

CHILI PLANNING BOARD  
March 14, 2023

A meeting of the Chili Planning Board was held on March 14, 2023 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Chairperson Michael Nyhan.

PRESENT: Paul Bloser, David Cross, Joseph Defendis, Matt Emens, John Hellaby and Chairperson Michael Nyhan.

ALSO PRESENT: Michael Hanscom, Town Engineering Representative; Jared Hirt, Counsel for the Town; Paul Wanzenried, Building Department Manager.

Chairperson Michael Nyhan declared this to be a legally constituted meeting of the Chili Planning Board. He explained the meeting's procedures and introduced the Board and front table. He announced the fire safety exits.

**PUBLIC HEARINGS:**

1. Application of Forest Creek Equity Corp., 89 Beaver Road, Rochester, New York 14624, Forest Creek Equity Corp., owner; for final approval of a 40-lot residential subdivision to be known as Rose Hill Subdivision Phase 4 at property located at 89 Beaver Road in incentive zone (R-1-20), FPO, FW District(s).

Walt Baker and Richard Battisti were present to represent the application.

MR. BAKER: Good evening. I'm Walt Baker with DSB Engineers, the site engineer, for the project. With me tonight is Richard Battisti who is representing Forest Creek Equity and also Faber Homes, if you have any specific questions for the developer. And also he is -- the -- Forest Creek Equity is the developer and Faber Homes obviously is the builder.

As the Chairman stated, we're here tonight for final approval for what we're referring to as Phase 4. As the Board is probably familiar, we started this project back in 2015 and we got preliminary overall approval in 2016. With the rezoning and issues with New York State DOT, traffic study, we went through all that.

Our main entrance where Section 1 was put in and -- all of the improvements were put in and the DOT turn lane was put in last year actually. With the development of a certain amount of houses, they required that we could stage it and wait until that was done. So that all -- I'm sure you're familiar with it. It has all been put in now.

Sanitary sewer, public water, all that is in place. We do have a sewer stubbed out in Section 4. As you're familiar, in -- Section 1, 2 and 3 kind of connect together. And Section 4 basically has its own separate entrance off of Beaver Road which we'll have to get a New York State DOT curb cut permit for that. But we have 40 lots in Phase 4. That will be obviously connected with the public sanitary sewer, water, stormwater detention.

Michael (Hanscom) made some comments from Lu Engineers. We did receive all of those and I went through them. And we don't have a problem addressing any of them. A lot of them are just referencing the signage for the site, stop signs, ADA detectors and stuff like that. Increase in easement for a storm drainage we which we do have a storm pond.

One of the things -- things that we talked about with the Town staff was that Forest Creek Equity also purchased a lot along Beaver Road. I will point it out here (indicating). It is right here at the corner (indicating). Here is our piece (indicating). This is our Phase 4. We have the two cul-de-sacs. They purchased this property right here (indicating). It's a little over one acre in size. And it exceeds the width that is needed to have -- per code, single-family. Actually, they're going to be cut in half, so a half-acre lot which exceeds the code requirements. So we're going to do two lots out of that one.

And what we're proposing is extending the sanitary sewer from the cul-de-sac, which would be right in the corner of the cul-de-sac up this property line (indicating), place a manhole here (indicating) to get service to the two new lots. And there are two existing lots, so that will allow the people that are existing on Beaver Road, if, in fact, they want to get off their septic systems -- I don't know what kind of condition they're in -- but at some point in time they could tie into the public sewer.

We already spoke with Monroe County Pure Waters, who is in charge of the system through the Gates-Chili Ogden Sewer District, and they're in agreement to doing this. So -- I'm waiting to hear back from Glenn Kaiser at Pure Waters, but I went over it with him. We made the changes he wanted and I sent him revised plans. And we're going to actually do that as an administrative approval just for the two lots because it meets the requirements to do administrative approval. However, we're going to be able to pull the sanitary sewer from this project up to service those four lots basically. So we can get two people off of septic systems at some point when they want to and obviously service the two new lots. So that is a little bit of a change that occurred.

I think Michael (Hanscom) mentioned it in his comments if it, in fact, were to go through,

that is what we're going to do. So we did receive comments from the County and they're basically stating the facts that there is a wetland on the property, which we knew about. We went through all of that at preliminary. We had it all delineated. All mapped out. We'll provide conservation easements over the area of Phase 4 like we did in Phase 3. There was a drainage swale that flows between Phase 1 and 3 and Phase 4. So we have already got that mapped out and we'll continue on with the requirements for that.

Like I mentioned, New York State DOT, they'll require a curb cut permit, which we'll comply with that. Health Department made some comments, but again, they're just standard that we deal with every time we do a subdivision. So if you have any specific questions?

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

CHELSEA WILKES and KASEY BATEMAN

MS. WILKES: I'm a resident of Rose Hill Estates.

MS. BATEMAN: I'm a friend, emotional support and also resident of Rose Hill Estates. Is it okay if I stand here?

MS. WILKES: First of all, thank you for allowing us to speak tonight. This is on behalf of the walk path for the subdivision of Phase 4. My husband was supposed to be here tonight, but he is a law enforcement officer and couldn't be here unfortunately. So he did write a letter.

Do you want me to read that to you or --

MICHAEL NYHAN: No. We have a copy of it.

MS. WILKES: Perfect. Just in regards of the walk path and the security that -- you know, we are concerned about the security, the privacy and the liability of the walk path between my house, which is 22 Etherington Crescent and 24 Etherington Crescent, which is my neighbor's house. Given, you know, that he is a law enforcement officer and also does suffer from diagnosed PTSD, he is always hypervigilant with who is walking on our property and I'm asking you to please take into consideration this walk path between two public properties -- or -- or two private properties. Sorry.

We did have the opportunity to go door to door and speak with our neighbors through the community for the requests for elimination of the walk path. And we do have that, as well, if you would like to see the signatures for it.

MICHAEL NYHAN: We have that, as well.

MS. WILKES: Okay. Perfect. That is my comments to you. Any questions?

MICHAEL NYHAN: No. Thank you.

PAUL WANZENRIED: Mike (Nyhan), you have the letter?

MICHAEL NYHAN: If this --

PAUL WANZENRIED: No, ma'am.

MICHAEL NYHAN: If you would leave us a copy.

PAUL WANZENRIED: The letter you spoke of.

MS. WILKES: You want to see it?

JARED HIRT: That should be received by you, Mike (Nyhan). So it is on record.

MICHAEL NYHAN: I thought that was the letter.

PAUL WANZENRIED: So it can be read into the minutes for Mike (Nyhan).

MATT EMENS: I thought the letter was the --

MICHAEL NYHAN: So there was a three-page letter to the Town of Chili Planning Board members, dated March 13th, 2023. Signed by James Wilkes, Jr. We'll just enter this into the minutes for the meeting.

Referenced letter on file with the Town Building Department.

Michael Nyhan made a motion to close the Public Hearing portion of this application, and John Hellaby seconded the motion. The Board unanimously approved the motion.

The Public Hearing portion of this application was closed at this time.

MICHAEL NYHAN: Seeing no thresholds that were met that would require a SEQR, there will be no new SEQR for final. Anybody disagree with that?

There was no disagreement.

MICHAEL NYHAN: On the discussion?

JOHN HELLABY: Has any of that pathway been installed? Is that -- that completely --

MR. BATTISTI: No. None of the pathway --

Richard Battisti with Forest Creek Equity and Faber Builders. To answer your question, none of the pathway has been constructed as of yet. And we are -- we want to support the residents in their request to remove it. We're okay with removing it. I think the original -- this was put on the original preliminary plan and that was quite a long time ago.

Since that, the pandemic happened, bail reform. We -- we do have -- we can understand the residents' concern for safety. And --

JOHN HELLABY: Was that put on there at the Town's request? Because I honestly can't recall.

MR. BATTISTI: To be honest, I wasn't involved -- I wasn't here yet at the time.

DAVID CROSS: It was a Planning Board request at the time. It was to -- to link the two -- the two phases so that pedestrians didn't have to go out to Beaver Road. There were safety concerns with that. And that is why we had brought it up at that time.

MR. BAKER: It was the 2016 preliminary approval.

MICHAEL NYHAN: Okay.

DAVID CROSS: Good memory.

MATT EMENS: Yeah, because you asked for it.

DAVID CROSS: Well, I asked for it, but, you know, if the developer, you know, doesn't wish to do it -- it is my opinion -- and if residents don't want it, I wouldn't push it.

MATT EMENS: Right.

MICHAEL NYHAN: So what we're asking for is to rescind the condition from the preliminary subdivision approval for the -- between Lots 435, 436, 116 and 115 to remove the path, correct? The foot path.

MR. BAKER: Yes, sir.

JARED HIRT: Walt (Baker), was there an easement with regard to that?

MR. BAKER: There was an easement we created for that. It was submitted to the Town and it was filed. It was filed through the Town obviously, but we did the whole easement -- I found it. We had the whole easement description. I don't know the liber and page number offhand. However, it was filed. We'll just have to go back to the Town Board to have it rescinded.

JARED HIRT: Who was the recipient of the easement, the Town?

MR. BAKER: The Town.

JARED HIRT: It was given to the benefit of the residents of the Town?

MR. BAKER: Correct. A 5-foot asphalt trail to go between the -- the lots. I don't know if you recall, but --

MICHAEL NYHAN: Doesn't one of them have an easement on it for sewers or something?

MR. BAKER: That's over here (indicating). That's a separate one. At one time we would put them together, but it got too cumbersome with the depth of it. The pathway was here (indicating). Sanitary here (indicating). We moved it -- dealing with Pure Waters who went this way (indicating). So the sanitary comes through here (indicating) and it services that direction (indicating). Walkway was through here (indicating).

MICHAEL NYHAN: So the only purpose of that easement was for the walkway?

MR. BAKER: Correct.

MICHAEL NYHAN: So would the Town want to remove that?

JARED HIRT: The purpose was to connect it to, correct?

MR. BAKER: Correct.

JARED HIRT: What we're talking about is the elevated bridge portion, right?

MR. BAKER: That's again, as Jared (Hirt) mentioned, the elevated bridge part was only to cross the creek. Like I mentioned, there is a wetland that goes down through here. And the drainage swale continues all of the way through.

At this point it becomes a wetland area, so we had -- we would have to construct a bridge to get across the creek. It's an intermittent creek, not large at all. But in order to get across it, you have to build some type of a wooden bridge or what have you to get across that area. Then it would be just at-grade asphalt.

JARED HIRT: So has any part of the walking trail been constructed at all?

MR. BAKER: No.

JARED HIRT: So there is nothing to even connect by way of the bridge?

MR. BAKER: Correct.

JARED HIRT: Okay. That easement has been recorded as it pertains to all of the sections, the walkway easement?

MR. BAKER: It should have been filed by the Town back in Phase 1.

JARED HIRT: Okay.

MR. BAKER: But just that portion between those two lots in Phase 1 and not Phase 4 because it was just remaining lands.

JARED HIRT: So I think for purposes of the Planning Board, if you were to vote to rescind that condition, then it should be subject to and conditioned upon the easement then being removed. Because that easement has to be, I guess, divested by way of Town Board resolution and then it's likely subject to a permissive referendum. So I would just make that a condition.

MICHAEL NYHAN: Okay.

MICHAEL HANSCOM: Would the Planning Board need to send a letter to the Town Board then?

JARED HIRT: I don't think they need to make an actual referral, but I do think I would condition -- if you guys are going to vote to rescind it, I would make that a condition to the rescission.

JOHN HELLABY: Without that walkway, only other way to access that then, if I'm thinking of it right, is out on Beaver Road, down Beaver Road and back into that section, correct?

MR. BAKER: Correct.

MATT EMENS: So the bigger question I guess I would have then is based on your recommendation, how we would need to air quotes "clean" that up? What is the risk? Just from

my -- I guess my own information, what is the risk of leaving it if we're just taking the improvement portion out? That's a risk to the Town, because it's deeded to the Town?

JARED HIRT: Well, there's -- it's -- I don't have the easement in front of me. So the easement, I presume, is for the benefit of the Town and its residents to have a walking trail. Right? Through that?

MR. BAKER: Right.

JARED HIRT: So if -- you don't want members of the Town walking through people's yards, frankly, without their being some improvement to it. So it just would clean it up.

MICHAEL NYHAN: Sure.

PAUL BLOSER: What is the status of it now? It is all bulldozed and flat where you proceed with development?

MR. BAKER: No. Their yards are just lawn. Other side of the creek, Section 4, hasn't been touched. It is still fallow field.

PAUL BLOSER: What are the chances of converting some of that money then into vegetation along that line separating those lots, phases? First of all, it will give you something out there to look at other than grass and dirt. It is also going to help pull moisture out of that ground and we already know it's a high moisture content. Certainly any type of trees, vegetation will help draw that moisture out. I would be interested in looking at that. As an alternative.

MICHAEL NYHAN: I think what is going to happen is the easement will be removed and that property will go to the homeowners.

Any other conditions? All right. Conditions that I have then are -- are upon completion of the project, applicant shall submit a Landscape Certificate of Compliance to the Building Department with a landscape architect certifying that all approved plantings have been furnished and installed in substantial conformance with the approved landscape plan.

Approval is subject to final approval of the Town Engineer and Commissioner of Public Works.

The Town Engineer and the Commissioner of Public Works shall be given copies of any correspondence with other approving agencies.

The applicant shall comply with all pertinent Monroe County Development Review Committee comments.

Condition Number 18 from preliminary subdivision approval dated April 15th, 2016, to construct a pedestrian connect elevated bridge in the areas of Lots 435, 436, 116 and 115 is rescinded.

Applicant shall apply to the Town to remove the easement that was put in place for the elevated pedestrian bridge and walking trail.

All other previous conditions imposed by this Board that are still pertinent to the application remain in effect.

Copies of all easements associated with the project shall be provided to the Assistant Town Counsel for approval and filing. Liber and page number shall be noted on the mylars.

Building permit shall not be issued prior to the applicant complying with all conditions.

The application is subject to all required permits, inspections and code compliance regulations.

The applicant to comply with all required life safety conditions and permits from the Town Fire Marshal.

And then just a comment, no thresholds were met that would require a new SEQR, so there is no SEQR on this application.

Any other conditions?

PAUL BLOSER: Do we want to do anything with vegetation along that line?

MICHAEL NYHAN: No. We have to leave that up to the homeowners. It will become their property.

PAUL WANZENRIED: First condition?

MICHAEL NYHAN: Landscaping, yes.

PAUL WANZENRIED: Aside from street trees, I'm not sure what landscaping they do in a subdivision.

MICHAEL NYHAN: I think they have a landscape plan for the street trees, right?

PAUL WANZENRIED: Yeah. That is usually just -- I don't -- I don't think we have ever -- I don't remember ever pursuing that. It's not like a building when there is a landscaping plan or a site plan when there is a landscaping plan. This is a subdivision. It's lots.

MICHAEL NYHAN: I thought we did put it on the previous approval, as well.

PAUL WANZENRIED: There is a street tree planting program. They plant X number of street trees every other side of the street. That sort of thing.

MICHAEL NYHAN: So it was on the original --

PAUL WANZENRIED: Was it?

MICHAEL NYHAN: -- approval. So we'll just leave it.

MR. BAKER: We do put in street trees. Sidewalks on both sides of the street.

MICHAEL NYHAN: I think that is what is on the plan, right?

MR. BAKER: Yes.

MICHAEL NYHAN: All right. Anything else?

With those conditions of approval now. Application of Forest Creek Equity Corp., 89 Beaver Road, Rochester, New York 14624, Forest Creek Equity Corp., owner; for final approval of a 40-lot residential subdivision to be known as Rose Hill Subdivision Phase 4 at property located at 89 Beaver Road in incentive zone (R-1-20), FPO, FW District(s).

JOHN HELLABY: Second.

The Board was unanimously in favor of the motion. (See below)

Michael Nyhan made a motion to accept and adopt the 2/14/23 Planning Board meeting minutes, and John Hellaby seconded the motion. The motion was approved by a vote of 5 yes with 2 abstentions (Dave Cross, Matt Emens)

There was a recess in the meeting at 7:23 p.m.  
The meeting resumed at 7:31 p.m.

MR. BAKER: Mr. Chairman, Board members, as far as clarification, regarding the existing easement that was placed during Phase 1 construction for a walking trail that was to extend to Phase 4, that easement was actually delivered to the Town for filing which encompassed the trail system that was going to connect Phase 4 to Phase 1. And we would like to have that removed. And obviously in Phase 4 we would remove that from the plan, as well, which was original shown on preliminary overall plans in 2016.

So there will not be a connection of the trail system between the sidewalks from Phase 1 to Phase 4 and also the removal of the existing easement in Phase 1.

MICHAEL NYHAN: Which we covered under the condition that applicant shall apply to the Town to remove the easement that was put in place for the elevated pedestrian bridge and the walking trail.

JARED HIRT: And the walking trail. So the ask by the applicant is to remove the walking trail as it exists in Phase 1 and Phase 4 --

MR. BAKER: Right.

JARED HIRT: -- in the previously approved preliminary plat, correct?

MR. BAKER: Right. And Phase 1 easement was actually a 20-foot easement with a 5-foot sidewalk trail and that easement was delivered to the Town -- I believe it was probably filed back in 2016. Or '17.

JARED HIRT: So Mike (Nyhan), the -- what the Board would be voting on is not only the removal of that condition -- I believe it's number 18 -- that references the four lots, but also the requirement that there be a walking trail in Phase 1 and Phase 4.

MICHAEL NYHAN: Yep.

So the -- the -- the condition reads Condition Number 18 for the preliminary subdivision approval dated April 15, 2016, to construct a pedestrian connect elevated bridge in the area of Lots 435, 436, 116 and 115 to include the walking trail that connects Phase 1 and Phase 4 is rescinded.

Does that cover it?

JARED HIRT: Yes.

MICHAEL NYHAN: All right. So with that amended condition, anything else?

JARED HIRT: No. That is obviously subject to the -- the condition you applied that -- the Town Board approval of rescinding the easement and --

MICHAEL NYHAN: For the pedestrian bridge and the walking trail?

JARED HIRT: Correct.

MICHAEL NYHAN: So I just amended the one condition. So that amendment to the one condition.

I make a motion to accept this application.

JOHN HELLABY: Second.

The Board was unanimously in favor of the motion.

DECISION: Unanimously approved by a vote of 6 yes with the following conditions:

1. Upon completion of the project, the applicant shall submit a Landscape Certificate of Compliance to the Building Department from the Landscape Architect certifying that all approved plantings have been furnished and installed in substantial conformance with the approved landscape plan.
2. Approval is subject to final approval by the Town Engineer and Commissioner of Public Works.
3. The Town Engineer and Commissioner of Public Works shall be given copies of any correspondence with other approving agencies.
4. Applicant shall comply with all pertinent Monroe County Development Review Committee comments.
5. Condition number eighteen for preliminary subdivision approval dated April 15, 2016 to construct a pedestrian connect elevated bridge in the area of Lots 435, 436, 116, 115 to include the walking trail that connects Phase 1 and Phase 4 is rescinded.

6. Applicant shall apply to the Town to remove the easement that was put in place for the elevated pedestrian bridge and walking trail.
7. All previous conditions imposed by this Board that are still pertinent to the application remain in effect.
8. Copies of all easements associated with this project shall be provided to the Assistant Town Counsel for approval, and all filing information (i.e. liber and page number) shall be noted on the mylars.
9. Building permits shall not be issued prior to applicant complying with all conditions.
10. Application is subject to all required permits, inspections, and code compliance regulations.
11. Applicant to comply with all required life safety conditions and permits from the Town Fire Marshal.

Matt Emens made a motion to adjourn the meeting, and Michael Nyhan seconded the motion. All Board members were in favor of the motion.

The meeting was adjourned at 7:35 p.m.