

**CITY OF ROCHESTER**

**Planning Board**

Monday, November 16, 2009 at 7:00 p.m. (workshop)

**City Council Chambers**

31 Wakefield Street, Rochester, NH 03867

*(These minutes were approved December 7, 2009)*

Members Present

A. Terese Desjardins, *Chair*

Nel Sylvain, *Secretary*

Tom Abbott

Rick Healey

Eugene McCarthy

John David Meader

Derek Peters

Members Absent

Tim Fontneau, *Vice Chair* (Excused)

Richard Groat (Excused)

Alternates Present

Gloria Larochelle

Stephen Martineau

Ray Varney

Staff: Michael Behrendt, Chief Planner

Madeleine Carter, Secretary

(These minutes are the legal record of the meeting and are in the format of an overview of the meeting. It is neither represented nor intended to be a true transcription 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).

Ms. Desjardins called the meeting to order at 7:00 p.m. The secretary conducted roll call.

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Ms. Desjardins appointed Ms. Larochelle as voting member for Mr. Fontneau, and Mr. Martineau as voting member for Mr. Groat.

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**Communications from the Chair**

No communications from the Chair.

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**Public Comment**

No comments.

## Discussion of general planning issues

Ms. Desjardins stated for the February workshop they would like to have Craig Wheeler, from Somersworth, speak to the Board based on the presentation that he gave at the Planning Conference.

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## Approval of minutes for November 2, 2009

*A motion was made by Mr. Martineau and seconded by Mr. Healey to approve the minutes of November 2, 2009. Motion carried unanimously.*

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## MODIFICATIONS/AMENDMENTS:

**A. McDonald's USA, LLC, 161 Wakefield Street.** Modification to approved site plan for redevelopment of McDonald's restaurant to change the color of the awnings. Case # 113-49-B2/R2-09

*A motion was made by Mr. Abbott and seconded by Mr. Martineau to approve modifying the color of the awnings from coffee to yellow. Motion carried unanimously.*

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**B. Rose Realty, LLC, Chesley Hill Estates, Chesley Hill Road** (by Berry Surveying & Engineering). Amendment to approved 2003 33-lot subdivision to change drainage patterns. Case #246-32-R1-02. (PH)

Ms. Larochelle recused herself because she is an abutter.

Mr. Abbott stated he has engaged Berry Engineering to do work for him, if there is a conflict with this he would recue himself. Board members agreed there would be no issue with that.

Chris Berry, Berry Surveying & Engineering stated they are proposing revising the drainage patterns from the approval of 2003. He updated the Board on the history of the project. He stated Mr. Diberto purchased this property in 2005. He stated there were multiple owners and developers that tried to develop this site. He stated he is here to facilitate a solution between Rose Realty, the City, and Mr. Gilbert who has expressed complaints that the project has increased storm water onto his property. Mr. Berry stated in 2008 after speaking with Staff and City Departments he reanalyzed and suggested modifications to the storm water intrastructure that would benefit both Mr. Diberto and Mr. Gilbert. He stated the solution, which they came up with, was presented to the City Staff and CLD. He stated for whatever reason there has not been any response from them, which might have to do with review funding. He stated Mr. Gilbert has filed a suit, which includes the landowner, and the City. He stated they are here to amend the plan and make Mr. Gilbert as amendable to the project as possible. He discussed the original storm water analysis, which was done by Berry Surveying & Engineering in 2003. He discussed the plans that were being viewed on the screen that included the storm water analysis plan, the right-of-way, and other items. He stated he has done a multitude of site walks on the property in all kinds of conditions.

He stated he has found some of the assumptions made concerning the storm water to Chesley Hill Road were a little lower than actually existed. He discussed the plans that were being viewed on the screen that included the proposed analysis in which he stated they reevaluated the entire site from start to finish in the areas affecting Mr. Gilbert's property. He discussed the wetlands. He stated they have found an amendable solution for Mr. Gilbert but Mr. Gilbert wants it reviewed by City Staff and CLD engineers. He discussed the plans that were being viewed on the screen that included the culvert, the infrastructure of Chesley Hill Road, the detention basin, the outlet structure, the faceplate, the direction of the storm water, peak discharges, regrading the swale, observations from the site walks, and other items. He stated he has provided plans and all of the information to the Public Works Department and CLD engineers. He stated he would like the Board to approve sending this to CLD for review at the applicant's expense. He stated he has met with Ridgemark, from the State of New Hampshire, who is the reviewer of alteration of terrain today, who originally approved the project and would be involved with reapproving these modifications because this project disturbed so much land area it required an alteration terrain permit. He stated he does not believe there are a multitude of plans and revisions out there; that is one of the things he is currently working on. He stated he is making sure the approvals that were granted by the City, are also the approvals granted by DES, and the alteration of terrain; that was the project that was constructed. He stated there does not seem to be a set of approved plans in the Planning Department. He stated he is meeting with Tom Willis, Public Works Department because Mr. Willis said he does have the approved set of plans. Mr. Berry would then compare the plans Mr. Willis has and the plans the alteration terrain has with the set he has. He stated there are some new designs since the project was approved. He stated those changes can be seen in the drawings he has provided for the Board, as well as CLD, and Mr. Willis.

Mr. Behrendt stated Staff recommends continuation of discussion and send this to CLD for review.

Mr. Varney asked how many points of analysis would there be. Mr. Berry replied there would be 3 points of analysis on Chesley Hill Road.

Mr. Berry discussed the plans that were being viewed on the screen concerning the analysis.

Mr. Varney asked if this is constructed per your changes there will be no changes in the peak or volume to any of those points from the original site. Mr. Berry replied at the time they were not required to analyze volume. He read and explained the description for the peaks from his records.

Mr. Healey asked about the drainage down Chesley Hill Road and the impact on the driveways. Mr. Berry replied it would be impacted the same way if the water were never routed through the project. He stated they are not concerned with their side of the table because they are not sending what was originally planned down Chesley Hill Road. He stated he has spoken with Mr. Willis two or three times and it has been brought to his attention.

Bob Diberto, Rose Realty, stated it only impacts one of the driveways. He stated the existing culverts down Chesley Hill Road were redone when the waterline was put in prior to the repaving. He discussed the size of the culverts. He stated there is one minor change on lot 30; they are proposing a small easement across a very minor part of the lot. He stated there is one oversight where that driveway comes out there is a catch basin. He stated there is plenty of room on the adjacent lot to bypass the catch basin and then tie back into the easement.

Board members and Mr. Berry discussed the analysis and the overall volume.

Ms. Desjardins opened the public hearing.

Attorney Jim Schulte, representing, Mr. Gilbert stated they have been trying to get this matter looked at for the past 2 ½ years. He stated he sent material to Mr. Behrendt, which he believes was sent on to the Board. He discussed a letter sent from Mr. Gilbert to him dated July 2007 regarding a hearing in 2003 raising concerns about drainage. He discussed the two CLD reports that are virtually the same. He discussed the site walk done in October 2003, by his client, Heidi Marshall, CLD, and Mr. Willis, Public Works Department. He discussed the erosion and silts on Mr. Gilbert's property. He stated they are pleased that drainage is going to be returned back down to the Punch Brook area. He discussed the final paving coat on the road, the catch basin, the existing detention ponds, the original designs, and the wet fields. He stated they are asking this to be sent to Public Works and CLD for review along with as-built plans. He stated after the review they would want updated as-built plans to prevent future problems. He discussed the CLD report concerning the drainage structure including the detention pond having been maintained. This raises the question whether anyone is managing an EPA required stormwater pollution plan. He stated there should be such a plan and someone should be managing it at least until such time the roads are taken over by the City if that ever happens. He believes that should be the developer's responsibility. He stated someone in the City should be checking periodically to make sure that what has been done is in fact being taken care of. He stated overall they are generally in favor of the concept and hope the details pass the muster of the Cities consultant and resident engineers and hope this alleviates the problem for his client.

Gregg Denobile, abutter, discussed the information he acquired from the Planning Department. He stated he is concerned if another abutter or resident in the area has this same problem and what recourse would they have.

Mr. Behrendt stated Mr. Gilbert is the aggrieved abutter who has filed a lawsuit. Therefore arrangements were made to resolve the problem through the amendment process. An abutter does not have the ability to request an amendment with the Planning Board. He stated an abutter could always present their concerns to the Planning Board. He stated an abutter could present to the Staff depending on the situation, which could be a way to mediate and address a solution. He stated it is only the applicant that can request an amendment.

Gregg Denobile asked if there is a performance bond posted.

Mr. Behrendt replied any intrasturcture that is being conveyed to the City requires a performance bond that is held for one year. He stated that is only for the portion that is public intrasturcture being conveyed to the City.

Mr. Denobile stated he is concerned and would not want to see his taxes go up to pay for an oversight.

Mr. Behrendt asked Mr. Denobile to send him an email or letter and he would forward his concerns to the Public Works Department and CLD. He stated he is not sure what the scope of their review is but he would try to clarify that with Public Works Department. He asked that once changes are constructed for Mr. Denobile to stay in contact with the Staff, that way if there are have problems he could come back to speak to the Planning Board or the City Manager, and / or Public Works Department.

Mr. Denobile asked about the flow amounts, concerns with the wetlands behind the cul-de-sac, and if any review has been done for the residents on Estes Road and that immediate area. Mr. Behrendt replied he would pass those concerns on to Public Works Department and CLD.

Board members and Mr. Behrendt discussed what benchmarks and criteria could be made for CLD.

Mr. Berry discussed Mr. Gilbert's concerns and stated Mr. Diberto was very active in going to him (Berry) and the City. He stated in his opinion this is not a case where the developer is trying to ignore this problem and make it go away. He discussed his analysis done in 2008. He stated Mr. Diberto is trying to rectify the situation with the City and Mr. Gilbert.

Board members discussed the drainage agreement, the catch basins, signoffs, curbing and other items.

Mr. Diberto stated the road was built exactly to the plans, the only deviations were the under drains that were put in at the request the Public Works Department.

Board members asked if the City signed off on the original construction of the road and the drainage. Mr. Diberto replied the City inspected and approved it, as far as signoffs; he does not how they do that.

Board members and Mr. Diberto discussed the drainage issue, and CLD.

Mr. Berry discussed the plans that were being viewed on the screen that included the under drains, as-built plans, and other items.

Board members and Mr. Diberto discussed drainage, the catch basins, benches, a common area, and other items.

Mr. Berry discussed the plans that were being viewed on the screen that included capping the entrance to the system and free flow to the rear of the property.

*A motion was made by Mr. Sylvain and seconded by Mr. Peters to send this out for review but to someone other than CLD.*

Mr. Varney stated the fact is that CLD has some history with this. If this were to go to some other firm they would have to start over and the cost would be more than if you went with CLD. He stated there are lots of people that are at fault here.

Mr. Behrendt discussed closing the loop and making sure Public Works Department and / or CLD is making sure if water is being redirected from Chesley Hill Road or possibly some other areas so that in every area near this parcel of land the drainage issues would be addressed in accordance with the required policies.

Board members and Mr. Behrendt discussed the fact that CLD should not only be looking to make sure the issues on Mr. Gilbert's property are taken care of but to include the surrounding properties as well.

*A motion was made by Mr. Sylvain and seconded by Mr. Peters to amend the motion to send to CLD to review specifically points of analysis 3, 4, 7 and 8.*

Board members discussed not wanting more money put into the project, all the Board is asking CLD to do is the 4 specific points.

*Motion carried 8-1 with Mr. Martineau opposed:*

This application was continued to December 21, 2009.

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Ms. Larochelle returned to the meeting.

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**Revised proposal for an amendment to the City of Rochester Zoning Ordinance - Section 42.15 Permitted Uses and Table 42.14. Proposal to allow Outdoor Wood-Fired Boilers only in the Agricultural zoning district and to establish conditions for their use.**

**RECOMMENDATION FOR ZONING AMENDMENT**

Mr. Behrendt stated this was developed by the Codes and Ordinances Committee at its meeting on November 5 which simplified the proposed ordinance. Mr. Behrendt read the new proposed ordinance from the recommendations.

He stated Staff has recommended a vote to endorse the enclosed amendment. He stated the next Codes meeting would be on December 3<sup>rd</sup>.

Mr. Varney stated the Planning Board is actually originating this; this would not come back to the Planning Board again assuming the Board approves it. It would go to Codes for a hearing and so on.

Board members discussed the RSA, the State taking all the liability for the enforcement other than the electrical, pulling the permit, and DES.

*A motion was made by Mr. Sylvain and seconded by Mr. Healey to endorse the proposed changes and send to City Council. Motion carried unanimously.*

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### **Other Business**

The process for hiring and selection of companies that do inspection of projects was discussed.

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### **Adjournment**

*A motion was made Mr. Peters and seconded by Mr. Healey to adjourn at 8:28 p.m. Motion carried unanimously.*

Respectfully submitted,

Madeleine Carter, Secretary

(These minutes were transcribed from notes)