

**LONDONDERRY ZONING BOARD OF ADJUSTMENT  
268B MAMMOTH ROAD  
LONDONDERRY, NH 03053**

**MINUTES FROM 4/19/17 MEETING**

The meeting was called to order at 7:00 p.m. Members introduced themselves. The following members were present: Neil Dunn, Chair; Jacqueline Benard, Vice Chair; Jim Tirabassi, Clerk; Suzanne Brunelle, member; Bill Berardino, member; and Allison Deptula, alternate member. Also, in attendance were Richard Canuel, Senior Building Inspector and Laura Gandia, Associate Planner. Chairman Dunn reviewed the hearing procedures.

I. APPROVAL OF MINUTES

J. Tirabassi made a motion to accept the March 2017 minutes as presented.

Motion was seconded by S. Brunelle.

Motion was granted, 5-0-0.

II. REPORT BY TOWN COUNCIL – N/A

III. PUBLIC HEARING OF CASES

- A. **CASE NO. 4/19/2017-1: Request for a variance from LZO 2.3.1.3.C.1 to construct buildings within an elderly housing community 30 feet from the front setback where 40 feet are required, 57 Adams Road, Map 6 Lots 59-1 and 84, Zoned AR-1 and Route 102 Performance Overlay District, Cross Farm Development, LLC (Owner & Applicant)**

J. Tirabassi read the case into the record noting that there was no previous zoning action on the property, and that an e-mail was received from Dan McLeod expressing opposition to the request. Attorney Morgan Hollis, Gottesman & Hollis, PA, 39 E. Pearl Street, Nashua, New Hampshire and Project Engineer, Joseph Maynard, Benchmark Engineering, Inc., 1F Commons Drive, Suite 35, Londonderry, New Hampshire, presented for the applicant. M. Hollis explained to the Board that the applicant is seeking to develop two very large parcels into a 55+ privately owned elderly community consisting of approximately 200 detached units with an association. He added that the internal roads will be privately maintained. He noted that the current concept plan was presented to the Planning Board at a conceptual meeting. He stated that the first phase is currently under design review with the issues of storm drainage, traffic, density, etc. being reviewed by Town Staff. He added that the parcels have unusual and unique characteristics such as numerous water courses, wetlands,

topography, etc. which affect the planning process. He noted that the proposed use is an allowed use in the AR-1 zone. He commented on the density noting that the applicant is allowed many more units than the 200 units proposed. To achieve the maximum flexibility, he added that the applicant is seeking to move the houses 30 feet from the road noting the current ordinance provides for a 40 feet setback from the road. He explained that with the 40 feet setback, the houses are very close to the wetlands/wetland buffer, and repositioning the houses 30 feet from the road would result in a better community feel. He added that the same request was made and granted by the Board for Hickory Woods and a similar request for the Nevins development. By granting this request, he explained that there will be more flexibility in design; the house will be further removed from the wetland/wetland buffers, streams and neighbors; less asphalt will be used (approximately one acre less); less plowing will be required; and less costs expended. He then reviewed the layout of the homes on the concept plan noting all internal roadways are privately maintained. He outlined the wetlands on the parcels. He presented the Board with a five page packet marked as Exhibit 1 detailing the typical roadway sections with 30 feet and 40 feet setbacks as well as a 30 feet setback conceptual site plan, and 40 feet setback conceptual site plan. He reviewed the packet noting that the density does not change and the variation in the setback is barely discernable. He added that whether the variance is granted or not, the density will not be affected but the granting of the variance will allow for better planning.

He then reviewed the five criteria for the granting of the variance as follows:

- (1) The granting of the variance is not contrary to the public interest: M. Hollis stated that there are two criteria in determining public interest: (1) will it substantially alter the character of the neighborhood; and (2) will it affect the health, safety or welfare of the public. In response to the first criteria, he explained that moving the homes closer will not affect the character nor will there be any change. He noted that the community will have a different character unique to itself which is desirable – the community will be its own close neighborhood, creating its own character. He added that the neighbors on the outside will not be affected because the houses will be ten feet further away from those neighbors which is in the public's interest. He added that there is no issue with safety or future road widening issues as the ways are private with adequate distance from the pavement up to the edge of the right-of way. He stated each house will consist of a garage and there will be ample room to stack cars in the driveway. He added there are no fire or police safety issues, and there is adequate width in the right of way. He added that this type of design was incorporated in similar developments and well received. He referenced the distance from the buffers and the reduction in asphalt.
- (2) The spirit of the ordinance is observed: M. Hollis noted the analysis is very similar to criteria number 1. He explained that granting the variance will not substantially alter the character of the neighborhood, and there is no threat to the health, safety or welfare. He then focused on the

purpose of the ordinance: safety (the road is not a major throughway due to the nature and design of the development), aesthetics (residents in similar communities who received a similar variance love the feel and look of it), and possible of reservation for future widening of the right of way (private roadway and development). He added that the granting is not contrary to the spirit and intent.

- (3) Substantial justice is done: M. Hollis explained that there is an injustice where harm to the owner outweighs the gain to the general public. He added that there is no harm to the public in granting the variance because the houses will further away from the neighbors' houses outside the development, and there will be a reduction in asphalt but denying the variance will limit the developer's flexibility. He added that there is no gain to the public if the variance is denied but significant loss to the developer.
- (4) Values of surrounding properties are not diminished: M. Hollis added that there is no impact to any properties except for those who are in the development and equally effected. He explained that the neighbors outside of the development will receive a benefit as the houses are located 10 feet closer to the road which in turn is 10 feet further away from them. He presented the Board with an April 17, 2017 letter (which was marked as Exhibit 2) from C. Chet Rogers, MAI of J. Chet Rogers, LLC, PO Box 1138, Hollis, New Hampshire 03049 who expressed his professional opinion that there would be no diminution in property values.
- (5) There is no fair and substantial relationship between the general purpose of the ordinance and the specific restrictions on the property because: he explained that the first part of the analysis is to decide whether the property is unique and in this case, the property is unique as it is one of the few very large parcels left in Londonderry and it has significant wetlands and unique topography. The second part of the analysis is to determine if there is a fair and substantial relationship between the general purpose of the ordinance and its application of the property. He contended that there is not a fair and substantial relationship. He explained that the purpose as previously discussed is safety and aesthetics adding that there is no difference or impact between the 40 and 30 feet in this 55+ community with private roads; therefore, there is no fair and substantial relationship and no reason to enforce the 40 feet as compared to the 30 feet. He then stated that the use use is a fair and reasonable use given the type of development the applicant is seeking. He concluded his presentation.

N. Dunn asked for questions from the Board. N. Dunn asked about the plan scale. J. Maynard explained that the plan scale is 1=200 feet. He commented on the two presented conceptual plans. He added that the Nevins development received a variance which allowed the houses to be positioned 20 feet from the edge of pavement granted and referenced the variance granted in the Hickory Woods development which is the exact same request presented, 30 feet from the edge of the right-of-way, putting the house 37 feet from the pavement to the face of the building (seven foot

setback from the edge of the pavement to the where the right-of-way line is). N. Dunn asked about surveying each lot with the setbacks. J. Maynard stated that a full boundary survey was conducted as well as the mapping of the wetlands. The Board, the applicant and R. Canuel had a discussion of the setback requirements and separation requirements involved in this type of development as well as the restrictions and covenants contained as part of this development to ensure the property use remains as presented. There was also a discussion about the potential purchase of the Route 102 property and possible access points. J. Maynard added if the purchase of the Route 102 is successful, there would be no connection on Cross Road (eliminating significant wetland impact).

Chairman Dunn asked for public input.

Resident, Gil Slater, 18 Acropolis Ave, addressed the Board with concerns over the access points to the development. J. Maynard explained that since the conceptual hearing at the Planning Board, the applicant with the help of the Town Manager is now engaging in negotiations with the State of NH for the purchase of the Route 102 property.

Resident, Peter Curro, 105 Adams Road, addressed the Board in opposition to the request. He presented the Board with his analysis of the five variance criteria (marked as Exhibit 3). P. Curro stated that the applicant failed to demonstrate hardship noting the applicant stated that the project will proceed with or without the hardship. He added that the ordinances are there to be followed and the developer has not demonstrated a need or hardship but rather just wants flexibility. He believes that the applicant should follow the rules. He asked about the timing of the wetland mapping. J. Maynard stated that they were mapped out in the fall of 2015 and finished in the spring of 2016. J. Maynard noted that the mapping does not just consist of the water level but of other criteria such as plants, vegetation, soil, etc. He added that wetlands can be affected by beaver and manmade activity. He noted that a full drainage analysis of the watershed was also conducted.

Resident, Dan McLeod, 11 Copperfield Lane, addressed the Board with concerns over wetland delineations and mapping, and the timing of the granting of the variance.

Resident, Michael Peterson, Seven Constance Drive, addressed the Board with concerns over sidewalks and private septic. J. Maynard stated that the development will be serviced by private septic which are usually located in between the properties, and reviewed the setbacks for septic and various soil types. He also described the State of New Hampshire's requirements for 55+ developments which allow no more than 125 gallons per day on a peak factor as compared to the 600 gallons per day for a 3-4 bedroom home. He added that there is no change with the septic with a 30 feet setback or 40 feet setback. J. Maynard explained that sidewalks are not being proposed because

there will be 28 feet wide roads. He explained that a right-of-way is established with the road. He explained that there is a 40 feet right-of-way limit associated with the project – 28 feet of pavement and seven feet from edge of pavement for the possible installation of sidewalks.

Member B. Berardino expressed concerns over safety with access to and from the property. J. Maynard informed the Board that the Adams Road would be the other access point in addition to the Route 102 access. J. Maynard reviewed the sight distance requirements for the driveway and intersecting roads, and also added that he is permitted to have approximately 1200 units on the property. He noted that if the variance is denied, the consequence from that denial results will be the addition of 44,000 SF of asphalt and the installation of detention pond (3-4 acres) requiring additional wetland disturbance.

The Board closed public input and began its deliberations as follows:

- (1) The granting of the variance is not contrary to the public interest because the houses are being further removed from the wetlands, the development is separate and self-contained, the houses are positioned further away from the abutters, and the roads are privately maintained. The Board discussed the shorter driveways which result in a reduction of pavement. The Board also discussed the feasibility of the project with a 40 feet setback. The Board concluded that there is no threat to the health safety or welfare nor is the character of the neighborhood altered.
- (2) The spirit of the ordinance is observed because the essential character of the neighborhood is not altered, there is no threat to public safety affected, and the roads are private maintained.
- (3) Substantial justice is done because the community is self-contained, the granting of the variance allows the owner design flexibility in protecting the wetlands, and there is no harm to the public (the value to the community is enhanced).
- (4) Values of surrounding properties are not diminished as the development is in line with the current neighborhood.
- (5) There is a fair and substantial relationship between the general purpose of the ordinance and the specific restrictions on the property because there was no hardship put forth by the applicant. The Board discussed the lack of a separate ordinance decreasing the setback for a 55+ elderly development. The Board stated that the developer can proceed with the project without the variance. J. Benard commented on the lack of children in these developments, and on the developer's point in the reduction of pavement which is in line with the character of Londonderry. J. Tirabassi noted there was no economic hardship as the developer stated the project will move forward with or without the variance. J. Benard noted that the applicant did not present any hardship even though the property is unique. She added that the property can move forward without the variance. S. Brunelle spoke of the purpose of the ordinance: safety, aesthetic and

road widening. J. Tirabassi stated that there is no reason to allow the variance. N. Dunn noted the use is a reasonable use and the project can move forward without it. J. Benard stated that they have the ability to move forward without the variance but they do not want to. The Board referenced RSA 674:33 and the hardship criteria as stated noting that the property can be used in strict conformance with the ordinance.

**J. Tirabassi made a motion in CASE NO. 4/19/2017-1 to deny the request for a variance from LZO 2.3.1.3.C.1 to construct buildings within an elderly housing community 30 feet from the front setback where 40 feet are required, 57 Adams Road, Map 6 Lots 59-1 and 84, Zoned AR-1 and Route 102 Performance Overlay District, Cross Farm Development, LLC (Owner & Applicant)**

**B. Berardino Deptula seconded the motion.**

**The motion was granted, 4-1-0. The applicant's request for a variance was DENIED.**

The reasons for denial were that the applicant failed to demonstrate a hardship as it was stated that applicant can proceed with the project without a variance. The zoning ordinance exists for a reason and the request is purely for a want and there was no hardship put forth by the applicant. Literal enforcement does not produce a hardship.

**B. CASE NO. 4/19/2017-2: Request for variances from LZO 2.5.1.3.L.2 to allow a portable storage unit over 20 feet in length where only 20 feet in length are allowed and from LZO 2.5.1.3.L.3 to allow a portable storage unit (a model unit) to remain on the property in excess of the allowed 45 consecutive days and in excess of the allowed 90 days annually, 154 Harvey Road, Map 28 Lot 31-30, Zoned IND-II, Wire Belt Co. of America, Inc. (Owner & Applicant)**

J. Tirabassi read the case into the record noting that the previous zoning action on the property. Attorney Daniel Muller, Cronin, Bisson & Zalinsky, 722 Chestnut Street, Manchester, New Hampshire and Dave Tessier, Wire Belt, presented for the applicant. D. Muller explained introduced Wire Belt Co. as a manufacturing company that located its business in Londonderry in 1989. He explained that Wire Belt invested \$250,000 developing a portable storage unit that it now seeks to display on a permanent basis for sale (not for storage) on its property at 154 Harvey Road (zoned Ind-II). He noted that the unit does not fit neatly into any ordinance or the definition of structure but was the closest to the portable structure ordinance. He reviewed the two ordinances in question (one for length and one for time). He added that the structure which is 23.7 feet in length is located on a concrete pad (not affixed) and will be used as a display model available for purchase. He then addressed the five criteria for granting a

variance as follows:

- (1) The variance will not be contrary to the public interest and (2) the spirit of the ordinance is observed because the granting does not unduly conflict with the zoning ordinance by altering the character of the neighborhood or present a threat to the public health, safety or welfare. He added that the lot is zoned industrial with numerous portable structure units present in the area. He added that because the model is for sale, the model will be well maintained and presented. He explained that the unit will not be located in close proximity to abutting property owners noting the Wire Belt ownership of the neighboring lot. He referenced the electrical permit which dictated the location of the unit on the property. He stated there is no threat to the public health, safety or welfare or traffic concerns or interference with other improvements on the property. He noted the removal of one parking space;
- (3) Substantial justice is done because the applicant invested \$250,000 in the development, marketing and creation of this structure and not allowing it to be displayed would require the applicant to reengineer the unit at a significant cost. Additionally, the cost to move the structure of approximately \$1700 per move is prohibitive.
- (4) The values of surrounding properties are not diminished because the property is in the Ind-II district where portable structures are allowed generally, and the property is abutted by Four Technology Drive where the view is screened by trees. He added that this is a display model unit which will be well maintained and presented for sale.
- (5) 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: D. Muller noted that the use does not fit tightly into the ordinance and is unique. He noted that the unit has the physical characteristic of the storage container but that is not the use that it is being used. He added that the zoning ordinances cannot be crafted to deal with every use and that you are not permitted to zone out particular uses. He noted that the parcel is large and the unit is located next to the building away from other properties. He added that the structure does not lend itself to being stored inside. He noted the lack of a fair and substantial relationship because the structure is not being used as storage but rather as a display model for sale. He added that it is a unique property lending itself to the outdoor use, and the use is reasonable. He commented that he is not aware of any complaints about the unit. He concluded his presentation and welcomed any questions.

Chairman Dunn reviewed the allowable time under the ordinance with R. Canuel who stated that two permits are allowed per calendar year. R. Canuel added that the unit is not an accessory structure and does not fit in nicely into the ordinance. He described the electricity serving the unit. J. Tirabassi asked about the proprietary design as it relates to the dimensions in the ordinance. D. Tessier commented about the ramps required to move which dictated in part the design. S. Brunelle asked about the design and D. Tessier stated it is designed for the storage of personal property. D. Muller explained that the design and manufacturing are proprietary. D. Tessier stated that it does not manufacture the unit but sells and markets it. J. Benard asked if the unit comes in varying sizes and why is power necessary. D. Tessier generally explained the reason for the power, and responded that there are other sizes available for sale with the 23.7 feet unit being the smallest. A. Deptula asked for the other dimensions. D. Tessier stated it is 8 feet wide and (inaudible) tall.

Chairman Dunn asked for public input and there was none.

The Board deliberated the request for a variance for the length of the unit as follows:

- (1) The variance will not be contrary to the public interest because the unit blends in with the character of the neighborhood, an industrial zone, and not being used as a storage unit but as a display model.
- (2) the spirit of the ordinance is observed because the unit is not being used as a storage unit but rather a display model, and the unit does not fit in neatly with the portable structure ordinance noting the unit is a manufactured product. The reasons for criteria 1 were incorporated here;
- (3) Substantial justice is done because there is no loss to the public but a significant loss to the applicant;
- (4) The values of surrounding properties are not diminished because the unit fits in with the character of an industrial zone and will be well maintained as a display model for sale;
- (5) 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 because the unit is not within the storage unit ordinance, and is a model unit that is on display for sale. The Board noted that there is no regulation/ordinance that addresses this situation. The Board noted that the proposed use is a reasonable one.

The Board noted four conditions to the granting of the variance: (1) only one unit for sale shall be displayed in the area described; (2) the unit shall not exceed 23.7 feet in length; (3) the unit shall not be used to store personal property; and (4) the variance terminates with Wire Belt's business and/or when Wire Belt is no longer the owner of the property.

The Board then deliberated the second variance request regarding the length of time. The Board noted the same reasons in the fact finding sheet for the first variance applied for the second.

**J. Benard made a motion in CASE NO. 4/19/2017-2 to grant the requests for variances from LZO 2.5.1.3.L.2 to allow a portable storage unit over 20 feet in length where only 20 feet in length are allowed and from LZO 2.5.1.3.L.3 to allow a portable storage unit (a model unit) to remain on the property in excess of the allowed 45 consecutive days and in excess of the allowed 90 days annually, 154 Harvey Road, Map 28 Lot 31-30, Zoned IND-II, Wire Belt Co. of America, Inc. (Owner & Applicant) with the following restrictions:**

**(1) only one unit for sale shall be displayed in the area described; (2) the unit shall not exceed 23.7 feet in length; (3) the unit shall not be used to store personal property; and (4) the variance terminates with Wirebelt's business and/or when Wirebelt is no longer the owner of the property.**



**J. Tirabassi seconded the motion.**

**The motion was granted, 4-0-0. The applicant's requests for two variances were granted.**

**C. CASE NO. 4/19/2017-3: Request for a variance from LZO 3.11.7.E.3 to allow an electronic price changer which is otherwise prohibited, Six Nashua Road, Map 10 Lot 120, Zoned C-II, Rana Realty 3, LLC (Owner) and NH Signs – Peter March (Applicant)**

J. Tirabassi read the case into the record noting the previous zoning cases. Peter March and Dan Hutchins, NH Signs, 66 Gold Ledge Ave, Auburn, NH presented for the applicant. P. March explained that they are requesting a variance to reface an existing non-conforming sign with an electronic price changer for a gas station. He reviewed the sign ordinance and explained to the Board the difficulties in changing the numbers on the sign as well as the safety issues involved with changing the numbers especially during certain weather conditions. He added that there will be no changeable text or any other graphics. He noted the numbers can be changed remotely through a network. He stated they are not message boards under the normal definitions. He stated that the sign makes it easier for the public to read the prices increasing public safety. He showed the Board the numbers that are changed noting the weight and size of the numbers. He commented on the method of changing LED signs. He then reviewed the five variance criteria as follows by first explaining the purpose of the sign ordinance as noted in LZO 3.11.1:

(1) The variance will not be contrary to the public interest because the gas station is one of the few businesses required to post its prices noting the prices can be changed up to three times a day. He referenced the picture of the pricing with the plastic numbers. He added that the effect is minimal noting little differences in size of the numbers. He commented on the well-known use of the LED signs, and stated there is no adverse effect on the health, safety and welfare of the public;

(2) The spirit of the ordinance is observed because the spirit is to protect and improve the livability and promote economic life. He added that the sign will reduce clutter and improve the visibility of the numbers and the appearance of the sign. He added that the Londonderry ordinances have not kept up with current technology. He noted that the neighboring Shell Station uses similar technology in its price display.

(3) Substantial justice is done because most gas station promote its prices this way which is encouraged for safety reasons;

(4) Values of the property are not diminished because the change will provide for visually appealing

technology, and the sign structure will remain unchanged;

(5) 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 because the Town has not kept up with the changes in technology. If the variance was not allowed, then the owner would be forced to change it manually with higher maintenance costs. He stated that the uniqueness of a gas station is that it is required to change prices on a regular basis.

Chairman Dunn asked for questions from the Board. J. Benard asked how many prices would be listed on the proposed sign. P. March stated there would be just one price listed noting the posting requirements for two places. He asked for public input and there was none. Chairman Dunn closed public input and the Board began its deliberations. S. Brunelle asked if the sign was non-conforming. R. Canuel stated it is not, and the sign was granted a variance to exist as it does today. B. Bernardino asked if the structure was changing. P. March stated no. N. Dunn asked if the sign just changes numbers. P. March stated yes. A. Deptula asked what colors would be used. P. March stated most likely red and one single color.

Chairman Dun asked for public input and there was none.

The Board deliberated the five variance criteria as follows:

- (1) The variance will not be contrary to the public interest because it improves the aesthetics, declutters, increases public safety and is easier to read;
- (2) The spirit of the ordinance is observed because the new sign controls visual clutter and satisfies the other purposes mentioned in LZO 3.11.1;
- (3) Substantial justice is done because there is a public safety gain as well as an increase in pricing accuracy. The new sign will attract economic development;
- (4) Values of the property are not diminished because the proposed sign is similar to other signs in the neighborhood (Shell gas station), and is cleaner and neater;
- (5) 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 because of the unique regulations for the gas stations and the new technology not addressed by the ordinance; the proposed sign promotes public safety and enhances the appearance; and the proposed use is a reasonable one as it is the same character of surrounding businesses.

The Board noted the following restriction: The sign shall remain as presented to the Board with numeric characters only.

Member J. Benard made a motion in CASE NO. 4/19/2017-3 to grant the request for a variance from LZO 3.11.7.E.3 to allow an electronic price changer which is otherwise prohibited, Six Nashua Road, Map 10 Lot 120, Zoned C-II, Rana Realty 3, LLC (Owner) and NH Signs – Peter March (Applicant) with the following restriction: The sign shall remain as presented to the Board with numeric characters only.

Member B. Berardino seconded the motion.

The motion was granted, 5-0-0. The applicant's request for a variance was granted.

## II. Communications and miscellaneous: **Training**

The Board was made aware of additional training opportunities offered by Town Counsel. The Board agreed it would come up with topics on of importance and forward those topics to Town Staff.

## III. Other business:

The Board noted a motion for rehearing was received yesterday in Case No. 2/15/17-2. S. Brunelle recused herself from this matter. Chairman Dunn noted the motion was untimely and outside of the thirty days required by statute. Chairman Dunn appointed A. Deptula to vote for S. Brunelle.

J. Benard made a motion to deny the applicant's request, in Case no. 2/15/2017-2: Request for a variance from LZO 3.9.1 and 3.9.4 to allow the construction of a wireless telecommunications facility in the AR-1 zone where otherwise prohibited and to allow construction of the wireless communication tower which is set back approximately 204 feet from the nearest property boundary where 300 feet are required, 76 Chase Road, Map 1 Lot 83, Zoned AR-1, Christopher Trakas (Owner) and American Tower Corporation (Applicant), for a rehearing as it is untimely filed pursuant to RSA 677:2 as the hearing date on the application was March 15, 2017 and the notice of decision was sent to the applicant on March 22, 2017 within 5 business days as required, and the motion for rehearing was hand delivered to the Town on April 18, 2017 – 34 days after the decision was made.

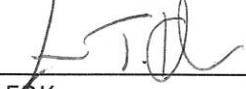
B. Berardino seconded the motion. The motion was granted, 5-0-0. The motion for a rehearing was denied.

Member B. Berardino made a motion to adjourn at 10:50 p.m.

J. Tirabassi seconded the motion.

The motion was granted, 5-0-0. The meeting adjourned at 10:50 p.m.

RESPECTFULLY SUBMITTED,

  
\_\_\_\_\_  
CLERK

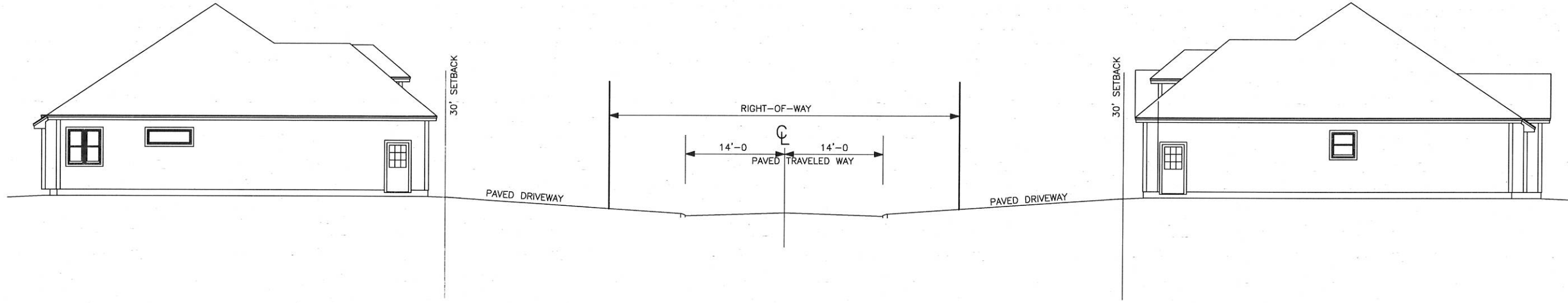
TYPED AND TRANSCRIBED BY LAURA GANDIA, ASSOCIATE PLANNER.

**APPROVED (X)** WITH A MOTION MADE BY Jim Timbassi, SECONDED BY Suzanne, 5-0-0.

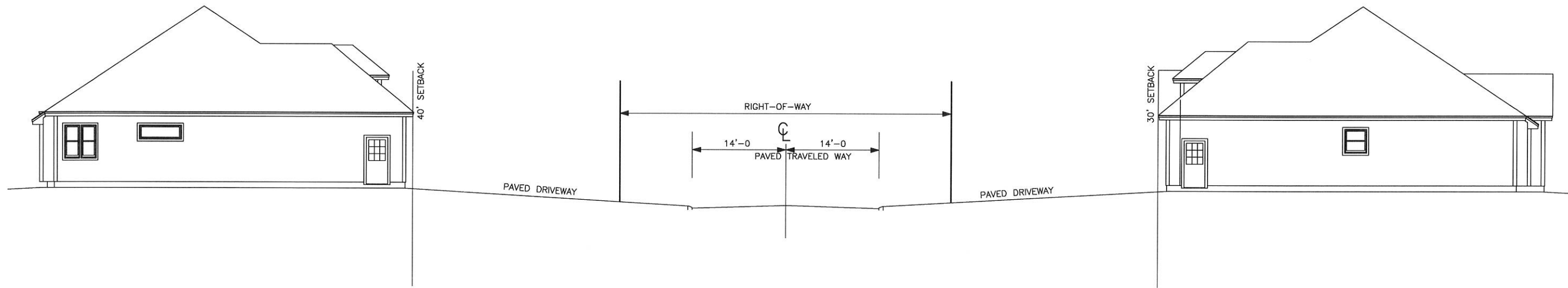
Exhibit 1

4/19/17-1

Exhibit 1  
11943

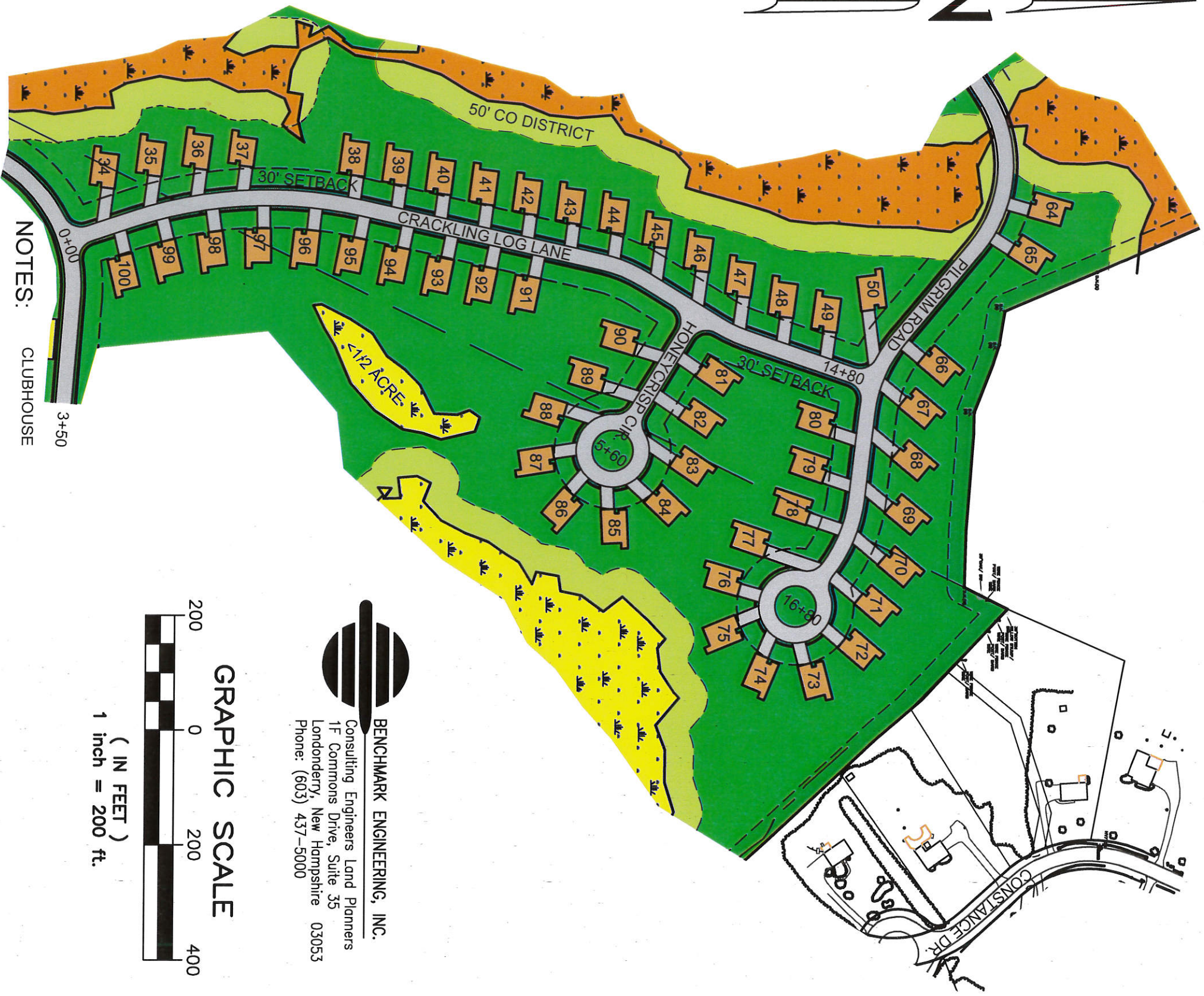


**TYPICAL ROADWAY SECTION 30' SETBACKS**  
(NOT TO SCALE)



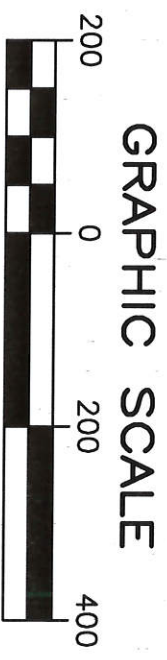
**TYPICAL ROADWAY SECTION 40' SETBACKS**  
(NOT TO SCALE)

11943



1. PURPOSE OF PLAN:  
 A) TO SHOW A CONCEPTUAL SITE PLAN ON TAX MAP 6 LOTS 59-1 WITH A 40' FRONT BUILDING SETBACK.

NOTES: CLUBHOUSE



**BENCHMARK ENGINEERING, INC.**  
 Consulting Engineers Land Planners  
 1F Commons Drive, Suite 35  
 Londonderry, New Hampshire 03053  
 Phone: (603) 437-5000

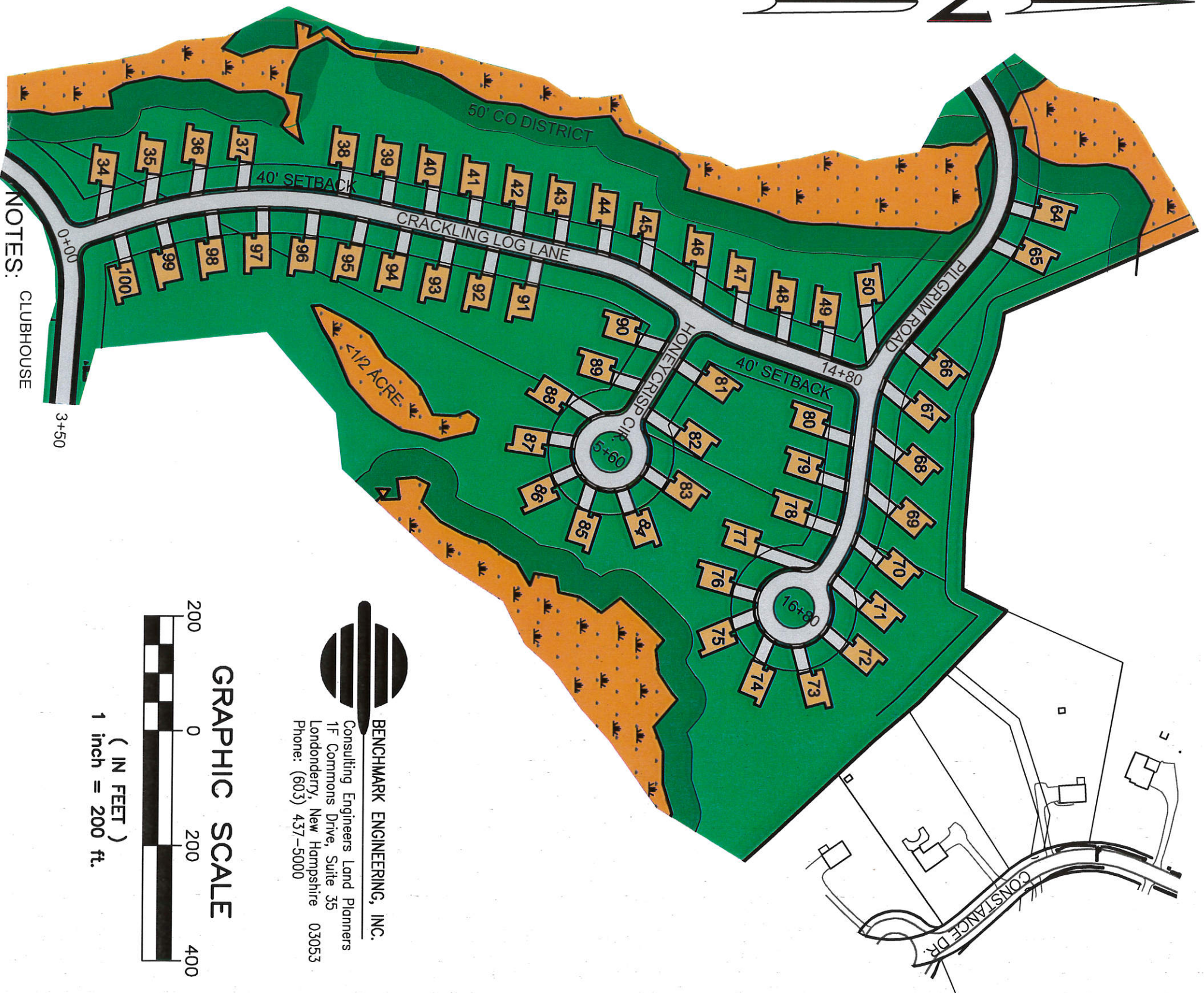
**DETAIL -1 30' SETBACKS**  
**CONCEPTUAL SITE PLAN**  
**GROSS FARM**  
 TAX MAP 6 LOTS 59-1 & 84  
 CROSS ROAD & ADAMS ROAD  
 LONDONDERRY, NEW HAMPSHIRE 03053

OWNER OF RECORD / PREPARED FOR:  
 TAX MAP 6 LOT 84  
 CROSS FARM DEVELOPMENT, LLC  
 PO BOX 543  
 LONDONDERRY, NEW HAMPSHIRE 03053  
 RCRD BK. 5672 PG. 2664

TAX MAP 6 LOT 59-1  
 DORIS & KENNETH CROSS  
 2048 SKY HIGH ROAD  
 LAFAYETTE, NY 13084  
 RCRD BK. 5056 PG. 2651

SCALE: 1"=200' SHEET 1 OF 1 JANUARY 18, 2016





NOTES: CLUBHOUSE

1. PURPOSE OF PLAN:  
 A) TO SHOW A CONCEPTUAL SITE PLAN ON TAX MAP 6 LOTS 59-1 WITH A 40' FRONT BUILDING SETBACK.



**BENCHMARK ENGINEERING, INC.**  
 Consulting Engineers Land Planners  
 1F Commons Drive, Suite 35  
 Londonderry, New Hampshire 03053  
 Phone: (603) 437-5000

**DETAIL -1 40' SETBACKS**  
**CONCEPTUAL SITE PLAN**  
**GROSS FARM**  
 TAX MAP 6 LOTS 59-1 & 84  
 CROSS ROAD & ADAMS ROAD  
 LONDONDERRY, NEW HAMPSHIRE 03053

OWNER OF RECORD / PREPARED FOR:  
 TAX MAP 6 LOT 84  
 CROSS FARM DEVELOPMENT, LLC  
 PO BOX 543  
 LONDONDERRY, NEW HAMPSHIRE 03053  
 RCRD BK. 5672 PG. 2664

TAX MAP 6 LOT 59-1  
 DORIS & KENNETH CROSS  
 2048 SKY HIGH ROAD  
 LAFAYETTE, NY 13084  
 RCRD BK. 5056 PG. 2651

SCALE: 1"=200' SHEET 1 OF 1 JANUARY 18, 2016





Exhibit 3 4/19/17-1

*It is my understanding that the applicant MUST meet all five criteria in order to receive the variance. I do not believe that is the case. I will address each of the five points.*

## 1. The variance would not be contrary to the public interest:

*I believe that it would the purpose in zoning regulations is.*

### 1.1.3 Purpose

These zoning regulations and maps are being enacted for the purpose of preserving and promoting the health, safety and welfare of the community. It is the intention of the Planning Board and the Zoning Board to guide the future growth and development of the Town in accordance with a Master Plan which represents the most beneficial and convenient relationships among the residential, non-residential and public areas within the Town considering the suitability of each area for such uses, as indicated by existing conditions, trends in population and modes of living, and future requirements; and considering such conditions, trends and requirements, both within the Town and in relationship to areas outside thereof. It is further the intent of these regulations:

**A. To provide adequate light, air and privacy; to secure safety from fire and other danger, and to prevent over-crowding of the land and undue congestion of population;**

B. To protect the character, the social and economic stability of all parts of the Town, to guide the orderly growth and development of the Town, and to protect and conserve the value of land and structures appropriate to the various land use classes established by the master plan for the Town of Londonderry, and by these comprehensive zoning regulations;

C. To promote the most beneficial relationship between the uses of land and structures, and the road system which serves these uses, having particular regard for the potential amount and intensity of such land and structure uses in relationship to the traffic capacity of the road system, so as to avoid congestion in the streets and roadways, and to promote safe and convenient vehicular and pedestrian traffic movements appropriate to the various uses of land and structures throughout the Town;

D. To provide a guide for public action in the orderly and efficient provision of public facilities and services, and for private enterprise in undertaking development, investment and other economic activity relating to uses of land and structures throughout the Town;

E. To provide an adequate housing choice in a suitable living environment within the economic reach of all citizens;

*The Town has spent many years and many hundreds of thousands of dollars writing and updating its zoning regulations. In those regulations, the minimum set back was set at 40 feet. This is presumably in part to comply with section 1.1.3 A of the zoning regulation and provide adequate light, air and privacy and especially to prevent overcrowding of the land. By reducing the setback, the properties will all be closer to the street, creating a "crowded" feel to anyone passing along the road.*

*The applicant indicates that having older residents is a mitigating factor. The zoning ordinance clearly took age into consideration when addressing age restricted housing and DID NOT make adjustments to setbacks for same.*

## 2. The spirit of the ordinance is observed.

*The spirit of the ordinance (having minimum setbacks) is to reduce overcrowding and provide light and air, by pushing all development closer to the road, contrary to the ordinance, visual congestion is created from roadway, this does not help to provide light, or prevent overcrowding of the visual landscape.*

## 3. Substantial justice is done.

*The developer will save a great deal of money by being granted the ordinance, they will have to pave less, presumably have shorter runs for utilities etc. In the application they state that they will have to clear less land and brush.. However granting a variance IS NOT intended to be solely a cost saving mechanism for a developer. The applicant also states that the variance will provide a larger buffer between the homes and the conservation land. However, this is only accomplished by providing a smaller buffer to the street. Without the variance, the conservation buffers can still be met.*

## 4. The values of the surrounding properties are not diminished.

*Possibly the most difficult of the 5 points to determine absolutely.. However compliance with the zoning regulations should certainly not reduce any values.*

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

- (A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:
  - (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

*The applicant indicates that being a "large" parcel with water courses and wetlands being addressed as a single community sets it apart and the applicant goes on to say in their application that providing a safe distance from a public way does not apply. Maintaining a safe distance from a roadway should always apply.*

- (II) The proposed use is a reasonable one.

*The applicant states in the application that elderly housing is permitted. And goes on to say that "more flexibility in the design of elderly housing should be allowed." The applicant is in essence requesting a rewrite of the ordinance, not a variance.*

- (B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

*The applicant states in their application that the project will move forward without the variance. NO hardship exists.*

Exhibit-2 Case 4/19/17-1

**J. CHET ROGERS, LLC**  
Commercial Real Estate Appraiser  
P.O. Box 1138  
Hollis, New Hampshire 03049

New Hampshire Certified General-NHCG-727  
Maine Certified General-MECG-2590  
Massachusetts Certified General-MACG-103344  
Vermont Certified General-VTCG-008.0091163  
[www.chetrogers.com](http://www.chetrogers.com) [www.conservationappraisal.com](http://www.conservationappraisal.com)

Tel: (603) 722-0663  
Fax: (603) 546-7776

Email: [chet@chetrogers.com](mailto:chet@chetrogers.com)

April 17, 2017

Morgan Hollis, Esquire  
Gottesman & Hollis  
39 East Pearl Street  
Nashua, NH 03060

**RE: 57 Adams Road, Londonderry, NH (Tax Map 6 Lots 59-1 & 84) - Zoning Variance**

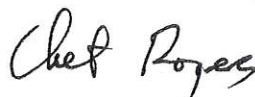
Dear Attorney Hollis:

In response to your recent request, I am pleased to submit my analysis of the above-captioned variance request to determine what effect a zoning variance to construct buildings within an elderly housing community with 30 feet front setback from a private way, when 40 feet is required, will have on valuation of surrounding properties. I have not performed any services regarding the Subject property within the past three years, as an appraiser or in any other capacity.

The site and abutting sites were inspected and photographed on April 16, 2017. I have reviewed and analyzed the plan and variance application that you provided. Surrounding properties consist of developed, residential lots in a wooded setting. The only abutter that could be impacted by this variance is the current owner of the property. No other abutters will notice any difference, as natural buffers offer both horizontal and vertical protection. A brook, wetlands, and woodlands create enough screening between residential neighbors on all sides.

In my opinion, granting the variance requested to allow construction of buildings within an elderly housing community with 30 feet front setback from a private way, when 40 feet is required, will NOT have a negative effect on the real estate values of the abutters or the neighborhood in general.

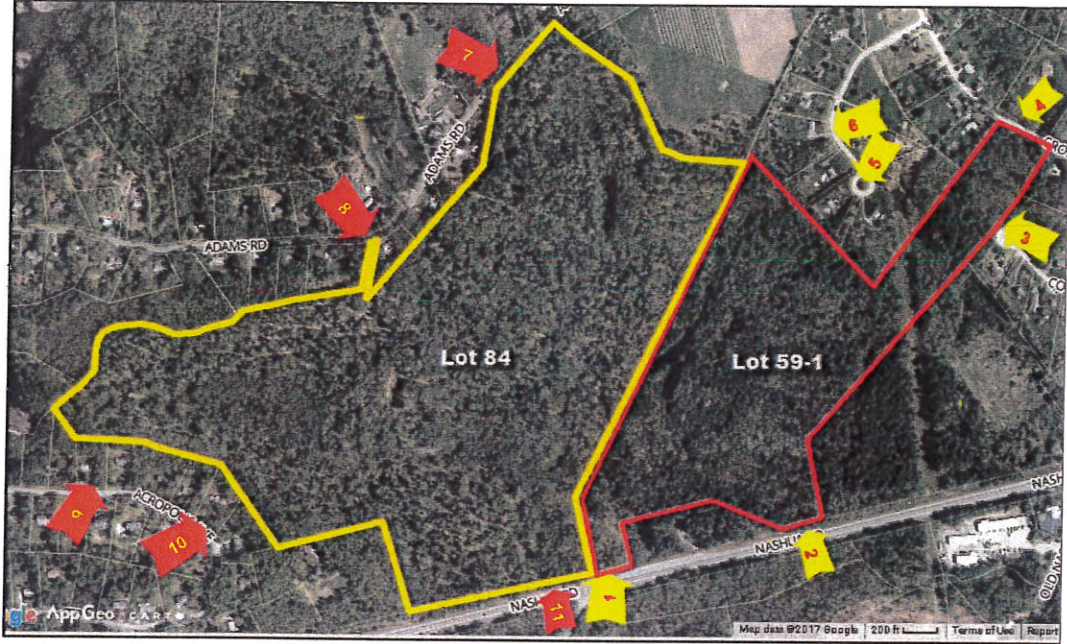
Very truly yours,



Chet Rogers, MAI  
Certified General Appraiser NHCG-727

Attachment: Qualifications of Appraiser

***AERIAL VIEW OF SUBJECT AND ABUTTING  
PROPERTIES, WITH PHOTO KEY***



*PHOTOGRAPHS*

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1 - View of Lot 59-1, taken from 209 Nashua Road



2 - View of Lot 59-1 just east of 209 Nashua Road



3 - Cul de sac at end of Copperfield Lane



4 - View of Lot 59-1 from Cross Road (between #19 and #23)



5 - View of Lot 59-1 from Constance Drive cul de sac



6 - View of Lot 84 behind 10 Constance Drive

Photos taken April 16, 2017

*PHOTOGRAPHS*

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7 - View of Lot 84 from Adams Road just west of 53 Adams Road



8 - View of Lot 84 at 75 Adams Road



9 - View of Lot 84 behind 16 Acropolis Avenue



10 - View of Lot 84 behind 8 Acropolis Avenue



11 - View of Lot 84, taken from 209 Nashua Road

Photos Taken April 16, 2017



## QUALIFICATIONS OF J. CHET ROGERS, MAI

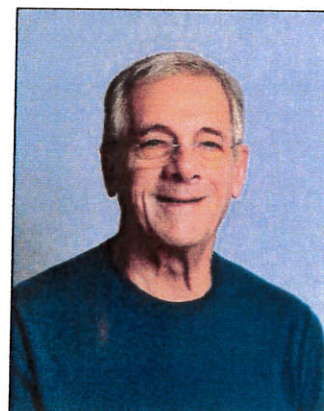
Real Estate Appraiser & Consultant  
New Hampshire, Massachusetts, Maine and Vermont



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### Appraisal Business Experience:

Independent commercial real estate appraiser licensed in NH, MA, ME and VT.

Engaged full time in the appraisal of real estate since 2003

Residential appraiser for Mickeriz Appraisal Company of Rumford, Maine 2003 to 2004

Commercial appraiser for R. G. Bramley & Co of Nashua, NH 2004 to 2010

Commercial assignments include appraisals in connection with buying, selling, financing, eminent domain takings, bankruptcies, divorces, tax abatements, estate valuations, and portfolio management.

Experience in conservation easements, donations and acquisitions

Experience in IRS and "Yellow Book" appraisals.

Experience in eminent domain and tax abatement appraisals.

### Licenses and Designations:

MAI designation from the Appraisal Institute

DAC, Designated Appraiser Coalition, Founding Member

New Hampshire Certified General Appraiser (NHCG-727)

Maine Certified General Appraiser (MECG-2590)

Massachusetts Certified General Appraiser (MACG-103344)

Vermont Certified General Appraiser (VTCG-080.0091163)

Certificate for Valuation of Conservation Easements, AI-ASA-ASFMRA-LTA

Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book)

LEED AP Accreditation, Green Building Certification Institute, expired

### Education:

Over 690 hours appraisal education (see list below)

Various technical certifications in the computer network field from Cisco, Novell and Microsoft

### Universities:

Graduate work in engineering management at Northeastern University

Graduate work in electrical engineering at Syracuse University

B.S. Electrical Engineering at Virginia Tech

Appraisal Seminars, Classes, or Exams:

September 2016	Paragon for Appraisers
May 2016	Land Valuation Seminar, AI-NH
January 2016	Accessing and Understanding NH Public Data, Update
January 2016	Supervisor-Trainee Course for New Hampshire, McKissock
November 2015	Drone Technology and Its Impact on Appraisers, NH-AI
October 2015	Advanced Excel for Appraisers, NH-AI
September 2015	Advanced Income Capitalization, AI
September 2015	A Pause in the Recovery, NH-AI
May 2015	Commercial Real Estate Lending and Valuation Process
January 2015	NH Past Presidents Speak, NH-AI
November 2014	Data Visualization in Appraisal, AI
November 2014	NH Department of Revenue, NH-AI
November 2014	Review of Court Decisions on Valuations, AI
October 2014	Right of Way – Three Case Studies, AI
October 2014	Business Practices and Ethics, AI
September 2014	Reaching Escape Velocity: Breaking Free of the Great Recession, NH-AI
June 2014	Conservation Easement Valuation Workshop, AI
June 2014	USPAP 2014-2015 Update, AI
May 2014	Real Estate Valuation from the Developer Perspective, NH-AI
March 2014	Residential Appraisal: Beyond the Secondary Market, NH-AI
March 2014	Appraisals of Senior Housing and Long-Term Care Properties, AI
January 2014	Accessing and Understanding NH Public Data, NH-AI
November 2013	Appraising Special Properties, NH-AI
November 2013	Valuation of Conservation Easements, AI
November 2013	Appraisal of Real Estate 14 <sup>th</sup> Edition Changes, AI
October 2013	Carving Out Your Legal Niche, AI
October 2013	Complex Litigation Appraisal Case Studies, AI
September 2013	Appraisal Reviewers Roundtable, NH-AI
May 2013	Commercial Real Estate Roundtable, NH-AI
April 2013	Commercial Bankruptcy, Workouts, and the Valuation Process
April 2013	The Appraiser as an Expert Witness, NH-AI
January 2013	NH Real Estate Appraiser Board, NH-AI
November 2012	Retail Center Analysis for Financing, AU
November 2012	Economic and Real Estate Implications of New Hampshire's Shifting Growth and Demographic Forces, NH-AI
November 2012	Practical Application of the Cost Approach, AU
September 2012	Map Websites for Appraisers, NH-AI
August 2012	Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book), GL
August 2012	Site Analysis and Valuation, AU
June 2012	Federal Agencies and Appraisal: Program Updates
May 2012	Values and Trends in the Commercial Real Estate Investment Market, NH-AI
April 2012	USPAP 2012-2013, NH-AI
January 2012	Energy Efficiency Factors When Appraising Commercial Buildings, NH-AI
November 2011	Regulatory Updates from Members of the NH Appraiser Board, NH-AI
October 2011	Interagency Appraisal & Evaluation Guidelines for Appraisers & Lenders, AI
September 2011	Attacking and Defending an Appraisal in Litigation, Whitmer
July 2011	Perspectives from Commercial Review Appraisers, AI
May 2011	Uniform Mortgage Data Program, NH-AI
April 2011	Real Estate Industry Perspectives on Lease Accounting, AI
March 2011	GIS Mapping, UNH
March 2011	Workforce Housing in New Hampshire, NH-AI
February 2011	Property Tax Appeals, NH-AI
January 2011	Appraising Historic Property, AU

Appraisal Seminars, Classes, or Exams ...continued

January 2011	Making Maps the Google Way, UNH
October 2010	Technology for Narrative Appraisals, NH-AI
October 2010	Allocation of Hotel Total Assets, AI
May 2010	Appraisal Curriculum Overview, AI
May 2010	Estimating Property Damage, NH-AI
March 2010	New Hampshire Economy and Real Estate Market, NH-AI
March 2010	2010-2011 USPAP Update, NH-AI
February 2010	Contemporary Appraisal Issues with SBA Financing, AI
January 2010	Loss Prevention Seminar, LIA
November 2009	Valuation of Low-Income Housing Tax Credit (LIHTC) Properties, NH-AI
October 2009	USPAP Update, NH-AI
October 2009	New England Appraisers Expo 2009, AI
May 2009	Appraisal of Manufactured Housing Communities, NH-AI
May 2009	Evaluating Residential Construction, NH-AI
April 2009	Introducing Valuation for Financial Reporting, AI
March 2009	Develop an Effective Marketing Plan, AI
March 2009	Real Data: Analysis of Real Estate, NH-AI
January 2009	Branding in the Age of Findability, AI
January 2009	Changes to the Comprehensive Shoreline Protection Act, NH-AI
January 2009	The Real Implications of the HVCC on Appraisers & Lenders, AI
November 2008	Review Appraiser Seminar, NH-AI
October 2008	New England Appraisers Expo, MBREA
June 2008	General Demonstration of Knowledge Appraisal Report Workshop, AI
May 2008	NH Bureau of Tax and Land Appeals, NH-AI
March 2008	Valuation of Conservation Easements, AI-ASA-ASFMRA-LTA
November 2007	Appraising Conservation Easements, MAREAB
October 2007	National USPAP Update #420, NH-AI
October 2007	Current Use Seminar, NH-AI
September 2007	Certified General exam; NH ME
May 2007	Affordable Housing Financing & Valuation; NH-AI
February 2007	MAI Comprehensive Exam; AI
October 2006	The Future of the Foundation; NH-AI
September 2006	Real Estate Values & Trends in NH; NH-AI
June 2006	Advanced Applications; AI
May 2006	Eminent Domain Appraising; NH-AI
April 2006	Scope of Work; AI
March 2006	Report Writing and Valuation Analysis; AI
January 2006	Real Data: How to use their tools in the analysis of real estate; NH-AI
January 2006	Business Practices and Ethics; AI
December 2005	Advanced Sales Comparison and Cost Approach; AI
October 2005	Appraising Conservation Easements; NH-AI
October 2005	Highest and Best Use and Market Analysis; AI
September 2005	Advanced Income Capitalization; AI
May 2005	NHREAB; NH-AI
May 2005	USPAP Update; MA-AI
March 2005	ISA & Home Inspection; NH-AI
March 2005	Appraising Convenience Stores; ME-AI
February 2005	General Demonstration Report Writing; MA-AI
February 2005	Associate Members Guidance; MA-AI
January 2005	Excavation in New Hampshire; NH-AI
October 2004	Appraising Income Properties; JMB Real Estate Academy
October 2003	Uniform Standards of Professional Appraisal Practices; AREA
October 2003	Basics of Real Estate Appraisal; JMB Real Estate Academy
September 2003	Appraising the Single-Family Home; AREA

Appraisal assignments include:

Testimony to NH BTLA	Testimony to Maine Superior Court
Conservation Easements	Bankruptcies & Workouts
Conservation Acquisitions	Zoning Variances
“Yellow Book” Appraisals	Industrial Buildings
Multi-Family Buildings	HUD Section 8 Rent Studies
Apartment Buildings	Commercial Retail Buildings
Raw land	Golf Courses
Condominiums	Self-Storage Facilities
Subdivisions	Professional Office Buildings and Condos
Gas Stations/Convenience Stores	Mobile Home Parks
Churches	Parking Lots
Restaurants	Tax Abatements
Shopping Centers	Eminent Domain Takings
Airplane Hangars	Auto Service Garages
Laundromats	Retail Buildings
Contaminations	Medical Office Buildings and Condos
Health/Fitness Clubs	Single-Family Residences
2-4 Family Dwellings	Work-force Housing
Hotels	Camp Grounds
Motels	Nordic Ski Area
Veterinary Clinics	Auto Dealerships
Ocean-front and lake-front properties	Farms
Right-of-Ways for power lines, pipelines, & rail trails	Funeral Homes

In addition to appraisal work, I have served in the following capacities:

1960-1964:	Computer Engineer for International Business Machines in Endicott, New York
1964-1975:	Computer Engineer for Honeywell in Waltham, Massachusetts
1975-1982:	Founder, Audio of New England, 6 Retail Locations and a Wholesale Business
1985-1987	Participated as a Principal in a Waterfront Subdivision in the State of Maine
1982-2004:	Founder, Micro C, Inc., a Computer and Network Support Company
1994-2003:	Founder, Micro C Training Center, a Computer Network Training Company
1993-2006:	Owner and Manager of a Commercial Office Building
2001-2007:	Race Director, Applefest Half-Marathon in Hollis, NH
2005-2006:	Founder, New England Appraiser Training
2007-Present:	Founder, J Chet Rogers LLC
2010-2016:	Appraisal Institute - New Hampshire Chapter, Board of Directors
2013-2015:	Appraisal Institute - New Hampshire Chapter, Vice President
2013-2016:	YMCA of Greater Nashua – Board of Directors
2015-Present:	Hollis Planning Board –member