



**TOWN OF FREMONT PLANNING BOARD
PO BOX 120
FREMONT, NEW HAMPSHIRE 03044
NOTICE OF DECISION**

You are hereby notified that at a Public Hearing, held on November 16, 2022 at the Fremont Town Hall, the attending members of the Fremont Planning Board did unanimously vote to approve the Subdivision Application requested by Fremont Land. This approval was made pursuant to the information and drawings submitted for the land subdivision of Map 2, Lot 151-2, located at 662 Main Street in Fremont New Hampshire, into three (3) parcels with a new public right-of-way named Iron Horse Drive. The new public right-of-way is to be located where the existing paved private road exists and shall have a temporary easement at its terminus for emergency vehicle maneuvering. Said easement will self-extinguish upon public acceptance of any subsequent extension of Iron Horse Drive. The approval of this subdivision comes with the following conditions:

1. Plan Sheets 1, 2, 5, and 6 Mylars shall be recorded at the Rockingham Registry of Deeds and a digital copy of the Mylar provided for the Town Land Use file.
2. All licensed professionals whose names appear on the approved plans and Mylar shall have original stamps and signatures.
3. All required state permits are received, and permit numbers noted on the approved plans and recorded Mylar.
4. All waivers granted and conditions of approval be noted on approved plans and recordable Mylar.
5. The "temporary easement for emergency vehicle maneuvering" be modified as recommended in comment 3 included in the Town Engineer's letter dated November 16, 2022.
6. All monuments shall be installed, shown on approved plans and recorded mylars, and certified.

7. Four paper copies of the final plan set (2 full sized and 2 half size) shall be signed for Town Land Use files.
8. A Development Agreement is executed according to Subdivision Regulations Article IV, Section 4.
9. To the extent that the existing private site driveway is intended to be dedicated as a public way, the applicant shall demonstrate construction conforms with applicable design standards and requirements contained in Sections 10.01 through 10.05 of the Fremont Subdivision Regulations as detailed in comment 5 of the Town Engineer's letter dated November 16, 2022. It is further required that Subdivision Regulation Sections 10.06 and 10.07 be satisfied precent to subdivision approval and prior to commencement of formal consideration of possible public acceptance of Iron Horse Drive by the Select Board.
10. All conditions of approval are met within 365 days of this approval date. The Planning Board may grant an extension of its original approval with good cause.
11. All fees incurred by the Planning Board, including but not limited to consulting, engineering, and legal fees, have been paid by the applicant.
12. An amended NHDOT Driveway Permit be received prior to or as a condition of any future site plan approval for establishment of new or modified use(s) on properties served by the now existing site driveway.

SIGNED:

A handwritten signature in black ink, appearing to read 'Paul Powers', with a long horizontal line extending to the right.

Paul Powers, Chairman, Fremont NH Planning Board

In support of this decision, the Board has made the following findings of fact:

1. The Board met on 4 occasions October 5, October 19, November 2, and November 16 of 2022 to review the Subdivision Application and original plan set dated July 12, 2022, received on August 17, 2022 along with a letter dated November 2, 2022 requesting a series of waivers from the Subdivision Regulations. Most relevant to the Board's conclusion is the revised plan set (7 drawings) dated July 12, 2022 most recently updated 10/15/22 per Town Engineer comments from Steve Keach of KNA Associates Inc. dated 10/5/22 with a cover letter dated October 18, 2022.
2. The Board received the following correspondence or testimony in relation to the application:
 - a. Professional review letter by Madeleine DiIunno, Regional Planner, Rockingham Planning Commission dated September 22, 2022.
 - b. Professional Review letters from the Town's Engineer Steven B. Keach, P.E., Keach-Nordstrom Associates, Inc. (KNA) dated October 5, October 31, November 16, 2022.
 - c. Comments from Select Board, Fire Department, and the Conservation Commission.
 - d. Letter from abutter Stephen Basset of Heritage Farm Trust received October 5, 2022.
 - e. The Town's Road Agent appeared in person before the Board on November 16, 2022 to speak in favor of accepting the roadway as a public right of way.

3. William Gregsak, Professional Engineer of Gregsak & Sons, Inc. represented the applicant, Fremont Land LLC.
 - a. Board Member Timothy Lavelle recused himself from this case as a consultant to the applicant.
4. The original subdivision application proposed 4 parcels (3 parcels of Map 2, Lot 151-2 and Map 2, Lot 151-4) with a new public right of way consisting of 2 phases. Phase 1 consisted of the existing private roadway with a temporary easement at the end for a turnaround for emergency vehicles until extended in Phase 2. Upon completion of Phase 2 the easement roadway will be rescinded.
5. At the October 19, 2022 meeting, Mr. Gregsak changed the proposed subdivision application to no longer affect Map 2, Lot 151-4 with roadway phase 2 shown as conceptual.
6. In accordance with Zoning Ordinance 1203.8.B, a hydrogeologic study is required for four (4) lots or greater. For subdivisions of three (3) lots or less the Planning Board decides on a case by case basis, the need for a hydrogeologic study. The applicant provided previous hydrogeologic study information completed under the Site Plan Review for Ragnar Original Innovations. The applicant contended that the land use is not known at this time such that an adequate study could be provided and the Board reconsider and require such study under Site Plan Review. The consensus of the Board was to require studies under Site Plan Review for each future parcel/use and not under the current application.
7. State Agency Permits required under the application include (a) NHDES Subdivision Approval (for two proposed lots less than 5.0-acres in area); and (b) ultimately, an amended NHDOT Driveway Permit prior to establishment of one or more additional uses on either outparcel proposed in the application. The current NHDOT Driveway Permit No. 06-167-213 issued August 16, 2019 is specific to the mixed commercial drive and that any change in use, increase in use, or reconstruction of the driveway requires reapplication. Further, the permit is for access to the existing gravel pit, existing Altaeros Energies facility (2,800 sf machine shop and 11, 400 sf warehouse), Ragnar Original Innovations facilities Phase 1 (9,800 sf warehouse and 6,500 sf office) and Phase II (24,580 sf headquarters office space), and Phase III (18,000 sf headquarters office space).
8. The existing private driveway was not originally planned to be dedicated as a public way, therefore the Town Engineer recommended that the applicant demonstrate construction completed to date fully conforms with applicable design standards and requirements contained in Sections 10.01 through 10.05 of the Subdivision Regulations. Specifically, the Town Engineer recommended a determination be made that: (a) approved design plans, upon which the owner/applicant relied when constructing now existing improvements, conform with applicable minimum design standards for public roadway construction; and (b) all workmanship and materials incorporated with construction of the same comply with applicable standards and specifications. The Board concurred with this recommendation and received a package dated November 2, 2022 including original design plans and inspection reports for review as part of the roadway acceptance process under the purview of the Select Board.
9. Several monument locations on the plan set indicated to be set. The applicant's surveyor indicated that the monuments would be set prior to approval.
10. Mr. Stephen Bassett, trustee of Heritage Farm Trust, owner of tax parcel Map 4, Lot 74, addressed the Board with concerns about his lack of legal access to his property via the subject parcel. Mr. Bassett submitted a letter to the Board detailing his concerns (letter

received by hand delivery to the Office of the Select Board October 3, 2022). Mr. Bassett contended that the plan does not depict a right-of-way to his property citing history of the property and access granted in the past. Mr. Bassett did not present a recorded deed, court order, or recorded plan that depicts the alleged right-of-way. The Board informed Mr. Bassett that the Board does not have jurisdiction to resolve access issues such as boundary disputes or disputed rights-of-way and that his matter appears to be a civil matter.

11. Subsequent review by Town Counsel to Fremont concurred with the Board's actions regarding disputed access and cited Short v. Town of Rye, 121 N. H. 415, 417 (1981); Wolters, et al. v. town of Salem, New Hampshire Supreme Court. Case No. 2012-0820 (January 9, 2014 order) as examples.

The Board made the following conclusions and votes:

1. Regarding the waiver from Article 3, Section 3.D, 3.E, and 3.H, the applicant requested relief from these sections for the existing parcel of 112.14 acres. They contended that they have provided topography and wetlands for 77 acres which is inclusive of the two proposed new parcels and the existing roadway. Excluded from the mapping required is mapping atop an area having vertical ledge which is inaccessible from the working portion of the site. Also excluded from the mapping is a section of wetlands along the eastern edge of the site in the vicinity of the prime wetland. The outer limit of the prime wetland is shown, the interior portion is inaccessible for survey and therefore not shown. The Board **granted waivers** to Article III, Sections 3.D., 3.E., and 3.H. as requested
2. Regarding the road length waiver from Article 3, Section 10.02 Q, the applicant requested relief from this section citing the existing roadway is 2, 100 feet long and was designed and constructed in accordance with the Town's requirements and presently access is two buildings. Also the 2 new proposed lots are at the beginning of the roadway, near Route 107. The Board received comments from Fire Chief Richard Butler and Deputy Fire Chief Joseph Nichols both commenting in favor of the proposed roadway noting that the location of the proposed turnaround easement was similar to the area approved under the Site Plan for Ragnar Original Innovations (plan set dated October 1, 2019) and that the existing private roadway has adequate space along the roadway for emergency equipment to turnaround including the parking areas of the existing manufacturing facility and the proposed emergency easement area. Further, if this were a more densely populated area the Fire Department might consider the need for additional turnaround area.
3. Board members and the Select Board (via written comments) expressed their concern about residential or commercial use in the future with no secondary access/egress. Mr. Lavelle stated that if the subdivision is to expand the applicant agrees they will need to seek secondary access.
4. The Fire Department was concerned with expanding the subdivision without installing the cistern which was approved for Phase 2 of Ragnar Original Innovations (ROI). Mr. Lavelle stated that this requirement remains for Map 2, Lot 151-2 ROI. Future uses on new lots will need to address their own fire service needs.
5. The Board **granted the waiver** with the temporary easement with the condition that it be shown on the plans and documented as recommended by KNA in the letter dated November 16, 2022 (see comment 3).
6. The Board **approved** the subdivision of Map 2 Lot 151-2 with the conditions as stated above with a vote of 4 to 0.