

**AGENDA
ZONING BOARD OF ADJUSTMENT
DECEMBER 17, 2018**

**AGENDA ITEM #3A
PUBLIC HEARINGS - CONTINUED**

**ROUTE 120 REALTY, INC., 0
NH ROUTE 120 (Tax Map 10,
Lot 9), zoned IND-L**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

December 17, 2018 Meeting

Staff Memorandum – #ZB2018-20-VAR – *continued from 9/17/18*

APPLICATION INFORMATION

Agenda Item: 3.A

Application Type:

Variance from §303.2 to allow a +/- 26-unit multi-family dwelling

Location: 0 NH Route 120 (Tax Map 10, Lot 9)

Applicant/Property Owner:

Route 120 Realty, Inc.

Zoning District: IND-L

Property Size:

+/-2.96 acres (+/-128,938 sq. ft.)

Existing Use: Parking lot for Jesse's restaurant, located in the Town of Hanover

Proposed Use:

26-unit multi-family dwelling; parking for Jesse's restaurant will continue

Overlay Districts:

Wetlands Conservation District

Previous ZBA Action (since 1995): none

Further Approvals Required:

- Planning Board Site Plan Review
- Building Permit

Attachments:

Additional application materials provided by applicant (11 pages)

HEARING NOTICE

ROUTE 120 REALTY, INC., 0 NH ROUTE 120 (Tax Map 10, Lot 9), zoned IND-L: Request for a Variance from Article III, §303.2 of the Zoning Ordinance to allow a +/- 26-unit multi-family dwelling which is not a permitted use in the IND-L District. #ZB2018-20-VAR

STAFF COMMENTS

This application was heard on September 17, 2018, and was continued to the October 15, 2018 meeting in order to give the applicant an opportunity to further substantiate a finding of unnecessary hardship (the fifth variance criteria). See discussion on pages 4 and 5 of the Draft 9/17/18 ZBA Meeting Minutes.

In response to the opportunity given by the Board, the applicant submitted the attached materials to the Planning Department on October 9, 2018.

Attachment

cc: Route 120 Realty, Inc. (via e-mail)
Haynes & Garthwaite Architects (via e-mail)
David Brooks, Planning & Zoning Director (via e-mail)
File

S:\PLNIDevelopment_Review_P&Z\Zoning_Board_Applications\2018_ZBA_Applications\ZB2018-20-VAR_0 NH Rt 120_10-9_Route 120 Realty\Staff Memo2.docx

Route 120 Realty, Inc.
Case #ZB2018-19-SEVAR
Variance from Article III, Section 303.2, IND-L Table of Uses, to allow
a +/- 26 unit multi-family dwelling which is not a permitted use in the IND-L District

Background

At a meeting of the Lebanon Zoning Board of Adjustment on September 17, 2018, Route 120 Realty, Inc. presented an application for a variance to allow a +/- 26 unit multi-family dwelling on its property that is currently located in the IND-L District. During deliberation/discussion, the ZBA determined that it needed more information regarding the hardship criteria, and specifically information regarding attempts that were made to develop the property under a conforming use. The ZBA asked the applicant to provide documentation to substantiate the claim that it would be hardship to develop the property under the current ordinance.

Prior attempts to develop the property with an allowed use

The support statement that was submitted with the initial application in this matter noted that given the topography of the site, a relatively narrow flat area sandwiched between significant ledge outcroppings high above Route 120, a steep slope toward the rear of the property, areas of wetland, and relatively small size of the project site, the majority of the uses allowed in Section 303.2 of the Zoning Ordinance, would not be a practical or, in some cases physically possible use of the site.

For example, given the small size of the site, many of the allowed uses, including Warehouse, Trucking terminal, Industrial PUD, Airport, Planned Business Park, and Bus Terminal, would not be practical given the footprint that such developments would require. In addition, Applicant previously attempted to develop the site with a smaller footprint concept, but was not able to create a viable concept or site design for an allowed use.

Specifically, in 2013 Applicant attempted to develop an Office Building for 50 or more Employees, which is allowed as a conditional use. Due to the site topography and wetlands constraints, however, and in order to meet the parking requirements for the existing Jesse's restaurant use, Applicant's ability to develop the property with this use required slope easements (and an access easement) from the neighboring property owner, DHMC. The areas of the proposed easements, and the associated grading and access points, are shown on the attached Easement Plan and Conceptual Site Plan that were prepared by Pathways Consulting, LLC. Applicant attempted to negotiate the required easements and met with DHMC representatives in November of 2013. Unfortunately, DHMC declined to grant the necessary easements,¹ and as a result the project was not able to proceed as a viable project.

Applicant believes that the current proposal for multi-family housing is a viable project even with the existing site constraints and without the need for additional easements. In addition, given the surrounding land uses and location the project is a reasonable use of the land.

¹ Although the Applicant does not have a written rejection letter from DHMC, attached hereto is a November 26, 2013, email sent by Applicant's architect that cites the rejection shortly after it happened.

Nate Stearns

From: Andrew Garthwaite <andrew@hgarchitects.com>
Sent: Tuesday, November 26, 2013 8:10 AM
To: Dan Hershenson; Nate Stearns
Cc: Rod Finley; Chris.Turgeon@pathwaysconsult.com Turgeon; marc milowsky
Subject: Jesse's MOB

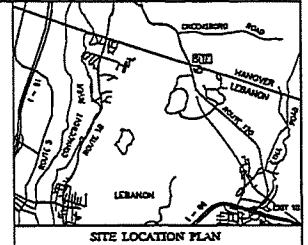
Good morning,

Marc has been in touch to say that it appears that DHMC is not going to be very helpful in regards to the easements we were proposing to them. Can we get together to review the alternate plan that Pathways has developed without these easements?

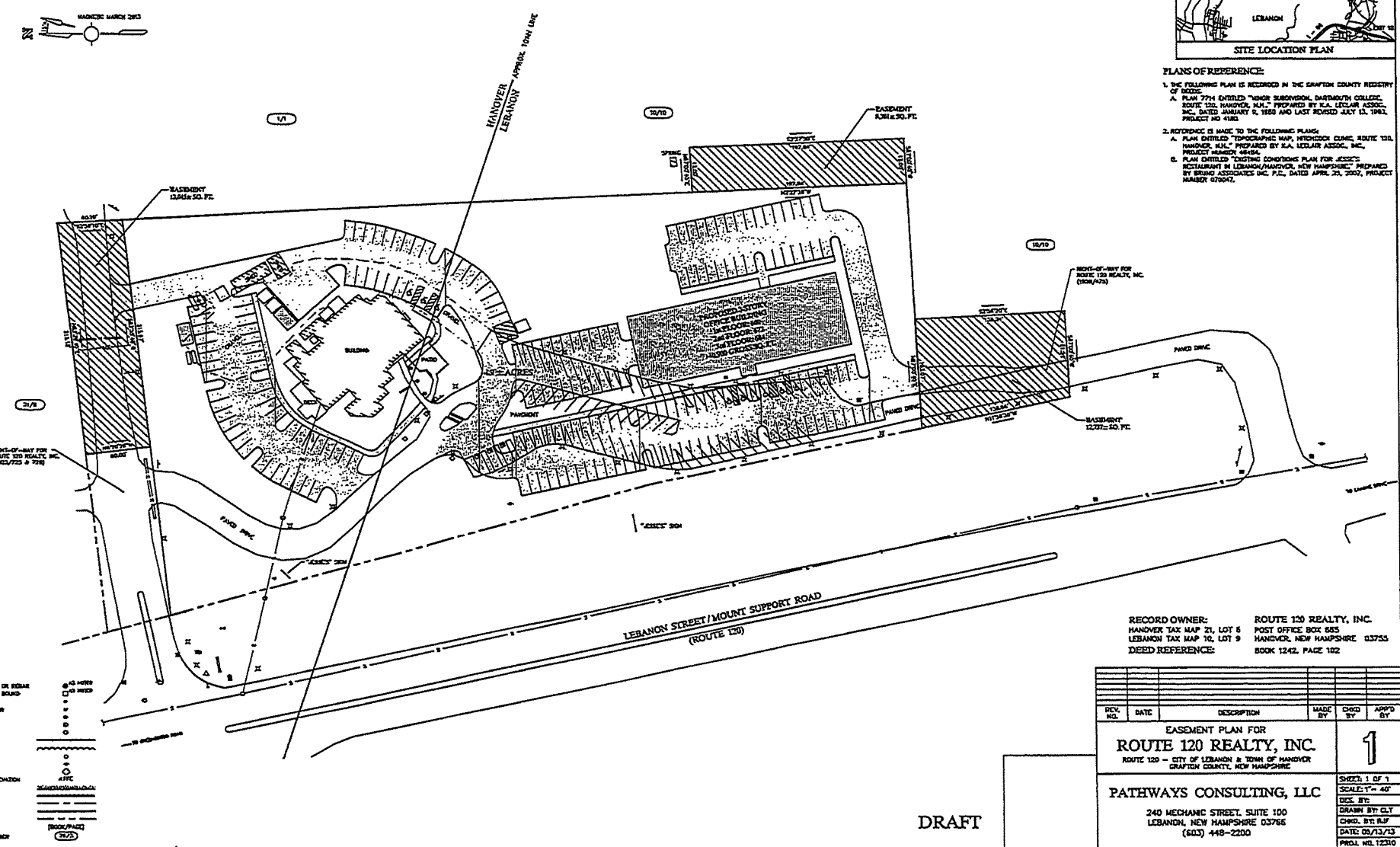
What is your availability during the week of December 2nd? Wednesday is not good for Marc. Tuesday afternoon at 2:00 is not good for me and I am going to be out of the office on Friday the 6th.

Thank you,
Andrew

Andrew Garthwaite
Haynes & Garthwaite Architects
PO Box 1098
Norwich VT 05055
802 649 3606



- PLANS OF REFERENCE:**
- THE FOLLOWING PLAN IS RECORDED IN THE GRANITON COUNTY REGISTRY OF DEEDS:
 - PLAN 774 ENTITLED "BARGE SUBDIVISION, DARTMOUTH COLLEGE, ROUTE 120, HANOVER, N.H.," PREPARED BY K.A. UDELMAN ASSOC., INC., DATED JANUARY 9, 1980 AND LAST REVISED JULY 11, 1982, PROJECT NO. 4182.
 - REFERENCE IS MADE TO THE FOLLOWING PLANS:
 - PLAN ENTITLED "TOPOGRAPHIC MAP, HITCHCOCK CLINE, ROUTE 120, HANOVER, N.H.," PREPARED BY K.A. UDELMAN ASSOC., INC., PROJECT NUMBER 4918A.
 - PLAN ENTITLED "EXISTING CONDITIONS PLAN FOR JESSE'S RESTAURANT IN LEBANON/HANOVER, NEW HAMPSHIRE" PREPARED BY BRUNG ASSOCIATES INC. P.C., DATED APRIL 23, 2007, PROJECT NUMBER 070047.



- LEGEND:**
- EXISTING 8" MIN. PVC OR HDPE
 - EXISTING CONCRETE FOUNDATION
 - COMPUTED POINT
 - PROPANE REGULATOR
 - WOODEN POST
 - ZONING MARKER
 - DRUM MARKER
 - FENCE
 - EDGE OF WOODS
 - ELECTRIC METER
 - LIGHT
 - WELL
 - PAVED FLOOR ELEVATION
 - EDGE OF YARDLAND
 - STORMDRAIN
 - BUILDING SCHEMATIC
 - BOUNDARY LINE
 - RIGHT-OF-WAY
 - DEED REFERENCE
 - TAX MAP PLAN NUMBER

RECORD OWNER: ROUTE 120 REALTY, INC.
 HANOVER TAX MAP 21, LOT 5
 LEBANON TAX MAP 10, LOT 9
 DEED REFERENCE: BOOK 1242, PAGE 102

REV. NO.	DATE	DESCRIPTION	MADE BY	CHECK BY	APP'D BY

**EASEMENT PLAN FOR
ROUTE 120 REALTY, INC.**

ROUTE 120 - CITY OF LEBANON & TOWN OF HANOVER
GRANITON COUNTY, NEW HAMPSHIRE

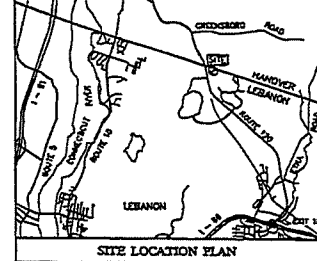
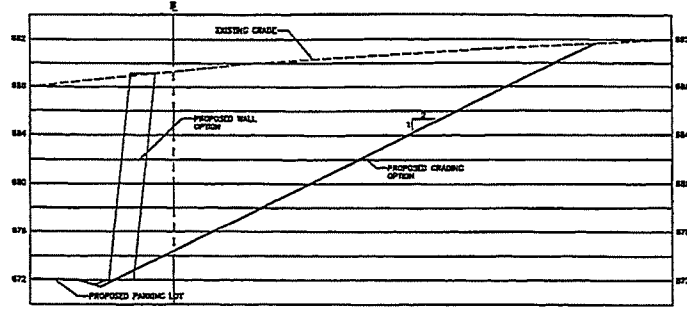
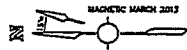
1

PATHWAYS CONSULTING, LLC

240 MECHANIC STREET, SUITE 100
LEBANON, NEW HAMPSHIRE 03755
(603) 448-2200

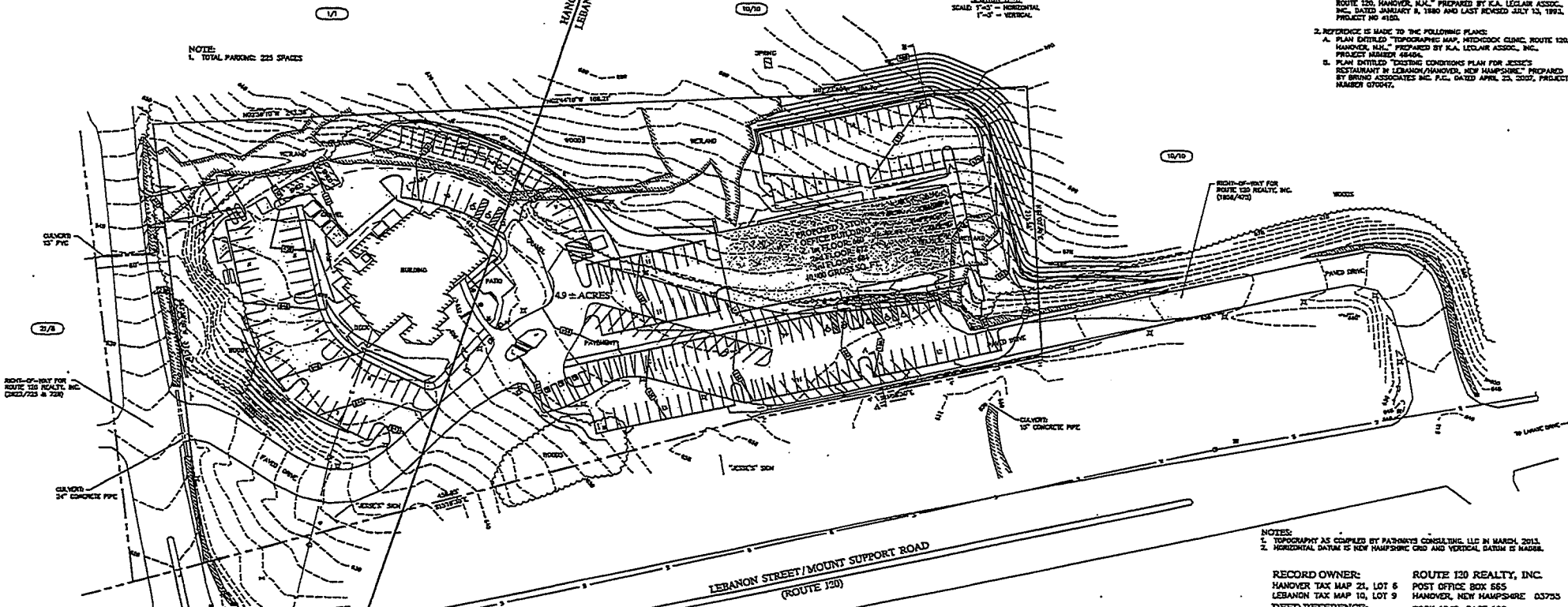
SHEET 1 OF 1
SCALE: 1" = 40'
DATE: 02/13/13
DRAWN BY: CLY
CHKD. BY: BLF
DATE: 02/13/13
PROJ. NO. 12310

DRAFT

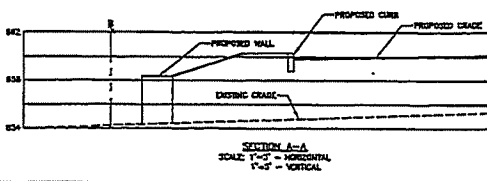


- PLANS OF REFERENCE:**
- THE FOLLOWING PLAN IS ACCORDING IN THE DRAFTON COUNTY RECORDS OF DEEDS:
 - PLAN 7714 ENTITLED "MINOR SUBDIVISION, DARTMOUTH COLLEGE, ROUTE 120, HANOVER, N.H.," PREPARED BY E.A. LECLAIR ASSOC. INC., DATED JANUARY 8, 1989 AND LAST RECORDED JULY 12, 1992, PROJECT NO 4183.
 - REFERENCE IS MADE TO THE FOLLOWING PLANS:
 - PLAN ENTITLED "TOPOGRAPHIC MAP, MEDICINE CLINIC, ROUTE 120, HANOVER, N.H.," PREPARED BY E.A. LECLAIR ASSOC., INC., PROJECT NUMBER 48484.
 - PLAN ENTITLED "EXISTING CONDITIONS PLAN FOR JESSE'S RESTAURANT IN LEBANON/HANOVER, NEW HAMPSHIRE," PREPARED BY BRING ASSOCIATES INC. P.C., DATED APRIL 23, 2007, PROJECT NUMBER 07047.

NOTE:
1. TOTAL PARKING 225 SPACES



- LEGEND:**
- STAINC IRON PIPE OR REBAR
 - STAINC CONCRETE BOARD
 - WAPED POINT
 - ORFIC INSULATOR
 - ODH POST
 - WER MARKS
 - AN MARKS
 - ICE
 - ICE OF WOODS
 - CONC WOOD
 - ST
 - 3M
 - 2ND FLOOR ELEVATION
 - 2C OF WCLAND
 - CHOPALL
 - LONG SEBACK
 - INDICARY LINC
 - 30'-OF-WAY
 - DE REFERENCE
 - # MAP/LOT NUMBER



NOTES:

- TOPOGRAPHY AS COMPILED BY PATHWAYS CONSULTING, LLC IN MARCH, 2013.
- HORIZONTAL DATUM IS NEW HAMPSHIRE GRID AND VERTICAL DATUM IS MADD8.

RECORD OWNER: ROUTE 120 REALTY, INC.
HANOVER TAX MAP 21, LOT 6
LEBANON TAX MAP 10, LOT 9
DEED REFERENCE: BOOK 1242, PAGE 102

REV. NO.	DATE	DESCRIPTION	MADE BY	CHKD BY	APP'D BY

CONCEPTUAL SITE PLAN FOR
ROUTE 120 REALTY, INC.
 ROUTE 120 - CITY OF LEBANON & TOWN OF HANOVER
 DRAFTON COUNTY, NEW HAMPSHIRE

PATHWAYS CONSULTING, LLC

240 MECHANIC STREET, SUITE 100
 LEBANON, NEW HAMPSHIRE 03766
 (603) 448-2200

SHEET: 1 OF 1
 SCALE: 1" = 40'
 DES. BY:
 DRAWN BY: CLT
 CKD. BY: RJF
 DATE: 04/06/13
 PROJ. NO. 12310

DRAFT

Route 120 Realty Co. Inc.
Case #ZB2018-19-SEVAR

Variance from Article III, Section 303.2, IND-L Table of Uses to allow a 26 +or- unit multi-family dwelling which is not an allowed use in the IND-L District

Prior attempts to develop the property with an allowed use.

This statement is meant to be in support of my testimony at the prior zoning board meeting on 9/17/2018 at which time I stated that I had made numerous attempts to contact DHMC, my abutting neighbor to secure 3 easements in order to allow us to proceed with the construction of an office building. Attached are a series of emails between myself and Gail Dahlstrom at the DHMC Development office dating from May of 2013 to November of 2013. These emails document my testimony that I tried without success to contact DHMC in order to get an answer to my requests. In November of 2013 Ms. Dahlstrom emailed me to tell me that Mr. David Doyle who was at that time was "a key player in DHMC's real estate work", would contact me. Having not heard from Mr. Doyle I began to make phone calls to try and reach Mr. Doyle. When I finally contacted Mr. Doyle in late November of 2013 he made it clear that DHMC would under no circumstances give us the easements we requested. Mr. Doyle's message was conveyed to me verbally on the phone; He did not send any email with his response.

After DHMC's denial of our request, we revisited the feasibility of doing the project without the necessary easements. We ultimately decided that given the nature of the terrain we would have to scale the project back substantially. Based on our findings we decided that a reduced scale project was not viable and decided not to proceed.

Sincerely,

/s/ Marc Milowsky

Marc Milowsky
President
Route 120 Realty Company

RE: Route 120 Office

10/8/18, 1:33 P

From: Gail A. Dahlstrom <Gail.A.Dahlstrom@hitchcock.org>
To: MAYPOS <MAYPOS@aol.com>
Cc: Sarah J. Stark <Sarah.J.Stark@hitchcock.org>
Subject: RE: Route 120 Office
Date: Mon, May 14, 2012 7:40 am

Hi Marc,

Yes, it would be a good idea to meet.

I'm cc'ing this to Sarah Stark, who manages my calendar. If you provide some dates and times, I'm sure we can find a time to meet.

Regards,
Gail

From: MAYPOS@aol.com [<mailto:MAYPOS@aol.com>]
Sent: Wednesday, May 09, 2012 10:58 AM
To: Gail A. Dahlstrom
Subject: Route 120 Office

Hello Gail,

Paul Olson gave my your contact information a while ago. I am in the process of designing and permitting an office building project of approximately 36,000 to 38,000 square fee on the land that I own adjacent to Jesse's Restaurant. As you know, the Hospital and the Clinic are my neighbors on all sides of our land. With that in mind I felt I should reach out to you to see if there was any interest on the part of the Hospital and Clinic in any aspect of this project. At the very least I felt I should make you aware of my intentions going forward. Is there any interest on your part in setting up a meeting to discuss our plans and any opportunities that may exist in the future.

Regards,

Marc Milowsky

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RE: Easements

10/8/18, 1:35 P

From: Gail A. Dahlstrom <Gail.A.Dahlstrom@hitchcock.org>
To: Marc Milowsky <maypos@aol.com>
Subject: RE: Easements
Date: Mon, Aug 19, 2013 9:34 am

Hi Marc,

Unfortunately, I haven't been able to get the right group together for a huddle on this subject. I'll try to walk it around within the next week or so get some resolution.

Have you thought about an alternative option, just in case? Also, can you give me a sentence or two about the agreements that were reached back when the Medical Center was building out here? You mentioned that you agreed to move your entry drives because of the need to upgrade the intersection at the north entrance to the Medical Center. That context would be helpful, I think.

Regards,
Gail

From: Marc Milowsky [<mailto:maypos@aol.com>]
Sent: Friday, August 16, 2013 3:38 PM
To: Gail A. Dahlstrom
Subject: Easements

Hi Gail,
Hope all is well. I am not sure if you got the message I left with your assistant Sarah the other day. In any case, I wondered if you had the opportunity to get an answer for us regarding the easement requests that I left off with you in early July. We are anxious to move our project forward. The direction we take with our project depends on our ability to get the easements from the Medical Center. I would appreciate it if we could get some resolution to this request at your earliest convenience in order for us to move along with the permitting process.

Regards,
Marc

Marc Milowsky
President
Blue Sky Restaurant Group
Ph 603-643-4111
Fax 603-566-3388

IMPORTANT NOTICE REGARDING THIS ELECTRONIC MESSAGE:

This message is intended for the use of the person to whom it is addressed and may contain information that is privileged, confidential, and protected from disclosure under applicable law. If you are not the intended recipient, your use of this message for any purpose is strictly prohibited. If you have received this communication in error, please delete the message and notify the sender so that we may correct our records.

From: Gail A. Dahlstrom <Gail.A.Dahlstrom@hitchcock.org>
To: Marc Milowsky <maypos@aol.com>
Subject: Follow up
Date: Mon, Sep 30, 2013 1:34 pm

Hi Marc,

I'll try to call you later this week. Thanks for the information you sent; it's helpful.

Gail

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From: MAYPOS <MAYPOS@aol.com>

To: gail.a.dahlstrom <gail.a.dahlstrom@hitchhock.org>

Subject: update

Date: Tue, Oct 8, 2013 9:59 am

Hi Gail,

I got your email last week. Can you update me with your progress with the easements? I am leaving on Friday for about 10 days and would like to give some direction to my team before I depart.

Best,

Marc

From: Gail A. Dahlstrom <Gail.A.Dahlstrom@hitchcock.org>
To: Marc Milowsky <maypos@aol.com>
Subject: RE: Follow up
Date: Fri, Nov 8, 2013 11:48 am

Hi Marc,

Our Real Estate group meets next Wednesday, 11/13. Dave Doyle or I will get in touch with you right away after that meeting.

I don't know if you've met Dave. He has been a key player in much of our real estate work, primarily in the southern part of the State. We're getting him more involved in the Lebanon region and I'm intending for him to be your primary liaison going forward. (He should be much more responsive than I have been.)

I've had much more travel the last month or so than usual—combination of work and vacation. Just returned from Turkey. Highly recommend it as a vacation destination!

Gail

From: Marc Milowsky [mailto:maypos@aol.com]
Sent: Tuesday, October 29, 2013 1:37 PM
To: Gail A. Dahlstrom
Subject: Re: Follow up

Hi Gail,

Please call me in the next couple of days to bring me up to speed on DHMC's response to our request for the easements we requested form our land development. I am really trying to get the permitting for this project moving along.

Regards,
Marc

Marc Milowsky
President
Blue Sky Restaurant Group
Ph 603-643-4111
Fax 603-566-3388

-----Original Message-----

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Hi Marc,

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From: Marc Milowsky <maypos@aol.com>
To: Gail.A.Dahlstrom <Gail.A.Dahlstrom@hitchcock.org>
Subject: RE: Follow up
Date: Tue, Nov 19, 2013 1:12 pm

Hi Gail,
I have not heard from Dave or anyone in your office regarding the meeting on the 13th. Can you please have him contact me this week.
Regards,
Marc

Marc Milowsky
President
Blue Sky Restaurant Group
Ph 603-643-4111
Fax 603-566-3388

-----Original Message-----

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