

**TOWN OF RYE – PLANNING BOARD  
MEETING**

**Tuesday, February 9, 2021  
6:00 p.m. – via ZOOM**

***Members Present:*** Chair Patricia Losik, Vice-Chair JM Lord, Steve Carter, Jim Finn, Nicole Paul, Selectmen's Rep Bill Epperson and Alternate Bill MacLeod

***Present on behalf of the Town:*** Planning/Zoning Administrator Kimberly Reed, Attorney Michael Donovan and Steve Harding from Sebago Technics

**I. Call to Order**

Chair Losik called the meeting to order at 6:00 p.m. via Zoom teleconferencing.

**Statement by Patricia Losik:**

As chair of the Rye Planning Board, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, I am confirming that we are providing public access to the meeting by telephone, with additional access possibilities by video and other electronic means. We are utilizing Zoom for this electronic meeting. All members of the board have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting by dialing in to the following phone number: 646-558-8656 or by clicking on the following website address: [www.zoom.com](http://www.zoom.com) ID #895 3348 0945 Password: 123456

Public notice has been provided to the public for the necessary information for accessing the meeting, including how to access the meeting using Zoom telephonically. Instructions have also been provided on the website of the Zoning Board of Adjustment at: [town.rye.nh.us](http://town.rye.nh.us) go to the Board of Adjustment page and click on the agenda for this meeting. If anyone has a problem, please call 603-379-0801 or email: Kim Reed at [KReed@town.rye.nh.us](mailto:KReed@town.rye.nh.us).

In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled. Please note that all votes that are taken during this meeting shall be done by roll call vote.

Roll call attendance of members:

1. Patricia Losik
2. Steve Carter
3. Jim Finn
4. Nicole Paul
5. Bill MacLeod – Seated for Katy Sherman
6. Bill Epperson
7. JM Lord

**II.**

**Business**

**1. Alternate position/candidates:**

- Kathryn Achen Garcia
- Robert Wright

Chair Losik welcomed new alternate position candidates Kathryn Achen Garcia and Robert Wright.

Kathryn Achen Garcia stated that as a parks and recreational professional, it is important to her to know that communities have the infrastructure to provide for healthy living. Having served on the advisory committee to the planning board in Concord, Massachusetts, she knows a bit about what the Board does. She hopes to be of service.

Robert Wright stated that he has been in Rye for about 30 years. For the bulk of his time in Rye, he has been travelling for work and did not have the time to participate in town government, even though he was interested in both the process and the outcomes. He continued that he retired in November and has found to have some time on his hands. He feels he might be able to contribute to this Board and is anxious to do so.

**Motion by Nicole Paul to accept Kathryn Achen Garcia and Robert Wright as alternates to the Planning Board for a three-year term. Seconded by Steve Carter.**

**Roll Call: Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill MacLeod – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed**

**2. Approval of Minutes**

- January 12, 2021

*Moved to end of meeting.*

### III. To Review Applications to Determine if they are Complete:

**Note:** *Applications taken out of posted agenda order (as shown in minutes).*

- a. **Driveway Application** by Joseph & Jane Wahl for property owned and located at 146 Perkins Road Tax Map 5.2, Lot 186 request a waiver from Section 202 Appendix 5-E:F for a driveway 24' wide a the lot line and 26' wide at the road surface. **Property is in the General Residence District. Case #03-2021.**

Chair Losik noted this was discussed at the Technical Review Committee (TRC) Meeting on the 3<sup>rd</sup>. After the TRC Meeting, a memo was received from **Dennis McCarthy, Public Works Director**, who raised some concerns about this application for a waiver. His memo notes that he “has been requested to provide a written response relative to the referenced matter. The subject property was issued a driveway permit based on a site plan presented to and approved by the Zoning Board. The plan met driveway regulations. Subsequently, the driveway was constructed in complete disregard for the provided plan. Now the homeowner is requesting approval for the non-compliant work”. Chair Losik continued that Mr. McCarthy goes on to caution the Boards to “not grant such approval request without reasonable and compelling reasons why the site cannot be constructed as originally approved”. He is concerned the Board will establish precedent which will negate having the regulations in the first place.

Chair Losik noted that Planning Administrator Reed dug through the files and forwarded to the Planning Board the plans that existed after the ZBA approval. One of the things that would be important is the stormwater management plan. Apparently, that has not been produced nor have elevations, flows, etc., been demonstrated on the plans. The Building Department issued a notice (NOV) in early January noting similar concerns: needing details relative to swales, cross-sections and elevations, as compared to the property prior to redevelopment; and locations and reference to property lines. It was noted without details on a stamped plan, review for approval cannot be done. It was also noted that a complete stormwater management plan that reflects current conditions, as compared to existing conditions, is needed. Chair Losik asked if someone would like to speak on behalf of the applicant.

**Attorney Tim Phoenix, representing the applicant**, addressed the Board. He noted that **John Chagnon, Ambit Engineering**, turned in the stormwater management plan to the Building Inspector. His understanding is that the stormwater management plan meets the town requirements that this driveway, as constructed, is not going to be a problem. (He presented the plan that was approved by the Zoning Board on the screen.) He explained the driveway was not the subject of any zoning review. The driveway is a pervious surface and did not need zoning relief. The property owners found the configuration of the driveway to be difficult for cars to come in and out, and difficult for multiple cars to park without blocking each other in. They ended up removing the tree. He pointed out that the Wahls were not aware of any driveway regulations. They relied upon the builders and the driveway people who suggested, once the tree was removed, to make it a straight shot. So, that is what was done. From the Wahls perspective, they were not intentionally ignoring the plan that was approved by the Zoning Board; again, the plan was not approving the driveway itself. (He presented the plan showing the new driveway.) He pointed out that his submission of January 15<sup>th</sup> said the driveway was 20' wide; however, it is

actually 24' with the flare at 26'. (He presented photos showing other driveways in the surrounding neighborhood.)

Attorney Phoenix stated that it has to be shown that there is an unnecessary hardship to the owner and it is not contrary to the spirit and intent of the ordinance. He noted there are multiple unnecessary hardships. One is that the configuration of the original driveway did not work very well. Secondly, the fact is it is already built. That is not always a reason; however, the Wahls themselves are innocent about that. Since permits have been given and otherwise driveways have been built very similar to this all over Rye, he thinks the hardship has been shown. It also has to be shown that granting this is not contrary to the spirit and intent of the ordinance. With zoning, it is whether it changes the central character of the locality. With all these other driveways, it does not. Does it threaten the public health, safety and welfare? It is all about access, sight distance and interface of vehicles. There is plenty of sight distance in either direction for vehicles. It will actually be better than the other turnaround. He commented this is pretty minor. It would be an injustice to the Wahls to deny it at this point.

**Don Cook, DD Cook Builders**, stated the original driveway was drawn with a misunderstanding that the catch basin should not be in the driveway. Almost every catch basin he has ever seen, is always surrounded by some sort of paving material and certainly not lawn. When it came time to discussing the driveway, he did not see any issues with reconfiguring it. However, in hindsight, he can see that was a mistake because this could have easily been resolved with discussions with Dennis McCarthy. He continued that he spoke with Mr. McCarthy about three weeks ago, who said his concern was not so much about the relocation but about the width. He also wanted to be sure that when Ambit Engineering did the drainage study, the catch basin would be able to handle the flow of the water. Mr. Cook noted the Building Inspector reached out to him and asked for the stormwater management plan. John Chagnon confirmed that the plan, dated January 15<sup>th</sup>, was submitted to the Building Inspector's office. The plan stated that everything would comply with the stormwater management plan, including the driveway. Mr. Cook stated the original plan was before the Board of Adjustment; however, the variances that were requested and granted were for setback and pervious relief. He did not think the BOA decision had anything to do with the driveway, so that is why they went forward. He commented that he has been building homes in Rye for 37 years. He feels he works well with the department heads, the building inspectors and various boards. Mr. McCarthy implied in his letter that there was complete disregard for the approved plan. He can assure the Board that was not his intention. This is really just unfortunate that it was changed without getting the approvals up front. He pointed out the driveway has a great line of sight. It will now allow the owners to park four cars off the road. He feels that with all the other driveways that have already been done and approved, they are sort of being made the exception.

Chair Losik stated it is more on a technicality at this point. The Board thought they had the stormwater plan and assumed it had been vetted by the Building Department, but that was just not true. While they certainly appreciate the safety factors, they could not look at it and say it was compliant. It is really a matter that the Board needs to look at the stormwater management plan and have a conversation with Mr. McCarthy.

Attorney Phoenix commented that they would be fine with a continuance.

**Motion by JM Lord to declare this application not complete, due to stormwater regulations, and to continue this to the March 9<sup>th</sup> meeting. Seconded by Jim Finn.**

Member Epperson stated he has known Don Cook and Tim Phoenix for a long time. Don Cook is the premier builder in Rye and his reputation is without question. He wants to make sure that everyone understands that the Town's employees, the public works' staff and the building inspectors, have great sway about how things are considered in Rye. To approve something like this after-the-fact, if it is not in compliance, is probably something the Board is not going to do. Speaking to Mr. Cook, he suggested speaking with Dennis McCarthy and have him look at the driveway to see whether or not he has significant problems with it. If he doesn't, Mr. McCarthy will send the Board a memo stating that it looks okay. Member Epperson continued that he does not want to be setting a precedent where people are going to begin doing what they want outside the bounds of what was approved.

**Roll Call: Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill MacLeod – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**  
**Motion passed**

- b. Major 4 lot subdivision** by Jones & Beach, Engineers, Inc. for Michael Fecteau for property located at 850 Washington Road, Tax Map 11, Lot 130 to subdivide the existing lot into four residential lots with a road. **Property is in the Single Residence District and Aquifer & Wellhead District. Case #01-2021.**

Chair Losik noted the Board has received the package. It was discussed at the TRC meeting last week. Attorney Donovan has also had the opportunity to make an initial review and submit his comments. It is found that additional information is needed; depth for lot 3, additional test pits to establish there is not a shallow ledge issue for lots 1 and 2; and groundwater recharge calculations. Based on that, it would be in both the applicant's and Board's interest to continue this application to next month, as it is believed it is not currently complete.

Vice-Chair Lord stated that in looking at lot 3, the minimum setback is 150' and only 25% of that property meets the setback. It's a very odd lot. In looking at the land being used for the home versus the detention basin, it is really less than 44,000sf of that lot being used for the home. The rest is all taken by the detention basin. He thinks they need to look really hard at lot 3 and how it meets the Town's criteria.

**Mike Garrepy, Garrepy Planning Consultants, representing the applicant,** commented that he would like to have a little bit of discussion about the lot depth requirements. He believes lot 3 does meet the lot depth requirements. He noted the ordinance is a little vague in how to define lot depth. If it is the Board's position that it does not meet the requirement, he would need some direction on how to proceed. He would also like to be able to go through the plan in some detail at this meeting to get some feedback.

Chair Losik asked Attorney Donovan to elaborate on his letter from February 6<sup>th</sup>.

Mr. Garrepy presented the subdivision plan on the screen for review. He noted that Lot 130-3 has more than the required frontage by over twice the amount. It meets the requirement in the ordinance for the minimum contiguous upland area calculation. The remainder of the lot is being used for bioretention and buffer. On average, the lot is above the 150' in the area that is important for lot depth. He pointed out that a 30' no-cut buffer is also being provided along the rear of the property, as a buffer to the neighbors. Even with the buffer, the lot demonstrates more than adequate area for the septic and house location. He reiterated that the ordinance does not have a clear way to define what average lot depth is. He believes they have satisfied that requirement.

Attorney Donovan stated there have been some unusual lot configurations, which makes it difficult to determine how to apply the average calculation. In this case, it is fairly simple because it's a perpendicular line between the street line and rear lot line. The fallacy in the Mr. Garrepy's argument is that the whole lot has not been taken into account. However, the whole lot is being used to qualify for minimum area. It's a fairly simple calculation, but the lot does not meet it. He pointed out that line 149 (shown on the plan) to line 167 is the only part of the lot that complies. The rest of the lot (line 149 to Washington Road) is less than 150'. There is no way it comes out an average of 150'. It is a pretty straight forward matter. The remedy, if the Planning Board agrees, is an administrative determination. One can go to the ZBA and say the Planning Board is not calculating the depth the way the ordinance states and that is an administrative appeal, or one could ask for a variance. In his mind, this does not meet the requirement that the average distance from the street line and the rear line is 150' or more.

Mr. Garrepy stated his position is that the ordinance does not really spell out how to calculate that average.

**Attorney F.X. Bruton, representing the applicant,** stated that the way they looked at this, was in the context of the requirements for the areas of contiguous uplands. Where the requirement is for 30,000sf, this has an area of about 37,000sf. That is being looked at as the area in question with respect to the relationship between the lot depth and where it would relate to, which is where the lot is used. In that area, it is compliant with the lot depth. The disconnect in the ordinance is that the entirety of the lot is only with respect to creating lot size, but not with respect to what is on it. There is a little more clarity with respect to the fact that the contiguous upland provision, outlines an area within a lot that is only 30,000sf. This lot has an area of about 37,000sf; thus, that meets the 150' depth requirement.

Vice-Chair Lord stated that lot depth is "the average distance between the front or street line of the lot". To be a lot, it requires 66,000sf and this lot does not have that. This is really a stretch of the imagination, just in reading the definition, that this even comes close to that. If this lot is going to go forward, he thinks they need a variance to make that occur.

Attorney Donovan stated that he thinks the concept the Attorney Bruton and Mike Garrepy are trying to get at is something that he actually talked to the Planning Board about back in 1988 when the new Land Development Regulations were put together. Some municipalities have a regulation that they call a minimum square. A dimension is chosen and every lot must have a minimum buildable square of certain dimension. The depth requirement in Rye is going to

become increasingly more difficult for developers to meet. Right now, the Town does not have those requirements for minimum square. This may be something the Board will want to consider when looking at changes to the LDR's. Right now, it is pretty straight forward. It doesn't meet the depth requirement.

Chair Losik asked the Planning Board if they had any other comments.

Member MacLeod stated that he agrees with Attorney Donovan that this does not meet the depth requirement.

Vice-Chair Lord commented the TRC had a hard time determining if this needed a conditional use permit (CUP). The plans say there was 49,000sf of disturbance; however, the stormwater report says less than 100,000. He thinks this will require a conditional use permit, if they go by the stormwater report. Also, over 50,000sf will require a hydrology report.

Chair Losik agreed that it needs a CUP and a hydro study. She asked Attorney Donovan if he agrees.

Attorney Donovan noted that he did not get into that level of detail when reviewing the application.

Vice-Chair Lord stated that Attorney Donovan's memo brought up that there is a lot of shallow test pits to ledge. Although some of them are just 75' away, it is not known what is in between those. He thinks they need to look at test pits with a minimum distance in between. There could be ledge between the test pit and proposed septic area. He thinks they need to look at a few more test pits.

Mr. Garrepy replied they do not object to doing that. With respect to the hydro study, based on the fact that there is less than the 50,000sf of impact area for the subdivision, and it will be less if the Board grants a waiver to the road width requirement, he does not believe they are technically required to perform a hydro study. Especially, given the fact that one lot is already developed. He reiterated they are not proposing to go over 50,000sf with the subdivision itself.

Vice-Chair Lord noted the area of disturbance is over 50,000sf. He asked why that would not require a hydro study.

Mr. Garrepy explained they are not proposing to be over 50,000sf for the subdivision. For individual lot development going forward, there will certainly be additional development. However, this is just a subdivision proposal without lot development. The ultimate question would be what will be achieved with a hydro study on this particular project.

Attorney Donovan stated if the Board adopted that interpretation of the ordinance, the only time the Board is going to require a hydro study is going to be a multi-family project. Most subdivisions are not going to be disturbed more than 50,000sf. The Aquifer Protection Ordinance almost becomes useless, if people are going to be able to subdivide land over the aquifer, develop the streets, build out the lots and disturb more than 50,000sf. He does not think

that was the intent. The Board cannot close their eyes to the fact that these lots are going to be built out with a fair amount of impervious surface. He thinks the Board's perspective is consistent with the spirit and intent of the ordinance.

Chair Losik stated that by virtue of the size of the bioretention pond and the work that was undertaken in the drainage analysis, it already points to the development.

Mr. Garrepy noted the total impact area considers all the drainage, as well. It just doesn't consider the individual lot development for the homes.

Chair Losik pointed out that it already considers the size of the houses per lot at 5400. That is in the drainage analysis.

Mr. Garrepy replied the drainage analysis does consider that because it is a conservative drainage analysis, which the Town requires. However, the actual impact area for this particular subdivision does not include lot development. He commented that he would like some direction on how to go forward. He suggested consulting with the Board's hydrogeologist and see if there may be a scope of work that can be considered that might be beneficial to the project. He is not opposed to considering some components of a hydro study.

**Joe Coronati, Jones and Beach Engineering**, stated that when Alteration of Terrain looks at the disturbance of a subdivision, they only go by the roadway and drainage infrastructure for the subdivision. They don't take in to account lot development. The road and pond would be built and stabilized prior to lot development.

Attorney Donovan pointed out that municipalities are allowed to take a more environmentally sensitive approach to their regulations than DES. It has been argued by several people over the years that DES should be looking at it more the way Rye Planning Board is looking at it. It is somewhat "putting your head in the sand" in saying that alteration of terrain is limited to building the road and to not worry about what is done on the lots. In looking at protecting the aquifer, the whole package has to be looked at, not just the streets.

Mr. Coronati stated they do account for the lots in the drainage analysis. The lots are designed to have porous driveways and infiltrated roof lines. AOT looks at it from a disturbance level. The Town of Rye does not really specify what is considered in the 50,000sf.

Attorney Donovan commented that the idea of talking with Danna Truslow is good. With recent projects, the scope of work has been worked out between the applicants' engineers and Danna Truslow. One of her concerns is the nitrate transmissions through the subsoil into the aquifer. He reiterated that it is a good idea to consult with Danna Truslow.

Mr. Garrepy replied they are happy to come up with a scope of work with Ms. Truslow.

Chair Losik noted this is the Aquifer and Wellhead Protection District. There are narrow requirements because of that resource, which is a critical resource. She continued that the Board



would also like an escrow of \$10,000 set up for the services of Attorney Donovan, Truslow Resource and Sebago Technics.

Mr. Garrepy agreed.

Attorney Donovan stated that if the applicant chooses to go to the ZBA with an administrative decision application on how the depth is calculated, it is going to put a stay on the Planning Board proceedings. The Planning Board would not be able to move this application along further, until the administrative appeal was through the ZBA. He continued that in looking at the plan and the lot across the hammerhead, there may be a question there, as well. The applicant may want to demonstrate how that lot meets the depth requirement. It is supposed to be 150' between the street line and rear property line. There are only a couple of places where that is a straight line because they are using the curves to meet the frontage requirements. He would suggest it be demonstrated how that lot meets the frontage requirements, as well.

Vice-Chair Lord stated this is a good point. If the same argument is used that is used on lot 3, then this lot would not even come close to meeting depth.

There was review of the plan in regards to the rear lot lines and the frontage of the lots.

Attorney Donovan explained that if the Board chooses not to accept the application as being complete, the reason it is incomplete has to be stated. If the Board thinks it needs a CUP, that has to be one of the reasons. If a variance is needed for lot 1, that has to be a reason too. He suggested the Board consider having them post only enough escrow for them to work out a scope of work with Danna Truslow and maybe do some more test pits.

Chair Losik suggested a partial escrow of \$2,500.

**Motion by JM Lord to declare the application not complete, for a number of reasons: the depth of Lot 3 is in question and might need a variance; there is enough information presented that shows more test pits are probably needed to determine septic areas; a Conditional Use Permit is needed; groundwater recharge calculations are also needed; and a hydro study based on scope of work with Danna Truslow. Seconded by Jim Finn. Roll Call: Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill MacLeod – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes Motion passed.**

**Motion by JM Lord to continue the application to the March meeting.**

**Seconded by Steve Carter.**

**Roll Call: Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill MacLeod – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes Motion passed.**

- c. **Major Site Development Plan** by Bluestone Properties of Rye, LLC for property located at 33 Sagamore Road, Tax Map 24, Lot 6 to construct a new 3,496 sf farmstead building and provide associated parking and driveways. Property serviced by the City of Portsmouth municipal water and sewer. **Property in the Business District. Case #02-2021.**

Chair Losik opened to the applicant.

**Eric Weinrieb, Altus Engineering**, addressed the Board. He explained the Labries own three properties at the round-a-bout. Altus has been working with them for quite some time on the redevelopment of that area. This application is for 33 Sagamore Road. (He presented a map of the site and pointed out the location of the wetlands on the property.) He noted that a complete set of site plans have been submitted. Zoning relief has been received for this project. The site plan shows the dimensions for the parking spaces and isles. The site has been designed with traditional pavement for the access ways and permeable pavers for the parking spaces. The entrance to the site is off Sagamore Road at the point furthest away as comfortable and aligning properly with Atlantic Grill and the round-a-bout. In 2007, during the initial planning for the Atlantic Grill, a concept of the whole site was done to give the Board the understanding that the restaurant was the not only project. It was a part of the Labries whole master planning and feeling they wanted to generate at the Foye's corner round-a-bout area. He noted they have done grading plans for the site, stormwater management and utility design with municipal sewer. Two water services from Portsmouth are proposed for the site; a fire suppression service and a separate domestic water service. Utilities will be served underground. The drainage study has been completed and included in the packets. The use density statement is also included in the packets. A detailed landscaping plan has been prepared for the site.

Member Epperson asked if permission is needed from Portsmouth in order to connect with the sewer.

Mr. Weinrieb explained it is just be a sewer connection permit. When the construction was done in 2014, the Labries got all the permits that were needed and a stub was provided, in order to tie into the sewer. No intermunicipal agreements (PUC approvals) are required.

Attorney Donovan suggested checking the intermunicipal agreement, as it has been a while. It may also require permission from the Rye Sewer Commission, which would be in the intermunicipal agreement.

**Motion by JM Lord to declare the application complete and to move it to the public hearing portion of tonight's agenda. Seconded by Bill Epperson.**

**Roll Call: Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill MacLeod – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed.**

- Discussion of Remand Order in Pelletier v. Rye Planning Board and Scheduling of Special Hearing

Attorney Donovan explained that over a year ago, the Planning Board approved the site plan and Special Use Permit for the redevelopment of the Driftwood Cabin site (Samonas Realty site). That was appealed to court by the neighbors. The court held a hearing on September 19<sup>th</sup> and came out with a decision on January 28<sup>th</sup>, which remanded the application back to the Planning Board. The issues raised by Attorney Hogan and the neighbors that resulted in the remand was that there were four conditions of approval that really weren't administrative in nature, involved discretion and should have been reviewed by the Planning Board, rather than by others. He continued this is a standard tactic this attorney uses. It is aimed, in part, at delay. It has certainly succeeded here. When there are conditions that are not administrative in nature, the Board is supposed to hold a compliance hearing where the full Planning Board reviews those conditions. If it is determined those are met, there is a final decision of approval and the appeal period begins. The judge agreed with Attorney Hogan on two of the four conditions. One of the conditions delegated the responsibility for determining the technical standards for inspecting the advanced treatment systems and the effluent content to the Technical Review Committee. There was also the standard condition that Sebago Technics had to certify that all their concerns in their most recent report had been addressed. In this case, because the driveway permit was still under review by DOT and the engineering of that driveway permit was under review, Steve Harding (Sebago Technics) was not able to sign off. Those were the two conditions the judge thought were problematic and should have required further action by the Planning Board. The two the judge did not have a problem with is certification from the Fire Chief and the actual obtaining of the DOT permit. The statutes clearly say that an approval can be conditioned on the issue of permits of other federal and state agencies.

Attorney Donovan continued the case has to come back to the Planning Board to look at the septic system standards that TRC has already approved and review Steve Harding's final letter. The Board has to hold a final hearing on whether all the concerns have been met and issue a notice of decision. He suggested the Board have a special meeting to move this along, since it has been a real delay for the applicant.

**Attorney Tim Phoenix, representing John Samonas**, stated the purpose is to get a public hearing noticed before this Board to address those two items. He noted that he disagrees with the judge's position. There was evidence that Attorney Donovan submitted at the hearing which addresses one, if not both, of these issues. He does not think the judge looked at that because there is no mention in the order. With that said, the quickest resolution is to just have the Planning Board look at these items and give a final approval.

Chair Losik opened to the public for comments.

Attorney Phoenix noted that he will work with the Planning Administrator on updating the abutters list and fees for notification.

Hearing no further comments, Chair Losik closed to the public at 7:40 p.m.

**Motion by Bill Epperson to hold a special meeting on February 23, 2021 to consider the items as described in Attorney Donovan's memo as item #3 and item #13.**

**Seconded by JM Lord.**

**Roll Call: Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill MacLeod – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed.**

#### **IV. Public Hearings on Applications:**

- A. Minor 3-lot subdivision** by Jak Nadeau Revocable Trust for property owned and located at 711 Long John Road, Tax Map 16, Lot 136 to subdivide the existing lot into three single family residential lots with access via a 50'-wide right of way. **Property is in the Single Residence District. Case #07-2020.**

Chair Losik opened to the applicant.

**Corey Colwell, TF Moran, representing the applicant,** spoke to the Board. He explained they last met with this Board in December 2020. They have since met with the Technical Review Committee. Several changes have been made to the plan to address Planning Board, TRC, Sebago and Attorney Donovan comments. He noted that submitted for review tonight is a 20-page set of project plans dated February 3, 2021, revised stormwater management report dated February 2021, an inspection maintenance manual and a construction cost estimate dated February 3, 2021.

He continued the first change to the plan was a change of Fire Trail Lane from a public to a private right-of-way. Secondly, the boundary line between Lot A and Fire Trail Lane was adjusted so Lot A is more regular in shape. It is now closer to a square and avoids lot A from being a corner lot. This allows for half of bioretention area 1 and all of bio-retention area 5 to be within the private right-of-way. Third, pavement width has been reduced to 20', which will significantly reduce impervious area. Next, the home location on Lot B has moved southerly closer to the road approximately 100'. This places the home much closer to Fire Trail Lane; which reduces driveway length, the number of trees to be cut and the amount of fill necessary for this lot. This allows for bioretention area 3 to be relocated about 100' to the south, which also allows for more preservation of the woodland. This raingarden is now located in the cleared area that exists on the property today. In turn, the property lines between Lots B and C have been adjusted to make the lots more regular in shape. Since raingarden 2, which is located adjacent to the hammerhead, treats roadway runoff only, it has been included within the right-of-way. This makes Lot B more regular in shape and eliminates the need for a drainage easement across Lot B.

Mr. Colwell explained that by making the road private, the driveways for Lots B and C are able to be located off the end of the hammerhead. Previously, the driveways had some odd angles, which required some sharp turns, due to DPW concerns. Now that DPW does not have to plow or maintain the roads because it would be private, the driveways can have a straighter configuration. These changes reduce two driveway lengths. It reduces sharp curves in a couple

of driveways, which in turn reduces the impervious area. It allows for the size of raingarden #4 to be decreased and pulled 30' closer to the private right-of-way. Raingarden #4 is on the Nadeau lot closest to the existing home. This allows for more natural woodland buffer to be preserved between the existing home and the Derderian property. At the last Board meeting, the Derderian's requested a 15' no-cut buffer, as their lot is restricted by such a buffer. Moving the driveway off the hammerhead allows the size of the raingarden to be shrunk and allows it to be moved 56' away from the Derderian property. This will allow for more natural woodland vegetation to exist between the raingarden, Derderian home and the Nadeau property. The natural woodland vegetation is now about 50' in size, where previously it was much less. He continued that they have also agreed to run a water service to Lot C, which is the existing Nadeau home. This eliminates the need for the well on Lot C and allows for the driveway length to be reduced. Previously, the driveway went out around the well, which created a sharp turn and longer driveway. By running the water service and eliminating the well, the length of the driveway can be significantly reduced.

Mr. Colwell pointed out that previously, these three home sites proposed approximately 25,000sf of impervious area. With these most recent revisions, impervious area is reduced to about 20,700sf., which is a 17% reduction. The undisturbed woodland has been increased by 12,400sf., which represents a 12% increase in undisturbed woodland. Also, the roadway intersection of Fire Trail Lane and Long John Road has been revised. Previously, concerns were raised by this Board about drainage at this intersection. To address this, two new leaching catch basins have been added, which are designed to capture and convey stormwater from the northerly side of Fire Trail Lane to the southerly side. A leaching basin is a basin with holes in the side. As stormwater enters and fills up the sump, it infiltrates into the ground and is not conveyed downslope. There is a pipe connecting these two basins in the event of a large storm; however, for the most part, water entering those two leaching basins will infiltrate into the ground. The natural path of stormwater along Long John Road runs southerly. These basins and the pipe that connects them will maintain this flow direction.

Mr. Colwell commented this summarizes the changes that have been made since the last meeting with the Board. He feels they have made substantial improvements. The lots have been made more regular in shape. Impervious area has been reduced significantly. The driveway lengths and roadway width has been reduced. The required tree clearing has been reduced. The woodland buffer has been increased around the perimeter of the property. Also, the burden of future maintenance has been taken off the Town by making the road private. A letter has been received from Steve Harding at Sebago Technics, dated February 6, 2021. The letter supports the waivers being requested and states the stormwater design meets the requirements of Rye's Land Development Regulations.

Speaking to Steve Harding, Chair Losik asked if he could speak to any areas that he may still be concerned about.

**Steve Harding, Sebago Technics**, commented that Mr. Colwell gave a really good summary of the changes that have been made. He noted that he has been having conversations with Mr. Colwell and Ms. Giovannucci all throughout the project. They've made a number of adjustments. They have studied options for the raingardens that were part of the issues early on

from the Board's comments and his reviews. He thinks they have come up with a really solid plan to address those concerns. The plan they have certainly meets the Rye Land Development Regulations. He noted that his comments in the letter had to do with just acknowledging the changes that were made. He pointed out that the stormwater inspection and maintenance document now has the leaching basin in it. There was some question in his mind whether they were going to create a homeowners' association or if the individual lot owners were going to do the maintenance. Regardless of who is responsible, it should be clearly stated in the inspection and maintenance document. Traditionally, the Town has always maintained the right to go in and view the maintenance on stormwater features. If the entity was delinquent in doing that maintenance, there was always provisions for the Town to get compensated for any changes.

Speaking to Mr. Colwell, Chair Losik asked where they stand in regards to the stormwater inspection and management of the facilities.

Mr. Colwell commented it was mentioned in the inspection and maintenance manual. The wording was that these would be inspected by a private entity, such as a homeowners' association. The intent is to have a homeowners' association that would be responsible for maintain and inspecting the stormwater improvements.

**Jay Nadeau, applicant**, stated that when this process started, he and his wife had talked to Sally King, who was chair of the Conservation Commission at the time. There was discussion about gifting a pedestrian pathway to RCC (town) for access to Marden Woods from Long John Road. (A plan showing the proposed pathway was presented on the screen for review.)

Chair Losik asked if there is a path there currently.

Mr. Colwell replied there is no path currently. He explained the path would be to get to the conservation land. It would mostly be a path meandering in that 10', in order to not cut trees. There would be some small saplings that would need to be cut. It would not be a paved path, just a walking trail through the woods maybe 4' or 5' wide.

Mr. Nadeau pointed out it would be pedestrian only.

Attorney Phoenix noted the homeowners' association will be implemented for both the maintenance of the raingardens and the road. Typically, once the Board approves, those details are worked out with Attorney Donovan.

Mr. Nadeau stated that Mr. Colwell had represented that the Derderians would be provided a 15' no-cut buffer on his side. What was offered was a 10' no-cut buffer by 500'. He explained the leaching field will be moved to the back of Lot C, so more than 10' really cannot be done.

Chair Losik asked if it will be 10' along the whole distance without an expanded buffer in the raingarden corner.

**Hannah Giovannucci, TF Moran**, stated the intent with the 10' buffer would be along the Derderian side of the property.

Chair Losik asked if the woodland outside of the 10' would be a no-cut area.

Mr. Colwell replied it is not; however, it is labeled on the plan as woodland vegetation to remain. The area is intended to be retained as woodland.

Chair Losik opened to the Board for questions.

Speaking to Mr. Harding, Member MacLeod asked if he is satisfied with the plan and the revisions that the applicant has made from a technical point of view.

Mr. Harding replied yes. He continued that early on there was discussion about options for the bioretention basins; particularly, on Lots B and C. The applicants' team has gone through a number of iterations to try to come up with some other options, while still meeting the technical standards of Rye's Land Development Regulations. They have done that, so he is satisfied.

Member Finn commented the engineering team has done a good job on this. However, he has a concern that when all is said and done, the site is a challenging site for development. He can see a contractor going in and really not abiding by the tree lines that are proposed. That has happened with other sites. This is something that concerns him a bit. Also, there is still the precedent issue of the irregularities of the lots. He thinks they are pushing the envelope a bit. However, they have been creative in terms of overcoming some of the concerns with regard to drainage, etc.

Vice-Chair Lord stated the water line running through the bioretention area is probably going to be a problem for the Rye Water District. He thinks they like to keep their mains within the street and roadways. He thinks the Board should get a letter from the Water District stating that they don't mind the line going through the bioretention area. His second concern, which came out of the TRC Meeting, is that these are all infiltration basins now. He thinks they were looking for cross-sections for about 150' coming in to this property for how much ledge is going to be coming out of this area to see how well these are going to work. Until that is known, he does not think they can verify one hundred percent that all these systems are going to work as intended. Most of this land close by is ledge right below the surface. He thinks it would be good to see cross-sections to see how much of a ledge cut is coming out. It could be a fair amount.

Mr. Colwell stated they have added notes to the Site Preparation Plan C-5 that show where the ledge is to be removed for the bioretention areas adjacent to Fire Trail Lane. The detail is located on Sheet C-19.

Referring to Sheet C-19, Ms. Giovannucci pointed out the ledge depth chart and spoke in regards to the ledge to be removed.

Mr. Colwell explained the entire hatched area shown under the roadway, bioretentions and surrounding areas, have to have ledge removed to the depths specified. It is not creating a bathtub. The entire area will have ledge removal.

Speaking to Vice-Chair Lord, Chair Losik asked if he is looking for a sense of what is there from a quantitative standpoint.

Vice-Chair Lord commented he is having a hard time understanding it. When he looks at the cross-section, it looks like there are different depths for different areas.

Ms. Giovannucci replied that is correct. There are different ledge cut areas. The upper portion of the driveway slopes down in its existing condition. In looking at the different stormwater features, the cuts are going to triple down into the next section because it gets deeper and deeper. Everything will be removed and the intent is for the groundwater to continue its natural course underneath Long John Road. Long John Road has had ledge removal in the past to allow for the subgrade to be beneath the roadway. It is her assumption that there would not be any ledge that would prohibit the groundwater path to continue downhill outside the private right-of-way.

Vice-Chair Lord commented he wants to be sure the bottom of the ledge of the pond isn't just a bathtub. He asked if the intent is to hold it within the basin and let it overspill.

Mr. Colwell explained the natural flow path today, prior to development, is coming from the north to the south to Long John Road. They are trying to maintain that same natural path without increasing runoff. Ledge will be removed from the right-of-way area such that the ledge will still have some slope to it. Going up Fire Trail Lane, the bottom of the ledge removal will be higher than the bottom of the ledge removal where the bioretentions are. The bottom of the ledge adjacent to Long John Road would be even lower. If water hits that ledge, it is all flowing towards Long John Road. He reiterated that the finished ledge is going to have a slope to it from north to south. He noted that the ledge in the hatched area on the plan is being removed to the depth specified in the table on Sheet C-19.

Ms. Giovannucci commented there is also uncertainty whether there is ledge in those locations because there were test pits that didn't indicated ledge in many areas.

Mr. Colwell continued that the plan shows the minimum elevation for which ledge has to be removed to in order to make drainage work. It may not exist to that depth but it has to be removed to that depth in order to make it work.

Ms. Giovannucci stated that if the Board felt more comfortable, they could consider increasing that amount; however, it meets the stormwater guidance in terms of ledge removal. The bioretention areas only need 1' of distance from ledge to the bottom of system, which these have been designed to.

Attorney Donovan asked if the location of these particular facilities, right adjacent to Long John Road, warrant more concern than the DES standard for a normal retention basin. This will have water flowing into the base material of Long John Road at some depth and it would seem the proximity of this would warrant a deeper cut into the ledge than 1'. He asked if they want to protect against forcing the water into the base material of Long John Road.



Ms. Giovannucci explained this is designed so there is less volume and less rate of stormwater being discharged towards Long John Road, as compared to today.

Attorney Donovan asked about the groundwater.

Ms. Giovannucci replied that they did not come across any issues with groundwater where the bioretention areas are proposed.

Attorney Donovan asked about the water that is in the basin and is going to percolate down into the gravel material, until it hits ledge. It will then run along the ledge towards Long John Road. That was a condition that didn't exist, but is being created by the bioretention being there. At some point, the water is going to hit ledge and flow towards Long John Road. If that is the case, it has to be deep enough so the base materials of Long John Road aren't being adversely affected.

Mr. Colwell explained that near the hammerhead, the land is at elevation 62 and at Long John it is at elevation 52. There is ledge there today. Any stormwater that is infiltrating into the ground and hitting the ledge is being directed into Long John Road. This will be continuing that same flow pattern. Enough is being held back such that it does not increase into Long John Road.

Ms. Giovannucci commented that in addition, they do not really see any ponding area along the right-of-way of Long John Road, which consists of all the stormwater of at least half of Long John Road. In existing conditions, this is a depressed area, but they are not seeing that stormwater gathers there. If it does gather, it is infiltrating. Also, through site visits and in looking at Google Maps, it did not appear to be any heaving or cracking issues with Long John Road in this area. This makes them more confident that if they continue to allow the stormwater to travel in this direction, it will infiltrate and not cause an issue with the subbase.

Chair Losik clarified they have considered the 100-year and increased the quantities by 15%.

Ms. Giovannucci confirmed. She noted that any stormwater that is discharging towards this area is not increasing compared to what is out there now.

Mr. Colwell commented it is actually a slight reduction.

Member Carter asked where the snow will be stored for the private road.

Mr. Colwell explained that because the width of the roadway was reduced, there is about 12' from the edge of pavement to the right-of-way line. Snow can be stored on both sides of the right-of-way and also within the hammerhead at the end of the right-of-way near raingarden #2.

Chair Losik stated that she has a question about the landscaping of the bioretentions. The Land Development Regulations provide some suggestions for plantings in Section 202-11.3. She asked why they made the decision to use a standard lawn mix on the slopes and basins. The homes on Lot C and Lot B are pretty visible driving in. She asked if this is really what they want to be looking at or should it be a mix of better blend native plants?

Ms. Giovannucci explained they did consider doing plantings within the systems. However, when considering that this is a residential private ownership and that ongoing maintenance would be required, the concern was putting in too many plants because sediment often needs to be removed from these systems to keep them maintained. UNH Stormwater Center often recommends just doing lawn landscaping for these bioretention areas. This will help it to look like a regular lawn and less of an eyesore feature.

Chair Losik asked if they looked at the section specific to raingardens and plants.

Mr. Colwell confirmed. He continued that the landscape designer has come up with a plant list based on the soil types that was found on site.

Chair Losik clarified for the landscaped areas, but not the raingardens. She commented there have been a lot of raingardens and bioretentions in multi-families. In her mind, it is a more commercial look. She thinks there is an opportunity with the LDR's to be a little more creative.

Mr. Colwell asked if it is the type of plants that are the concern.

Chair Losik clarified that she is talking about the slopes and in the basin. She pointed out that the work of Robbi Woodburn, and other landscape architects the Board has worked with, is quite different. She commented that these raingardens in this development are a prominent feature.

Mr. Colwell stated they can take a look at some different plant varieties that might go in these raingardens.

Ms. Giovannucci reiterated that the concern is that these systems have to be maintained regularly and an excavator is needed to get the sediment out and sometimes replace the soil. People are trying to get away from planting in these systems just to allow for the maintenance to continue to occur.

Mr. Colwell commented that several years ago, most raingardens had plants. The direction they are now going in is that these raingardens are better maintained and better served if they are grassed in the middle and not planted because of the maintenance.

Chair Losik pointed out that landscaping, in general, is given high value in the community.

Member Carter asked if the existing stonewall runs along the top quarter of the rain garden. Referring to the location of the stonewall shown on the plan, he stated it is quite a ways back. There is going to be a lot of open space where there are currently trees.

Ms. Giovannucci noted that to buffer that open space, they have proposed quite a number of trees. (She pointed out on the plan four, large trees, as well as a number of bushes and plants to help buffer that area. She also pointed out the side slope that will help protect the view from Long John Road.)

Attorney Donovan asked if there will be a conflict between the 10' pedestrian easement to the conservation land and the landscaping objectives.

Mr. Colwell replied no. He noted they are able to have 10' between the trees and the wall.

Attorney Donovan asked how the abutters feel about the pedestrian easement.

Mr. Colwell commented he has not reached out to them yet.

Mr. Nadeau stated that he has not talked to the abutters about the idea. He commented that he thought it would be a nice gesture to give this to the Town, but it does not have to be done.

Attorney Donovan replied that he thinks it is a great idea. He pointed out that it is pretty close to the abutter's house.

Mr. Colwell suggested that another location for that access could be just west of the Lot A boundary line.

Chair Losik opened to the public for comments.

Planning Administrator Reed noted that she received a comment in the chat room from Christian Derderian. Comment: It was agreed that a 10' no-cut buffer would exist between his property and the new abutting lots, which is not on drawing set.

Mr. Colwell confirmed this is going to be added.

Question from Mr. Derderian through chat: Although the house location on Lot B has been moved closer to the proposed road, what on the drawing or deed keeps the house location fixed?

Mr. Colwell recommended they do something similar to what they did on Big Rock Road. The Town required residential site plans to be submitted and approved by the building inspector, prior to the issuance of a building permit. This is the best way to govern house location, impervious area, setbacks and tree removal. He does not think the applicants would have an objection to that being a condition.

Mr. and Mrs. Nadeau agreed.

Attorney Donovan stated that one of his initial recommendations was that there should be a lot development plan approved by the Planning Board as part of this process, at least on Lot B.

Question from Member Jeffrey Quinn through chat: Which bioretention areas will be the responsibility of the HOA?

Attorney Donovan noted that it would be all of them and that would be his recommendation. He stated that the Board may want to make it the responsibility of the HOA to maintain the

bioretention areas but also that they hire a qualified contractor to do it. There should be a standard that they hire someone that knows how to maintain these facilities.

Hearing no further comments, Chair Losik closed the public hearing at 8:50 p.m. She asked Attorney Donovan for an overview of the waivers.

Attorney Donovan stated there are seven waiver requests. Many of them have been recommended for approval by the engineer; however, there is one that he does not think is necessary. There are at least three or four others that the Board ought to consider approving. The ones that warrant the most discussion are whether or not these lots are still irregular enough to warrant a waiver; the waiver prohibiting disturbance of the tree line 3' from the back edge of the ditch; and there has also been discussion about the ledge and road base under the first 200' of the road. Those are the three most critical waivers. In terms of the standards for granting a waiver, the application materials that are made available to applicants list both statutory reasons for a waiver. The Board should let the applicant argue both of those and consider both in making the waiver decision. The checklist now clarifies that it is only based on strict conformity imposing a hardship and the waiver would not be contrary to the spirit and intent of the regulations. He would not apply that to this application because of the way the checklist has been handled over the years. He reiterated they should be able to argue both reasons for a waiver. The one he does not think is required is the fifth waiver on the list which prohibits driveways from being within 100' of an intersection (6.2B(7)(d)). The Board has interpreted this in the past not to apply to an existing driveway on the street which its being intersected with. This would cut the list of waivers down to six.

Referring to 6.2A(1)(b), Chair Losik stated that part one of the explanation of justification is attended to Lot B. Specific circumstances for the second rationale is for Lot C. She asked if these can be taken separately.

Attorney Donovan confirmed. They applied for 6.2(A)(1)(b) which is the provision that lots not have grossly irregular angles or narrow portions. That comes down to whether the Board feels that regulation has been complied with. If that has been complied with, they do not need a waiver. He believes the issue is whether the 50' by 60' portion of Lot B adjacent to the hammerhead is a narrow portion of the lot for which a waiver is required. If not, a waiver is not required. That is different than the next requirement, which is more general, to 6.2(A) that lot lines be orderly and harmonious and not contrary to establish principles of subdivision. This is two steps also. Do they comply with that regulation? If the Board believes the lot lines are now orderly and harmonious then they don't need a waiver. He thinks it is arguable that the changes they have made no longer make the lots irregular, given the shape of what they are starting with. He thinks they have created another question though. By drawing the square right-of-way around the retention facility, is that really frontage? The boundary of the square is not really street boundary. It's a boundary that is designed to encompass a retention facility. It raises a question; however, it is arguable that the lot is no longer disharmonious and disorderly. The question comes down to whether the Board views that 50' x 60' deep portion on the left, adjacent to the hammerhead and Lot A, as being irregularly narrow; therefore, requiring a waiver.

Member Finn asked Attorney Donovan's thoughts about Lot C.

Attorney Donovan stated that it is really due to the shape of this six-acre lot. The portion of the lot where the house is sited, now that they've adjusted the lot lines between B and C, they have really created a regular area for the house lot itself and this is just remnant land.

Chair Losik clarified that with regard to the waiver for 6.2(A)(1)(b), potentially there is still a situation on Lot B because it still does contain the narrow portion south of the bioretention common area.

Attorney Donovan stated that he does not think a waiver from 6.2(A) is necessary. They have made it regular enough in shape, but for the narrow portion. The Board would have to decide if the narrow portion requires a waiver.

Vice-Chair Lord asked what creates frontage on a hammerhead. It looks like this is being changed, not for the hammerhead, but for other reasons.

Attorney Donovan pointed out that it is 70' from the center line of Fire Trail Lane to the end of the hammerhead. In looking at a design for hammerheads, this has more length than a typical hammerhead. In general, for low volume streets, they don't have to be that long. He would suggest that this one is being created longer to create frontage. That might become an issue, as well. In his opinion, they are using the hammerhead to get a third lot.

Mr. Colwell explained from the main point of Fire Trail Lane to the end is 50'. (He pointed this out on the plan.) That area is sized for a firetruck turnaround. The square portion that is being counted as frontage, was really done to strike a balance. The narrower hammerhead, in many of the board members' opinion, created irregular lots. This was discussed at one of the prior meetings that if this was squared up, it would not be so irregular. This was done to make the lots less irregular. Also, bioretention area 2, just treats stormwater from Fire Trail Lane. It is not uncommon to have those stormwater practices within the right-of-way. This makes the lots less irregular and will include Fire Trail Lane's stormwater treatment within the hammerhead. He continued that the question came up in their minds about whether this should be included in the frontage. In reviewing it with legal counsel, it was felt it could be included based upon the definition in the zoning ordinance. Frontage is defined as "the continuous side of a lot or tract of land on one side of a street or proposed street measured along a street line". The key word is "street". The definition of street in the ordinance is "a public roadway which has been accepted by the Town or such a roadway other established by law as a town or state highway, or an officially approved private road, if not less than 40' in width, which affords means of access to abutting properties". He pointed out they had to create a hammerhead that allowed firetruck turnaround, made the lots not irregular in shape, but also afforded access to the lots. The portion just to the east of the raingarden is not necessarily needed for access. That area isn't necessary for access but it usable for access. The driveway to Lot B could loop around the raingarden and go into the lot. For those reasons, it was felt that this was an acceptable alternative. If the raingarden was right up against the boundary line, it would not afford access because a driveway could not go there.

Attorney Donovan noted that can't be done along the entire width of that square because then they would be crossing the drainage easement.

Mr. Colwell commented that a driveway would not be along the entire width of the frontage. A spot has to be chosen. As long as that spot is viable, it affords access. Any where along that long line to the east of the raingarden, access to that lot is viable.

Vice-Chair Lord asked if the hammerhead was this deep in the prior layout.

Mr. Colwell replied yes. With the original design, the depth off Fire Trail Lane is the same. The only difference is that it was wider.

Attorney Phoenix commented that the Board is looking at lines on a piece of paper. When this is built, someone is not going to notice the property lines or how the hammerhead was set up. He thinks the 50' is justified. It provides for firetrucks to be able to back out. It also provides for access for a vehicle for someone who is maintaining the raingarden. He commented they have to look at what this looks like on paper, what it will look like for real and the rights of the property owner to try to utilize their property constitutionally, as they are entitled. There may be some unusual characteristics, but when balancing it all it is going to be a beautiful subdivision. He thinks this is approvable, either with or without the waivers.

Vice-Chair Lord stated in the old layout, the driveways came off the side of the cul-de-sac. Now with them coming directly off the road, he does not think the hammerhead needs to be that big. He hears what they are saying; however, he does not agree with it. He thinks the width of the hammerhead is to gain frontage.

Attorney Phoenix stated there are no standards for this. The fact that one or more people think it is longer than it needs to be, does not outweigh the owners' rights to develop their property. This is not going to be problematic on the ground. It will be very problematic for the owners if they lose a lot that is worth several thousand dollars over a 10' length of a hammerhead.

Referring to the comment that there is not going to be a problem on the ground, Attorney Donovan stated that argument could be taken to extreme to say who cares about frontage requirements and depth requirements because all it is in the end is a place where the line is put on the ground.

Attorney Phoenix commented if it was 700' that would be one thing. The turning area for a truck does not look like it is too long.

Mr. Colwell noted that in order to turn a firetruck, at least that depth for a hammerhead is needed, with snow storage. He could see the argument more so if it was a public right-of-way. However, this is private and the homeowners' association is maintaining Fire Trail Lane in its entirety.

Referring to the discussion on whether they are using the hammerhead to get frontage, Member MacLeod noted that is what a developer or land owner does. They build a road to get frontage. If the Town of Rye allows hammerheads and there are no specific specifications for the layout of that hammerhead, he certainly does not think the Board can say they can't do it this way. If it is built too short, there would be big trouble versus building it a little too long. It is not just the

length of the vehicle, but it is also the turning movement of the vehicle that requires the length. Regarding the waivers, the first one is the requirement the lots not have grossly irregular angles on narrow portions. He does not think there are grossly irregular angles on the lots with the way that these have been reconfigured. He pointed out that he did not really think they were an issue to begin with. As far as calling that section to the south of the hammerhead, whether it is narrow or not, it is just part of lot. That area is 50 x 60. In his opinion, that is not a grossly narrow portion of the lot. To the fact that the lot lines be orderly and harmonious and not be contrary to establish principles of subdivision design, he has seen some pretty bad subdivision designs during his career. Except for the lot lines that were already established by carving lots off historically in years past across the front, there's really nothing that is not harmonious. He does not see anything on the plan that is contrary to established principles of subdivision design. In looking at the lot lines, emanating off this road, he does not see anything that is not orderly or not harmonious. He continued there has been a lot of discussion on the shape of the lots and the hammerhead design. Frontage, in his career, has been the total length of the distance of the lot along the street line. This layout of the road gives this lot the required frontage. In his opinion, a waiver is not necessary under 6.2(A)(1)(b) nor 202-6.2(A).

Speaking to Member MacLeod, Chair Losik asked if he has an issue with Lot C.

Member MacLeod replied he does not have an issue with Lot C because those boundary lines have been established probably since before there were subdivision regulations in Rye.

Referring to 6.2(A)(1)(b), Member Carter stated he does not think it is necessary. He thinks they are doing what the Town allows them to do. He commented that some of the regulations may need to be rewritten. Hammerheads may need to be defined a little more closely. Based on what they are working with, he does not see it as necessary.

Referring to the irregularity of the lots, Member Finn stated that at this stage there is no need for a waiver. They have done a lot to the layout to make it conform to what is needed.

Member Paul stated this is a lot better than the first design. She still sees that the lots seem to be jerry-rigged and a little shoved in. She can see the argument that maybe they don't need the waiver under #3. She sees Lot C as being a really bizarre shape. She thinks Lot A is fine and Lot B is a lot better; however, Lot C is not normal.

Member Epperson stated that from the last plan to this one, it is a significant improvement. This is a piece of property that is challenging. He agrees with Attorney Phoenix that they are doing the very best job they can. They certainly have a right within certain bounds to develop their property. He thinks this is as good as it is going to get. He does not think the waiver is necessary.

Vice-Chair Lord commented that he can fall in line with Member Paul. He thinks Lots B and C are irregular in shape. He disagrees with Member Epperson with the approach of "this is as good as its going to get" when doing a subdivision. He thinks they really have to look at this and apply waivers where waivers are necessary. He thinks that little portion of B makes it a very unconditional lot. If it were square all the way across, then he could say it is not so not so

irregular. With the jog, it is a highly irregular lot. He has a concern, if the Board agrees this is not irregular, that going forward they are going to have a very difficult time, in the Town of Rye, finding an irregular lot.

Chair Losik stated that she does look at that area as being a narrow portion. She thinks both lots are irregular. Despite the changes that have been made, they are really nothing more than incremental gains. She does not think this is representational of what they have worked on and have generally seen. She agrees with Member MacLeod that right now, with respect to this area of hammerheads, it has raised a lot of questions and concerns, but now is not the time for the Board to deal with those concerns by making an improper decision. She asked Attorney Donovan if there should be a vote on this waiver.

Attorney Donovan replied that the first vote would be whether or not the waiver is even required. If it is not required, the Board can move on to the other waivers.

**Motion by JM Lord that a waiver is required from 6.2(A)(1)(b) for Lots B and C.  
Seconded by Nicole Paul.**

**Roll Call: Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill MacLeod – No;  
Bill Epperson – No; JM Lord – Yes; Patricia Losik – Yes;  
Motion passed by a vote of 5 to 2.**

Waiver request to 6.2(A)(1)(b) addressing grossly irregular lots:

Mr. Colwell stated that in looking at the lot lines as they exist today for the entire parcel, there are some irregularities. Regular, in everyone's minds, are square and rectangles. Square and rectangles just do not fit within that parameter. There has to be some shape other than rectangle and square that fits inside that parameter. There is over 5-acres of land and the minimum lot size is 66,000sf, which is an acre and a half. An acre and a half times three, brings it to 4.5-acres with 3.5-acres left over. So, size really isn't an issue. Large homes with yards and utilities can fit on these lots. Everything fits and has ample space without needed zoning relief. Based on the existing lot shape that exists today, based on the size of the lots and the fact that everything fits adequately without zoning relief, they don't look at these as grossly irregular. The Board has just voted that a waiver is needed for irregularity, but the regulations are pretty well stated that they can't be grossly irregular. Although, he could agree there may be some minor irregularities, he does not think it is even close to being grossly irregular, which would be very narrow portions, sharp curves and long panhandle lots. These lots are as square as they can get with a road that complies with the Land Development Regulations. This meets access lengths, all frontage requirements and all zoning requirements. He does not think there is anything grossly irregular about these lots. He guesses they might come to some agreement that there might be some slight irregularities, but certainly not grossly. For that reason, the waiver was requested.

Attorney Phoenix stated they need to look at what is a standard for granting a waiver, which is "strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations". The second one of the State is also applicable here which is "specific circumstances relative to the subdivision or conditions of the land in such subdivision indicate that the waiver will properly carryout the spirit and intent of the



regulations". He continued that developers and owners try to build a roadway to get the most lots and therefore get the most return. Since these squares and narrow areas are not going to be seen on the ground, it's not fair to penalize the Nadeaus by potentially losing them a lot. In balancing the requirement of the hardship against the owner compared to the spirit and intent of the regulations, they are going to lose several hundred thousand dollars in value. The spirit and intent of the regulations which is to have orderly subdivisions where people can access their lots, emergency vehicles can get to and people can park, those requirements have been met. The hardship standard in the regulation does not have a definition, so a financial hardship definitely applies. Turning to the spirit and intent of the regulations, in looking at the zoning regulations, it would be whether it would change the neighborhood substantially or violate public health, safety and welfare. There are numerous lots along Long John Road, including subdivisions. Most of which are open lots. Some have hammerheads and some have cul-de-sacs. This pocket neighborhood is certainly not going to change the neighborhood nor is it going to harm public health, safety and welfare. He respectfully thinks the Board got it wrong that a waiver was even needed. It is abundantly clear to him and to his clients, they should be granted the waiver, so they can have the additional lot.

**Motion by Bill MacLeod to grant a waiver to 6.2(A)(1)(b) for Lots B and C because strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations and specific circumstances relative to the subdivision or conditions of the land in such subdivision indicate that the waiver will properly carryout the spirit and intent of the regulations. Seconded by Bill Epperson.**  
**Roll Call: Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – No; Bill MacLeod – Yes; Bill Epperson – Yes; JM Lord – No; Patricia Losik – No**  
**Motion passed by a vote of 4 to 3.**

Waiver request to 3.3(B)(8); Building Elevations:

Mr. Colwell stated that they are creating the lots, which allows for the sale of the lots. Someone would employ an architect to design the home. At this state, it is just too premature to design the homes. Although, he sees this requirement in the Land Development Regulations as being necessary for other types of developments, for single family lots in subdivisions it is totally inapplicable.

Attorney Donovan noted that the Board will probably implement a lot development requirement for review, so the purpose of that will be met in the long run.

**Motion by JM Lord to grant a waiver to 3.3(B)(8) to the Rye Land Development Regulations because strict conformity would pose an unnecessary hardship to the applicant, as it would entail employing a builder and architect prior to the acquisition of the land by the future landowner; the waiver and request meets the spirit and intent of the regulations and does not adversely affect public convenience and welfare.**  
**Seconded by Jim Finn.**  
**Roll Call: Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill MacLeod – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**  
**Motion passed by a unanimous vote.**

Waiver request to 6.2(A)(1)(A) for the 25' curve radius at intersection property lines at street intersections:

Mr. Colwell stated that the property, which exists today, does not have the 25' radius. The purpose of the 25' radius is to allow large trucks, such as firetrucks and delivery trucks, a turning radius. The road has been designed so those trucks can get in there. It is just impossible to provide that radius on a pre-existing condition. The 25' radius can be provided on the opposite side of Fire Trail Lane. By not having that 25' radius, there is still adequate sight distance and there is adequate turning movement. It does not affect access, size or shape of any of the lots by not having the 25' radius. It cannot be provided because it is a pre-existing condition. It doesn't make anything more unsafe, less slightly or affect access to this subdivision. For those reasons, the waiver was requested.

Member MacLeod pointed out that Steve Harding from Sebago Technics looked at this from an engineering point of view. It was his opinion that the plan, as designed, provided an adequate radius on the edge of the pavement. He believes Mr. Harding supported the granting of a waiver on this.

Chair Losik agreed.

**Motion by Bill MacLeod to grant a waiver to LDR 202-6(A)(1)(A) requiring a 25' curve radius at the property line because specific circumstances relative to the subdivision or conditions of the land in such subdivision indicate that the waiver will properly carryout the spirit and intent of the regulations. Seconded by Bill Epperson.**

**Roll Call: Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill MacLeod – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes;**

**Motion passed by a unanimous vote.**

Recess from the application for 711 Long John Road.

**Motion by JM Lord to continue the application for 33 Sagamore to the March 9<sup>th</sup> meeting. Seconded by Jim Finn.**

**Roll Call: Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill MacLeod – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed.**

Continuation of the application for 711 Long John Road:

Waiver request to 6.2(B)(7)(A)(2) for slopes in accordance with typical street cross section:

Mr. Colwell explained the purpose of this waiver is primarily for the intersection of Long John Road. The road has been superelevated, meaning there is no crown. Required slopes require a crown. By super-elevating the road, the drainage is forced to the south side of the road where it can be treated and infiltrated. If a crown was kept per the typical cross section, drainage would go to both sides of the road. Some drainage would go to the north side where there is all ledge and no infiltration and no treatment. The intent is to get the drainage off the road, into the swales

and bioretention areas on the south side of the road where it can be treated and infiltrated. The purpose of this waiver is to provide more treatment and more infiltration of stormwater. Strict adherence would mean that some of that stormwater goes untreated and un-infiltrated and would probably go over the property line of the property owned by Beeson Irrevocable Trust. He pointed out that Sebago Technics supported the waiver in their review letter.

**Motion by JM Lord to grant a waiver to 6.2(B)(7)(A)(2) of the Rye Land Development Regulations because specific circumstances relative to the conditions of the land make this necessary to pull the flow away and trap it into the stormwater drainage system; and strict conformity to this regulation would prevent stormwater infiltration along the east and cause ponding on the road, due to existing ledge. Seconded by Bill MacLeod.**

**Roll Call: Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill MacLeod – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed by a unanimous vote.**

Waiver request to 6.9(C)(4) for bottom of the road base:

**Motion by JM Lord to grant a waiver to Section 6.9(C)(4) of the Rye Land Development Regulations, as the proposed Fire Trail Lane meets the spirit and intent to promote subbase drainage to protect pavement durability and the proposed roadway will require ledge excavation which will poach drainage and potentially reduce the seasonal highwater table; additionally, the first 1.5' of roadway base consists of actively draining soils and the spirit and intent of the regulations are met. Seconded by Jim Finn.**

**Roll Call: Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill MacLeod – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed by a unanimous vote.**

Waiver request to 6.8(C)(1) for existing woodlands within the right-of-way shall not be disturbed 3' from the street ditch:

Ms. Giovannucci stated the intent is to keep as much existing woodlands as possible along the right-of-way. However, in order to meet the stormwater regulations, a bit of grading had to be done for stormwater treatment, which were proposed in areas with sufficient groundwater and ledge separation. Due to the elevations, grade has to be made to the existing roadway so it can continue its existing path. Because some of the existing woodlands is being removed to accommodate the stormwater, the landscaping plan replaces a number of trees and shrubs to get that effect back, to be a little more visually appealing, and to meet the spirit and intent of the regulation. Sebago Technics reviewed and supported this waiver request.

Member Lord stated that as heard earlier in the presentation, they do not know the real depth of the ledge in this area and all they are doing is blasting it down to make it work. They could put it much further into the site and much narrower to get it away from the roadway to keep strips of wooded area along the westerly side of the road. There is a small swale that goes into bioretention 5, but the rest is major runoff from the rest of the subdivision that could be brought to the west, which would allow for a major strip of the woodland to remain. He thinks this one should be denied.

Member Epperson asked what percentage would be replanted.

Mr. Colwell replied it is about 30%. He pointed out that they are trying to keep the proposed drainage pattern the same as the existing drainage pattern. Where the drainage goes today is right in the area where the bioretention areas are proposed. The stormwater runs across the property towards Long John Road today. They are trying to keep that same location and that is why the bioretention areas are proposed in that location. It really necessitates the tree removal in that area.

Chair Losik clarified that swale has to be created to feed the bioretention.

Mr. Colwell confirmed. Without the swale, there would be a lot more water in Fire Trail Lane, which would increase runoff and create icy conditions at the intersection with Long John Road. For that reason, they are forced to put the swale and bioretention in that location. He pointed out that vegetation in the form of plants and grass is going back in all the areas where removal occurs.

Referring to 202-6.8 standards for preservation of natural features and the environment, Chair Losik stated this is one of the areas the Board has looked a lot at with projects; (A)(1) “the land developer shall identify and take suitable steps as required by the Planning Board to preserve and protect significant existing features, such as trees, stone walls, scenic vistas, brooks, streams, rock outcroppings, water bodies, wetlands and other natural features and historic landmarks”. She commented that figures high in her mind. As they approach this beautiful resource there are bioretentions. Also, the trees have been stripped and it looks nothing like photos 3 and 4 of the stormwater plan. On the one side, they had to be extremely diligent in meeting the Land Development Regulations in order to meet the stormwater requirements. However, it also seems like it has been to the detriment in areas which may have had some wiggle and the natural resources that are there are not appreciated. This gives her some concern. Also, in 202-6.3(B)(2), grading and filling shall be minimized. Was there not another solution to a swale? Was there not another configuration? She can’t imagine there was not another opportunity.

Ms. Giovannucci explained that they looked at other opportunities to use catch basins; however, the Town dislikes curving. In addition, that creates the systems to be much lower. Although they have a little less impact, there has to be an area for the outlets to daylight. Because there is no area to daylight, more surface drainage had to be used to collect a lot of the area, which drives where things are able to be put. It has to be sure stormwater flows to the natural low point because the low point cannot be altered around the boundaries. In addition, they had to make sure that it was put in areas that had separation for ledge. The grading plan shows where the test pits were. The further up they went, the more ledge that was encountered.

Chair Losik stated she still sees that the constraints of the highwater table and the bedrock/ledge have eliminated the possibilities to meet some of the LDRs. There is a pattern where compliance has been selective.

Ms. Giovannucci commented a lot of the reasons why things were done was in order to meet the stormwater regulations. If the stormwater regulations weren’t there, they would have a lot more

flexibility. There are constraints with the lot. This has been designed to meet the stormwater regulations. They are allowing the intent of keeping existing woodlands by prozing woodland area. She commented that she believes this waiver is only for disturbed areas 3' from the street ditch. They provided this waiver to be conservative in what is being requested. The street ditch along the right-of-way is pretty much along the edge of pavement. There is 8' from the edge of pavement to the lot line. In existing conditions, there is no woodlands there. One question would be whether a waiver is even needed based on that understanding.

Attorney Donovan pointed out the requirement also applies to the new right-of-way being created, not just on Long John Road. He continued that now it is a private street, the right-of-way requirement is only 40'. He does not know if correcting the layout to reflect the 40' right-of-way would affect the argument on this waiver. It would certainly cut down the narrowness and may increase the hardship requirement.

Ms. Giovannucci commented this is an interesting consideration. It would probably allow for less impact if it was a 40' right-of-way; however, a swale would still need to be provided. The majority of the clearing is caused by the fact that the stormwater from the developed areas need to get into these swales.

Attorney Donovan pointed out the swale might end up falling outside the right-of-way and the need for this waiver might not exist.

Ms. Giovannucci replied that in her opinion it would still require a waiver because it's talking about 3' from the ditch line. It wouldn't be possible to carve out a swale with the same grade as the proposed roadway and just leave certain strips of wood to meet that intent.

Vice-Chair Lord asked if the drainage could be pushed more towards the west.

Mr. Colwell commented that no matter where it is located it is going to require some tree removal.

Attorney Donovan stated if the tree removal is outside the right-of-way, this regulation doesn't apply. This regulation only applies within the right-of-way. He noted that he rewrote the Land Development Regulations in 1988. A lot of the LDRs were already existing. This one goes back to the late 70's when the land was being subdivided in Rye primarily from flat farm land, which made sense. Now, with more difficult pieces of land that have now become economically feasible to engineer, one can argue that this regulation should probably revisited because its probably going to require a waiver on most applications received moving forward.

Mr. Colwell stated they were requesting the waiver because it was tree clearing outside of the right-of-way where the ditch was proposed. That was the purpose of the request for the waiver. It might have been just interpretation of the regulation. He noted there are no trees being cut within the right-of-way for purposes of this ditch. However, there may still be trees that have to be cut. He thinks the 3' is a small area. He sees the requirement for the waiver, but it is certainly not required to construct that ditch line. He suggested they provide more landscaping along the ditch line to replace some of the vegetation removed. The other option would be to

inventory how many trees are to be cut within the right-of-way. He thinks that may give the Board a little more information. He does not know how many trees need to be cut. It was interpreted as trees being cut in the ditch line. There must be some in the right-of-way, but he is not sure the extent. He explained they interpreted it to be within 3' of the right-of-way on either side. The waiver was requested for purposes of constructing the ditch.

Chair Losik commented there are a couple of developments in North Hampton that were done very well in terms of the preservation of the natural features. Sometimes there is a seamless transition into the development. She thinks that to the extent that there can be some preservation, it really helps with the outcome.

Mr. Colwell agreed. He pointed out there is a lot of grading going on in that area to meet the stormwater regulations. He agrees that as many trees as possible should be preserved. He thinks they have made great steps to do so from the last layout.

Chair Losik asked if they could look at this and get back to the Board at the meeting in March.

Mr. Colwell commented that he thinks the best thing to do is inventory how many trees will need to be cut within that right-of-way. That will give the Board the information necessary.

Attorney Donovan agreed this would be helpful to the Board. He noted that the applicant ought to also look at whether reducing that right-of-way from 40' would effect this waiver, as well.

Vice-Chair Lord stated if they are going to do a tree survey and look at the right-of-way, they may also want to look at a robust tree planting program along here. Right now, there is not a lot there.

Chair Losik agreed. She asked if there are any other items to address this evening for this application.

Vice-Chair Lord asked if they were going to follow up with the Rye Water District to be sure they are comfortable putting the water line through the bioretention area.

Chair Losik confirmed that request was made.

Planning Administrator Reed suggested that they add the 10' pathway for access to Marden Woods to the plans.

Mr. Nadeau noted that they are still working with the Conservation Commission. He wants to be sure they are in agreement on some things. He agreed it can be drawn in on the plans, but he does not want to be committed until all the final details are worked out.

Attorney Donovan suggested some condition of approval asking them to use their best efforts. Put it in words as a condition subsequent, not a condition to signing the plan. It can probably be worked into the conditions of approval in a manner that it be acceptable to the Nadeaus.

**Motion by JM Lord to continue the application to the March meeting.**

**Seconded by Bill Epperson.**

**Roll Call: Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill MacLeod – Yes;**

**Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed.**

**B. Major 4 lot subdivision** by Jones & Beach, Engineers, Inc. for Michael Fecteau for property located at 850 Washington Road, Tax Map 11, Lot 130 to subdivide the existing lot into four residential lots with a road. **Property is in the Single Residence District and Aquifer & Wellhead District. Case #01-2021.**

- *Application declared not complete and continued to March meeting (See motion above).*

**C. Major Site Development Plan** by Bluestone Properties of Rye, LLC for property located at 33 Sagamore Road, Tax Map 24, Lot 6 to construct a new 3,496 sf farmstead building and provide associated parking and driveways. Property serviced by the City of Portsmouth municipal water and sewer. **Property in the Business District. Case #02-2021.**

- *Continued to the March meeting (See motion above).*

**D. Driveway Application** by Joseph & Jane Wahl for property owned and located at 146 Perkins Road Tax Map 5.2, Lot 186 request a waiver from Section 202 Appendix 5-E:F for a driveway 20' wide at the lot line and 26' wide at the road surface. **Property is in the General Residence District. Case #03-2021.**

- *Application declared not complete and continued to the March meeting (See motion above).*

#### **V. New Business:**

- **Discussion on Hammerheads**

Attorney Donovan stated there have been a couple of applications that have really taken advantage of the hammerhead provision to get extra lots. There are no standards in the regulations. He thinks the standard that was in there in 1981, about not being able to count the lateral dimension towards frontage, was soundly based. The fact that a year ago hammerheads were put back in without any standards, would make it difficult to make a decision that this rule would have to apply. He thinks there needs to be some standards; such as depth; how frontage is treated and where driveways can be located. He suggested doing an LDR amendment that puts a stay on hammerheads, until the Board amends the LDR to include some standards. This can be done with a public hearing on February 23<sup>rd</sup>.

The Board agreed to hold the public hearing on February 23<sup>rd</sup> in regards to a stay on hammerheads.

**Motion by JM Lord to have Attorney Michael Donovan prepare an LDR amendment placing a stay on the approval of hammerheads until the standards are developed and set a hearing for February 23<sup>rd</sup>. Seconded by Nicole Paul.**

**Roll Call: Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill MacLeod – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**  
**Motion passed.**

## **VI. Old Business/Other**

- Stoneleigh Subdivision updates

**Note: Bill MacLeod recused himself from the discussion about Stoneleigh Subdivision and adjourned from the meeting.**

Chair Losik noted that they received an email from Steve Harding in regards to Lot 7 at Stoneleigh. Mr. Harding did not think the drainage change would be significant on that .8-acres. It was suggested that the cut-through between Lots 7 and 8 could be addressed in the same manner as the cut-through between Lots 6 and 7. Speaking to Mr. Harding, she asked him to address the triangle of the lawn and the overcut areas on the side boundary between Lots 7 and 8.

Mr. Harding stated that in regards to the two cut-through areas, they were already going to address the one abutting Lots 6 and 7. It looks like that area got opened up a bit. The area right next to Autumn Lane where Lot 8 is located, looks like Lot 8 basically went on to Lot 7. There is a skewed property line right next to the right-of-way. Even if a wooded buffer was built on Lot 7, it is going to look artificial because of the lawn area behind Lot 8, which is now occupied and difficult to change. The areas along the side look like they may have been trimmed out a bit more than they should have. If that is left to grow back to where they were over time, those areas will fill in. It is more important now to make sure any areas that were shown to be preserved on the LDP remain woodland and not turn into lawn.

Referring to the triangle of grass, Chair Losik asked how they work with that.

Mr. Harding commented he does not know how they go back to Lot 8 landowner now and ask them to do anything different. There will be that triangle piece next to the Lot 7 driveway. Landscaping could be put in but it is going to have an artificial look, not a natural look.

Vice-Chair Lord stated that the encroachment between Lots 7 and 8 may have occurred anyways, even if they had done something different, to create that lawn area. He agrees with what is being done between Lots 6 and 7, and Lots 7 and 8. He thinks they can let the front end of that go. However, he thinks they need something more than just letting that big cut area between Lots 7 and 8 go. It needs to be more of a buffer, as originally seen on the land development plans. It was grossly overcut. He suggests a more robust area to help fill it in. It would probably help accent the driveway and maybe help the trees that are there to survive.



Member Finn commented that he thinks they can tolerate leaving the grass triangle area. He agrees with Vice-Chair Lord that they need to put in trees and bushes in the area that has been stripped.

**Christian Smith, engineer for the developer**, spoke with the Board in regards to their concerns. He commented that he does not have any issues with the suggestions from TRC. He agreed to work with Mr. Harding's prior email.

Mr. Harding noted that the only thing that was added is bolstering the side line with Lot 8.

Mr. Smith agreed that will be infilled with the plantings as recommended by Stratham Hill; the entire strip up to the Lot 7 driveway.

Mr. Harding will send a letter summarizing these comments to Mr. Smith.

- Waiver request form  
*Moved to the Feb. 23<sup>rd</sup> meeting.*
- Eversource tree trimming in Rye request for a public forum  
*Moved to the Feb. 23<sup>rd</sup> meeting.*
- Approval of Minutes  
*Moved to the Feb. 23<sup>rd</sup> meeting.*

## **VII. Escrows**

*Moved to the Feb. 23<sup>rd</sup> meeting.*

## **Adjournment**

**Motion by JM Lord to adjourn at 11:00 p.m. Seconded by Bill Epperson.**

**Roll Call: Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson- Yes;**

**JM Lord – Yes; Patricia Losik – Yes**

**Motion passed**

Respectfully Submitted,  
Dyana F. Ledger