**City of Rochester Planning Board**

Monday December 5, 2016

City Council Chambers

31 Wakefield Street, Rochester, NH 03867

*(These minutes were approved on December 19, 2016)*

*Members Present*

Dave Walker, *Vice Chair*

Matthew Kozinski, *Secretary*

Tim Fontneau

Rick Healey

Robert May

Mark Sullivan

Tom Willis

*Members Absent*

Nel Sylvain, excused

Robert Jaffin, absent

Deborah Shigo, excused

*Alternate Members Present*

James Gray

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.)

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

The Planning Secretary conducted the roll call.

**III. Seating of Alternates**

The alternate was not present for the meeting

**IV. Communications from the Chair**

There were no communications from the Vice Chair.

**V. Approval of Minutes**

*A motion was made by Mr. Healey and seconded by Mr. May to approve the November 21, 2016 meeting minutes. The motion carried unanimously.*

**VI. Continued Applications:**

**A. Caler & Real Estate Advisors Inc., 151 Franklin Street & 24 Jeremiah Lane**

Christopher Berry of Berry Surveying & Engineering addressed the Board to say he had assumed this application was continued to the December 19th meeting along with the application for Jeremiah Lane.

*A motion was made by Mr. Fontneau and seconded by Mr. Willis to continue the application to the December 19, 2016 meeting. The motion carried unanimously.*

**B. SDJ Development of Rochester, LLC, 183 Washington Street**

Matthew Peterson of Hillside Design Consultants said at the last meeting they discussed the plan and overview. He said they have outlined the notice of decision and are before the Board to discuss the changes. Mr. Peterson said the project was originally approved in 2002 and had amendment approvals in 2005 and 2009 and they are proposing to amend it again to allow for the 2016 layout. He said he wanted to stress they are only proposing changes to the Master Plan of the PUD at this time, they don’t have any proposals for anything further at this time and they are not looking to change the number of units that were approved.

Mr. Peterson explained the updates they are proposing. He said they are not looking to change the density; only to change the layout to reflect the 2016 proposed plan.

Mr. Peterson said they would like to remove the section of the notice of decision that talks about uses. He said the first is “granny flats”. There was a brief discussion with the Board members about how this would coexist with the state law for accessory dwelling units. Mr. Gray asked what staffs opinion was. Mr. Campbell said staff didn’t have an issue removing this portion. Mr. Healey said it should be left in but should be called accessory dwelling units instead of granny flats. Mr. Gray asked that staff have a conversation with the legal department.

Mr. Peterson went on to talk about “live/work units”; he said they may work in other parts of the country where the density is greater but they don’t work here in New England.

He then talked about the residential adjustments. He said item six talks about age restricted units. Mr. Peterson said there are 24 townhouse flats but they are not age restricted. He went on to say if the Board really wants 55 and over housing they would need to discuss it.

Item seven requires a “meeting house” such as a church; they are proposing that be removed.

Mr. Peterson said they will be conducting a traffic study within the next couple months because there have been many changes since the original approval 14 years ago and added that the one way streets that were approved will go away. Mr. Peterson added they will leave the requirement about Hussey Hill Road as a possible emergency access. He added the streets in phase III will be private streets.

Mr. Peterson said they don’t believe there should be restrictions on the architectural of the homes and buildings.

Mr. Walker opened the public hearing and noted there will be a 5 minute limit to make it fair for everyone in the audience.

Betty Baun of 10 Hussey Hill Road questioned where they will get enough land to make the upgrades that would be required to the road. She said she is not willing to sell any of her land and believes her neighbors feel the same way. Ms. Baun said they were told Hussey Hill would not be used and said the Board should stick to that.

Mike Dubois of 8 Hussey Hill Road said he understands they will want fast access to the development but said they shouldn’t use Hussey Hill Road. He said traffic has increased tremendously over the 40 years that he’s lived there and added that he is not willing to give up any of his land to upgrade the road. Mr. Dubois also asked that the Board stand behind their original decision not to use Hussey Hill Road.

Joseph Boudreau of 20 Pierce Drive read a prepared letter (which is on file in the Planning Department) saying a homeowner feels anxiety when the developer proposes major changes. He said he has doubts about the proposed changes as he has not seen supporting documents to allow the residents to understand the rationale.

Mr. Boudreau said he believes the developer will focus on the apartments over the single family homes; adding the developer has only sold three homes over the last year. He asked that the Board consider putting four conditions in the notice of decision; 1) The Planning Board require the developer to keep the uses clause in the NOD; 2) Request a viable master plan to the Planning Board, residents, and potential buyers that addresses when the build out for the single family homes will be built out, and request that the rock and dirt pile at the top of the hill be moved to show they do intend to develop the single family homes; 3) the developer submit a proposal to complete Fillmore Boulevard so that the services the residents pay taxes for can finally be provided; 4) complete the PUD as presented; phase I, homes and apartments, phase II homes, phase III apartments; not phase I, phase III, phase II.

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

Mr. Campbell said the Board has staff recommendations and the notes from TRG meetings. He said they are looking strictly at the master plan right now and the applicant would have to come back with any site plans or subdivisions.

Mr. Walker said the issue with accessory dwelling units need be hashed out with the legal department before proceeding.

Mr. Willis said the people that bought homes there have had to look at an unfinished mess for the last four years and the developer shouldn’t be able to just over phase II which would be single family homes to construct phase III which will be more apartments.

Mr. Willis went on to say he believes there should be a home owner association and keep the meeting house.

Mr. Fontneau said he agrees with a lot of Mr. Boudreau’s comments. He said the biggest thing was that multifamily housing wasn’t and isn’t allowed in the agricultural zone; he said it was going to be a mix of residential and commercial uses and now the majority of the development will be apartments that would have otherwise not been allowed. Mr. Fontneau added that someone needs to do some careful planning before it gets out of hand.

Mr. Sullivan asked who will be re-writing the notice of decision. Mr. Campbell said the applicant will re-write it and staff and the Board will review and approve it.

Mr. Peterson said they have been working on this project for six years however, they can’t have all the details worked out because it’s a master plan.

Mr. Walker speaking about the apartments in phase III said he doesn’t think the Board wants the traffic from 200 units to travel all the way through the site without a second access.

Mr. May said he can’t support the change because it’s too radical of a change from the PUD; unless the single family homes are built up to 90-95%.

Mr. Campbell suggested having the applicant come back for the January 9th meeting with a clean copy of the notice of decision; and it will be written based on the direction from tonight’s meeting.

Mr. Fontneau asked that both the marked up copy and a clean copy be provided so the Board can compare the two.

*A motion was made by Mr. Fontneau and seconded by Mr. Willis to continue the application to the January 9, 2017 meeting. The motion carried unanimously.*

**C. Cramer Family Trust & Patricia Woodward Trust, 156 Old Dover Road & Laura Drive**

Kevin Baum of Hoefle, Phoenix, Gormley & Roberts, P.A. said they have been before the Board three times with this application and believes they have covered just about everything. He said the last open item from the last meeting was questions on Laura Drive and the need to widen it. Mr. Baum said the City Attorney provided a memo with his legal opinion that stated no widening is necessary because it is to complete a previously approved plan. He said based on that the issue of whether there needs to be improvements beyond what’s being proposed, which is to maintain the gravel road and build up the cul-de-sac is all that’s necessary.

Mr. Walker opened the public hearing.

Cliff Newton of 168 Old Dover Road addressed the Board saying he watched the last meeting and saw the City Engineer speak however; it was not reflected in the minutes. He requests that the minutes of the meeting be amended to reflect Mr. Friend-Gray’s comments.

Mr. Newton went on to say it’s unbelievable that no one still seems to know who owns Laura Drive. He said it’s important to know who owns the road as he believes if the residents own it they all should have been notified as abutters.

Mr. Newton then read Title LXIV, Planning & Zoning Section 676:4 Board’s Procedures on Plats as well as Running a smooth public hearing, time limits and repetitive comments, and NH constitution (all are on file in the Planning Department). He added that he doesn’t believe the Board has the authority to limit how long an abutter may speak.

Todd and Michelle Bourasso of 12 Laura Drive provided a packet they put together to the Board members (on file in the Planning Department). Ms. Bourasso asked if any of the Board members have visited Laura Drive. Mr. May said that he’d had a chance to get out there. She said they were there to approve a subpar or non conforming lot on a subpar or non conforming road. Mr. Walker corrected her saying the application is for the approval of a lot line revision.

Mr. Bourasso said the memo and attached plan from 1973 from the City Attorney shows an access road for lot 23. He said if you look at the memo from public works in 2002 they reference lots 23 and 25, there is no lot 24. Ms. Bourasso said their interpretation is that the doesn’t exist.

They went on to say the road can’t sustain any more development; saying it would be unlikely to be able to get two emergency vehicles side by side down the road. Mr. Bourasso said if in fact they are only talking about a lot line revision and not take into consideration any this else like a development coming through as a road.

Ms. Bourasso read the definition of “abutters”. She said only one abutter besides themselves were notified and when they went around to talk to the other neighbors about the project they were surprised. Ms. Bourasso said they have a signed petition from the neighbors to upgrade Laura Drive to current city standards before any further construction takes place.

Mr. Bourasso said he’s not sure what the intent of creating a second lot; saying he can’t see the future. Ms. Bourasso added it seems like a lot of money to invest in a dirt road just for a lot line revision. She said it seems there’s a lot more to the plan.

Mr. Bourasso said on the ordinances alone this lot line revision should be denied.

Hank and Taryn Decken of 162 Old Dover Road said everything that happens on Laura Drive affects them and their property, such as watershed.

Ms. Decken said she was told by the property owner Mr. Cramer that lot-24 was a right-of-way. She said the plan from 1973 doesn’t show a lot number for that piece of land, adding it was owned by the Spruling family. She told the Board they have an unofficial plan that Mr. Cramer gave them that says “this line will be moved east before lot 8 is sold”, showing the right-of-way she added.

Ms. Decken said she feels that Tritech is grasping at straws by saying this is a buildable lot and they’re going by ordinance.

Ms. Decken said they are very concerned with who actually owns Laura Drive. She said she was disappointed that the City Engineers comments were not reflected in the minutes of the last meeting because she really wanted to repeat what he said. She said she feels that all residents on the street should have been notified because when she went back and watched the video Mr. Friend-Gray said all owners would own up to the center line. Ms. Decken said she got a copy of the abutters list from the Planning Department however she doesn’t feel it is a complete list; saying its obvious that there are people she knows of that are missing from the list.

Mr. Decken said Mr. Campbell had said at a previous meeting if the lot line revision were to be approved and they then won their first right of refusal it would be able to be undone. Mr. and Ms. Decken said that is not the case, once you make a lot less non conforming it cannot be undone.

Ms. Decken said they are still trying to exercise their first right of refusal; she said she has called numerous law firms and has been told that they can’t help her because they represent Tritech and it would be a conflict of interest. Yet, she said the City Attorney and the Attorney representing Tritech use to work for the same law firm and she believes that is a conflict of interest. Mr. Walker said the issue before the Board is a lot line revision and their issue is not for the Board to determine. Ms. Decken said they just want the Board to be aware that they are trying to work with the applicant and is afraid if the lot line revision goes through it won’t be able to be reversed. Mr. Walker again said there is nothing the Board can do in regards to the first right of refusal; they would have to exercise that right through the judicial system.

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

Mr. Campbell said the Board accepted the application as complete at the last meeting. He said staff would recommend approval.

Mr. Walker asked that the City Engineers comments from the November 21st meeting be added to the minutes and brought back for approval.

Mr. Walker asked if Laura Drive is or isn’t a city street. Mr. Campbell said staff has not found a deed for it, the original subdivision was 1973. He said the city has been taking care of the road. Mr. Walker said he doesn’t doubt the city has been taking care of it but asked if there are any minutes or anything saying this is a city road. Mr. Campbell said no.

Mr. Walker asked if in that case would all residents of the road needed to be notified. Mr. Campbell said no, because the road is not all one property. He said even if the owners of Laura Drive owned to the center line of the road, there’s still lot lines and they wouldn’t be a direct abutter of the lot that’s being adjusted. He added that the abutter’s that were required to be noticed were noticed.

Mr. Gray asked what the deeds of show for the residents of Laura Drive. He asked if they show ownership to the center of the road or do they show ownership to the edge of Laura Drive.

Mr. Walker asked if the lot in question was in fact meant to have been an easement. Mr. Campbell said no, there are metes and bounds, it’s a lot.

Mr. Fontneau said there are still a lot of questions. He said by approving the lot line revision there will most likely be two new homes built at the end of the cul-de-sac on a road that probably can’t sustain the existing homes. Mr. Fontneau went on to say if the Deckens win their first right of refusal could open a can of worms if the Board approves the lot line revision.

Mr. Campbell said if the application were approved the abutter’s would have the option to appeal the decision.

Mr. Willis asked if Laura Drive and the right-of-way be lengthened so that a cul-de-sac can be formed to current city standards. Mr. Stowell said he is sure that could be done. He went on to say there are two lots shown on the tax map so that’s how they approached it. Mr. Stowell added the City Attorney says its ok to make this lot less non conforming.

Mr. Walker said staff needs to find out who owns the road before the Board can make a determination. Mr. Baum said where the subdivision is older the records may not exist.

*A motion was made by Mr. Willis and seconded by Mr. Healey to continue the application to the January 9, 2017 meeting. The motion carried. Mr. May opposed.*

Mr. Walker called a recess at 9:27pm

Mr. Walker called the meeting back to order at 9:33pm

**VII. New Applications**

**A. Mary Elizabeth Herbert, Trustee, Lawrence P. McManus, Jr. Trust, 717 Columbus Avenue**

Mr. Campbell informed the Board the applicant asked that the conceptual application be postponed.

**B. William C. Stowell, Jr., 56 Whitehouse Road**

Bob Stowell of Tritech Engineering said they are proposing a 2-lot subdivision for a four acre parcel. He said they have been granted a variance to allow one lot to have less than the required frontage.

Mr. Walker opened the public hearing. No one was present to speak so he brought the discussion back to the Board.

Mr. Campbell said staff recommends accepting the application as complete and approving.

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

Mr. Campbell said the existing shed would have to either be moved or demolished. Mr. Stowell said it will be demolished.

*A motion was made by Mr. Fontneau and seconded by Mr. Healey to approve the subdivision. Mr. Willis asked for a discussion.*

The Board briefly discussed the perc test results and the existing well. Mr. Stowell said the existing well was proposed to be abandoned; however since researching the well they may try to use it. He said there was a mobile home on the property that had been removed.

Mr. Healey asked if the utilities will be above or below ground. Mr. Stowell said they are proposing to go below ground for the new lot.

*A motion was made by Mr. Willis and seconded by Mr. Fontneau to amend the prior motion to include “a standard water quality sample be collected from the existing well and a standard water quality analysis be done and presented to the Building Inspector prior to the issuance of a building permit”. The motion carried unanimously.*

**C. Anna & Ervin Fazekas Rev Trust, 89 Milton Road/Flat Rock Bridge Road – Lot Line Revision**

Christopher Berry of Berry Surveying & Engineering explained the layout of the property and the proposed lot line revision. He said by doing the lot line revision it would allow them to do the multifamily development on one parcel and the commercial development on the other.

Mr. Walker opened the public hearing. No one was present to speak so he brought the discussion back to the Board.

Mr. Campbell said staff recommends accepting the application as complete and approval.

*A motion was made by Mr. Fontneau and seconded by Mr. Healey to accept the application as complete and approve the lot line revision. The motion carried unanimously.*

**D. Anna & Ervin Fazekas Rev Trust, 89 Milton Road/Flat Rock Bridge Road – Site Plan**

Mr. Berry said when they first started this project a year ago they have made a number of changes to the plan to create less of an impact. He asked that the application be continued so he has time to review staffs comments.

*A motion was made by Mr. Fontneau and seconded by Mr. Kozinski to continue the application to the January 9, 2017 meeting. The motion carried unanimously.*

**IX. Other Business**

**A. Review of 2017 Meeting Dates**

Mr. Willis asked that the regular meeting in July be changed from July 3rd to July 10th.

*A motion was made by Mr. Fontneau and seconded by Mr. May to approve the 2017 meeting dates with the changes made. The motion carried unanimously.*

**X. Adjournment**

*A motion was made by Mr. Healey and seconded by Mr. Kozinski to adjourn at 9:49 p.m. The motion carried unanimously.*

Respectfully submitted,

Crystal Galloway,

*Planning Secretary*