permit the construction and use of buildings with a retail/office/restaurant use that are not permitted in the Residence 1 Zone.

In order to determine if Rochester's Zoning Board of Adjustment will grant an applicant a variance, the municipality follows the five guidelines of New Hampshire RSA 674:33 I (b). You have retained me to analyze guideline four that states:

"The values of surrounding properties are not diminished."

For this analysis, the surrounding properties have been identified as:

Address	Map/Lot	Improvement
Rochester Crossing	130/38	300,000s.f. community shopping center with 1,521 parking spaces
173 Washington St.	130-42	PSNH property with power lines
174 Washington St.	130/39	960s.f. ranch style house built in 1964
176 Washington St.	130/40	1,104s.f. raised ranch built in 1973
175-177 Washington St.	130/41&237/6-1	1.17 acre vacant parcel purchased for commercial development
1 Florence Drive	130/53	1,547s.f. cape built in 1986
2 Florence Drive	130/44	1,100s.f. ranch built in 1970
3 Florence Drive	130/52	1,196s.f. ranch built in 1966
4 Florence Drive	130/54	1,200s.f. ranch built in 1970
5 Florence Drive	130/51	1,128s.f. split built in 1971
6 Florence Drive	130/46	1,652s.f. cape built in 1962
7 Florence Drive	123/77	1,120s.f. ranch built in 1975
8 Florence Drive	130/47	1,382s.f. ranch built in 1951
12 Florence Drive	123/72	1,700s.f. colonial built in 1978
13 Florence Drive	123/76	2,256s.f. colonial built in 1958
19 Florence Drive	123/75	1,152s.f. ranch built in 1985
21 Florence Drive	123/73	2,408s.f. log home built in 1983
40 Labrador Drive	130/49	3,296s.f. colonial built in 1996
43 Labrador Drive	130/48	1,600s.f. cape built in 1999
46 Labrador Drive	130/50	1,911s.f. garrison built in 1967
52 Labrador Drive	123/70	1,414s.f. ranch built in 1969
58 Labrador Drive	123/71	1,456s.f. cape built in 1981

This section serves as my expert opinion on the standard of New Hampshire RSA 674:33 I (b) referenced above.

The appraiser acknowledges that the proposed development represents a change in use of the subject property, and a change to the neighborhood. Specifically, a 16.60+/- acre vacant and treed parcel that provides somewhat of a visual buffer to several houses on Labrador Drive/Florence Drive will be developed with commercial improvements. At issue to the appraiser is not if there has been a change in use, but if that change in use diminishes the values of the surrounding properties in a negative and measurable way. It is the appraiser's opinion, current commercial properties benefit from additional commercial development, so only residential properties are addressed in this report. In addition, the two residential properties to the west of the subject are also not addressed as they are located right on Washington Street. In order to form an opinion concerning residential properties on Florence Drive/Labrador Drive, the appraiser researched recent sales in the neighborhood where the buyer was fully informed of the ongoing events in the neighborhood, and specifically, what was planned for the properties that are the subject of this analysis. That search produced one sale. A review of all the tax cards indicated this was the only recent sale in the neighborhood.

8 Florence Drive-Map 130 / Lot 47

8 Florence Drive is a 1,382s.f. ranch style house that was built in 1951. The house has three bedrooms, one full bath, and a one-car attached garage. It was in good condition

but dated on the inside. It is situated on a .62-acre lot at the Florence Drive/Labrador Drive intersection. It was listed for sale with a real estate broker at \$165,000 on May 25, 2012. According to the listing broker, the initial list price was somewhat aggressive. After 28 days, the price was reduced to \$159,000. In 18 days, it was under contract at \$149,000. It closed at that price on July 13, 2012. The appraiser was able to interview the buyer. Julie Higgins has resided at 385 Washington Street for 15 years. She had watched the neighborhood transition from a low density residential one, to one mostly commercial. She was fully aware of the potential zoning changes in the neighborhood, the potential NH Rideshare facility off Fillmore Blvd., and the proposed commercial development on Labrador Drive. She bought in the subject neighborhood because Florence Drive had been closed off and had a quiet feel. In addition, the proximity to shopping (Rochester Crossing) and the Spaulding Turnpike were benefits, and made the neighborhood very convenient. Finally, it was her opinion with a 300,000s.f. community shopping center directly across Washington Street from the neighborhood, the addition of roughly 34,000s.f. of commercial space on Labrador Drive would not negatively affect the neighborhood or diminish property values. If she thought it would, she would not have purchased the property. In addition to being the buyer, Julie Higgins is a former residential real estate broker very familiar with the Rochester market.

While the sale is a piece of very conclusive evidence, the appraiser completed some further research. The appraiser searched the New Hampshire Multiple Listing Service based upon the following parameters:

Location:	City of Rochester
Sale Date:	1/1/12 through 5/9/13
Style:	Ranch
Year Built:	1940 to 1970
Size:	1,000s.f. to 1,500s.f.

That search produced 16 sales. The sale prices were between \$47,000 and \$151,900. Attached in the addenda are the listing sheets and photographs of the five sales at the top of the range. They are also summarized below:

Address	Sale Date	Sale Price	Lot Size	GLA	Bedroom/Baths
41 Oak Street	5/4/12	\$123,000	.50 acres	1,120s.f.	3/1
13 Corson Street	4/27/12	\$125,000	.32 acres	1,176s.f.	3/1
61 Oak Street	3/22/13	\$142,000	2.40 acres	1,232s.f.	3/1
249 North Main Street	8/7/12	\$149,900	.21 acres	1,032s.f.	2/1
48 Harding Street	9/17/12	\$151,900	.48 acres	1,284s.f.	3/1

From a location standpoint, the most similar property to the subject is 249 North Main Street. This road handles a significant volume of traffic. In addition, commercial improvements to include Burger King, Home Depot, Hannaford Supermarket and Brooks commence 400 feet to the north. It is the appraiser's opinion the negative externalities of this property are greater than any of the properties in the Florence Drive/Labrador Drive after developed with the proposed commercial improvements. This would include the homes directly abutting the proposed

development. 8 Florence Drive sold at the top end of the range of five similar properties, four of which were in exclusively residential areas.

In conclusion, the recent sale of 8 Florence Drive and the five other comparable sales provide compelling evidence in the opinion of the appraiser that the proposed commercial development on the two lots fronting Labrador Drive will not diminish the value of surrounding properties.

It is the appraiser's opinion the test for granting a variance under New Hampshire RSA 674:33 I (b) that you retained me for has been met.

Sincerely,

A handwritten signature in dark ink, appearing to read "Peter A. Knight", written over a printed name.

Peter A. Knight
Director-Commercial Division
NHCG-606

QUALIFICATIONS OF PETER A. KNIGHT

PROFESSIONAL AFFILIATIONS

Appraisal Institute; Associate Member, #413032

LICENSES

Certified General Real Estate Appraiser, State of New Hampshire

License Number CG-606 (Expires June 30, 2014)

Certified General Real Estate Appraiser, State of Maine

License Number CG-1878 (Expires December 31, 2013)

PROFESSIONAL EXPERIENCE

The Stanhope Group, Portsmouth, New Hampshire, 1998 to Present – Director of the Commercial Division and Land Valuation/Conservation Easement Division. Real estate appraisal and consulting throughout New Hampshire and Maine. Expertise in appraising complex residential properties, all types of commercial properties, industrial properties, vacant land, special purpose properties, residential subdivisions, and conservation easements. Experienced in Yellow Book compliant work, work for federal and state agencies, and work subject to Internal Revenue Service scrutiny on noncash charitable donations. Successfully completed United States Department of the Interior Technical Appraisal Reviews. Versed in eminent domain and tax abatement appraising. Clients include law firms, accountants, financial planners, corporations, state and federal government agencies, financial institutions, private individuals, municipalities, and conservation organizations.

Coldstream Real Estate Advisors, Inc., Portsmouth, New Hampshire, 1997 to 2004 – Licensed Broker. Specialized in the areas of commercial and industrial brokerage, tenant representation, corporate services, land master planning, and approval management.

Banking Industry Executive, New England and New York City, 1983 to 1997. Successfully completed Manufacturer's Hanover Trust's Management Training and Credit Training programs. Financial industry executive with experience in the following industry areas:

- | | |
|-----------------------------------|--|
| * Middle Market Corporate Banking | * Development/Investment Real Estate Lending |
| * Factoring | * Equipment Leasing |
| * Bank Due Diligence | * Loan Workout/Bank Asset Liquidation |
| * Staff Supervision & Training | * Policy & Procedure Development |

QUALIFICATIONS OF PETER A. KNIGHT, continued

ADDITIONAL EXPERIENCE

Expert Witness (Testimony Before)

State of New Hampshire

Rockingham, Strafford, Belknap, Carroll, Sullivan and Grafton Superior
Courts

Derry District Court

Board of Tax and Land Appeals

Department of Revenue Administration

New Hampshire Office of the Attorney General

State of Maine

York County Superior Court

Board of Property Tax Review

Federal Bankruptcy Court

Various Municipal Planning Boards/Town Councils/Zoning Boards of Adjustment

EDUCATION

Syracuse University, Syracuse, New York

1982

Bachelor of Science in Business Administration

Dual Major in Finance and Economics

The Appraisal Institute, Chicago, Illinois

Classes

Appraisal Principles (110)

2000

Appraisal Procedures (120)

2000

Basic Income Capitalization (310)

2001

Standards of Professional Practice (410)

2001

Standards of Professional Practice (420)

2001

Advanced Income Capitalization (510)

2002

Highest & Best Use and Market Analysis (520)

2004

Advanced Sales Comparison & Cost Approaches (530)

2002

Advanced Applications (550)

2005

Seminars

Uniform Land Standards for Federal Land Acquisitions

2006

Valuation of Conservation Easements

2007

QUALIFICATIONS OF PETER A. KNIGHT, continued

PARTIAL LIST OF CLIENTS

Law Firms

McLane, Graf, Raulerson & Middleton, PA	Devine, Millimet & Branch, PA
Sheehan, Phinney, Bass & Green, PA	Wiggin & Nourie, PA
Orr & Reno	Gallagher, Callahan & Gartrell, PC
Nelson, Kinder, Mosseau & Saturley, PC	Preti, Flaherty, Beliveau & Pachios, PLLP
Shaheen & Gordon, PA	Robinson, Boesch, Sennott & Masse, PA
Sumner Kalman	Shaines & McEachern, PA
McNeill, Taylor & Gallo, PA	Bernstein, Shur, Sawyer & Nelson, PA
Hoefle, Phoenix, Gormley & Roberts, PA	Ford & Weaver, PA
Boynton, Waldon, Doleac, Woodman & Scott	Marcus, Clegg & Mistretta, PA
Donahue, Tucker & Ciandella, PLLC	Cassassa & Ryan
Prescott, Jamieson, Nelson & Murphy, LLC	Kalil & LaCount
Harvey & Mahoney, PA	Brennan, Caron, Lenehan & Iacopino
Tenn & Tenn, PA	Mulhern & Scott, PLLC
Tober Law Offices	Sager & Haskell, PLLC
Colliander, Field & Brown, PA	Ransmeier & Spellman, PC
Robert Stein & Associates, PLLC	Hamblett & Kerrigan, PA
Peter Loughlin	Douglas, Leonard & Garvey
Mitchell Municipal Group	Law Office of James Schulte
Flood, Sheehan & Tobin, PLLC	Pierce Atwood, LLP
Sulloway & Hollis, PLLC	Upton & Hatfield, LLP

Municipalities

Town of Exeter	Town of Epping
Town of Salem	Town of Wilmot
City of Rochester	Town of Stratham
Town of Durham	Town of Barrington
Town of Rye	Town of Newmarket
Town of Hopkinton	Town of Hudson
Town of Hinsdale	Town of Lee
Town of Wolfeboro	Town of Brentwood

Financial Institutions

Citizens Bank	BNY Mellon
Optima Bank & Trust	First National Bank of Ipswich
Cambridge Trust Company	Hampshire First Bank
Federal Savings Bank	GE Capital
Profile Bank	Granite State Credit Union
Laconia Savings Bank	First Colebrook Bank
Centrix Bank	Pepperell Bank & Trust
Provident Bank	Haverhill Bank
Peoples United Bank	

QUALIFICATIONS OF PETER A. KNIGHT, continued

Conservation Organizations

The Nature Conservancy
Southeast Land Trust of NH
SPNHF

The Trust for Public Land
United States Department of Agriculture
Bear Paw Regional Greenways

Corporate/Miscellaneous

Sprague Energy Corporation
Phillips Exeter Academy
Two International Group
U.S. Army Corps of Engineers
Pease Development Authority
Tyco International
The Kane Company
Rockingham Electric, Inc.
The Stabile Companies
Cornell University
Alvin J. Coleman & Son
Optima Bank & Trust
Community Action Partnership of Strafford Cty.

Frisbie Memorial Hospital
Lewis Builders Development, Inc.
University of New Hampshire
Grubb & Ellis Company
Exeter Hospital
Wentworth-Douglas Hospital
Wentworth By The Sea CC
Turbocam International
Newbury North Development
Eastern Materials
Weathervane Seafoods
The Common Man