

**TOWN OF RYE – PLANNING BOARD
MEETING
Tuesday, March 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 Alternates Jeff Quinn and Rob Wright

Present on behalf of the Town: Planning/Zoning Administrator Kimberly Reed and Attorney Michael Donovan

I. Call to Order

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

Alternate Jeff Quinn was seated for Katy Sherman.

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 ID #868 5485 3553 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 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.

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. Jeff Quinn
2. Steve Carter
3. Jim Finn
4. Bill Epperson
5. JM Lord
6. Patricia Losik
7. Rob Wright
8. Planning/Zoning Administrator Kim Reed
9. Attorney Michael Donovan

Note: *The members confirmed they were alone for the meeting.
Member Nicole Paul joined the meeting after roll call.*

II. Business

- **Approval of Meeting Minutes**
Moved to end of meeting.

III. To Review Applications to determine if they are complete:

Note: *Jeff Quinn recused himself from the 850 Washington Road application. Alternate Rob Wright was seated.*

- **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 opened to the applicant.

Mike Garrepy, Garrepy Planning Consultants, noted that he was present to represent Michael Fecteau.

Chair Losik commented that two items have been received since the last meeting on February 9th. A letter has been received from Truslow Resource, dated February 18th, in regards to the CUP and the hydro study. Last week, the applicant's team submitted Sheet A-1 regarding total lot area, so there are some calculations and a different schematic than what was presented on February 9th. She asked if there are other items that have been submitted.

Mr. Garrepy replied that is all that has been submitted, in order to continue the discussion. Based on this evening's discussion, the plan set will be modified in its entirety for the next meeting. He would like to have a discussion about the thresholds that were discussed at the last meeting, with respect to completeness matters. He would like to see if they can continue to advance this application forward.

Attorney Donovan stated that based on what Mike Garrepy has said, he thinks the Board should treat this as a preliminary consultation, in that the comments of the Board will be non-binding. Mr. Garrepy is looking for advice on a concept. He asked Mr. Garrepy if he has a problem with treating it that way.

Mr. Garrepy replied if that is the way the Board would prefer to proceed, he wouldn't argue. However, there were some particular items that were brought up at the last meeting with respect to the plan not complying with zoning. He has submitted a supplemental sheet, which is part of the plan set, and the remaining sheets will be modified. He was hoping that this meeting was just a continuation of application completeness, so they can continue to move the ball forward.

Speaking to Attorney Donovan, Chair Losik asked if the application could be moved down on the agenda, if this was to be considered a preliminary consult. She also asked if this would also impact issues relative to the hammerhead stay.

Attorney Donovan noted that Mr. Garrepy said that after he hears from the Board, he might go back and redo the plan. That makes the meeting more of a consultation, unless this is a revised application.

Mr. Garrepy stated it is certainly part of the plan revisions. When an application is submitted, it is determined complete at some point. Even beyond that, revisions occur often through the process. It would be unusual for revisions to plans to be considered subject to a preliminary consultation. He thinks they are in the acceptance of application and jurisdictional phase of the process. He would like to continue that discussion tonight. He reiterated that a supplemental sheet has been submitted that modifies the lots to comply with the lot depth requirements, as to how the Board has interpreted them.

Attorney Donovan asked if this is the application. It needs to be clear if this is the application. The Board is being asked to accept an application as complete. It is either this one or the other one.

Mr. Garrepy replied it is one in the same. What was previously submitted and this sheet submittal, are part of the same application.

Joe Coronati, Beach and Jones Engineering, explained they have submitted revisions based on the comments that were received.

Mr. Garrepy noted that they have not revised every single plan sheet because they were hoping to have a discussion with the Board tonight to be sure it is moving in the right direction. He also noted that a letter from the property owner was sent to the Board. It is important for the Board to know they are present with the owners of the property.

Chair Losik asked if the new Sheet A-1 is what is before the Board.

Mr. Garrepy explained this is a revised A-1 that would replace the A-1 from the original submittal. The rest of the plan set would be revised, in accordance with this configuration, should the discussion go in the direction that he hopes it would go tonight. The Board may find that it is not complete tonight and they would come back next month with a fully revised plan set.

Chair Losik stated that there is the other issue with respect to the Truslow Resource Consulting letter with advising in regards to the CUP and hydro study. She thinks it would be a leap for them to get to complete.

With respect to special investigative studies that are required by boards, Mr. Garrepy pointed out that is typically not an item that would preclude the Board from not accepting the application as complete. The hydrogeologic study is a long process. Potentially, some investigative studies might be going on for several months to determine the modifications that might be needed to the plan to mitigate impacts. He does not expect that would be a completeness matter. He maintains that the proposal does not meet the requirements for a hydro study under the ordinance. The ordinance has a threshold of five or more lots that trigger the hydro study, so this is under the threshold.

Referring to the last meeting, Attorney Donovan stated the Board determined that the application was incomplete for three reasons; 1) lack of a hydro study, 2) the fact that it did not meet the depth requirements and there was no variance for that item, and 3) the need for more test pits. He noted that Mr. Garrepy did not appeal the determination that it needed a hydro study to the Zoning Board, as a matter of interpreting the ordinance. He thinks that one stands. The avenue is to appeal to the ZBA, if it is thought that the Planning Board misinterpreted the ordinance.

Mr. Garrepy replied they were not going to argue with the Board. His position was that it wasn't required, but he is willing to work with the Board. He noted they are already implementing most, if not all, the mitigation methods that one would assume would be recommended from a hydrogeologic study anyway. He reiterated they are happy to work with Danna Truslow and put forth the best plan.

Chair Losik stated that in regards to the hydro study, this is part of the Aquifer and Wellhead Protection District and this is how the Board finds information to help them to make the decisions the Board is tasked with. The Board has actually held applications as not complete until the hydro study was completed. She pointed out that Attorney Donovan spoke at the last

meeting in regards to the hydro study and its relationship to the Aquifer and Wellhead Protection District. That aquifer is a big deal.

Planning Administrator Reed asked if additional test pits have been scheduled. She pointed out that was one of the reasons the Board said the application was not complete.

Mr. Garrepy presented the revised A-1 sheet on the screen. He noted the plan has been revised in several ways. A 20' wide paved road surface has been provided, as the Board has recommended. The right-of-way has also been modified to a 40' wide right-of-way. It will be a private road, which will eliminate some of the concerns about winter maintenance and driveway locations. The lot depth has been drawn in for 130-3. The calculation of lot depth achieves a greater than 150' average. Having done some remodifications of the plan and some reconfigurations of the lot, the 4k areas have also been readdressed and it is felt that additional test pits are not needed because they are far enough away from other test pits that have passed. If more test pits are needed, they can do them as the application moves forward. He commented the real reason it was important to have this meeting tonight is to make sure they are on the same page collectively with the Planning Board in the approach to lot depth and reconfiguration of the lots.

Chair Losik asked if the average of the lot depth is being determined from the nine data points (shown on the plan).

Mr. Garrepy replied yes. The data points are measured every 50'. He found it to be confusing because there is no methodology in the ordinance to calculate lot depth, so this was a representative average. The buildable area is everything towards the southeast of the lot. The area is well in excess of 150' on average. He believes they meet the requirement under the ordinance and would like to have that concurrence by the Board.

Chair Losik commented the rationale was moving from south to north with the first data point on the south. She asked why they did not go the other way or make it ten data points and include another tangent at the narrow end. She noted that with ten data points it falls short.

Mr. Garrepy replied they just went every 50'. The goal was to find a way to meet the lot depth requirement. He believes they have. If the determination of the Board is that it doesn't, the plan can go back to the drawing board. He stated that if the Board does not want to determine the application is complete because of the hydro study, that is fine. They will continue the application while the hydro study is being conducted. He would like a determination on whether this approach meets the requirement of the ordinance. If it doesn't, it will need to be tweaked again or it will need to go to the ZBA for their determination or a variance.

Chair Losik opened to the Board for comments in regards to completeness.

Member Carter stated he does not think it is complete because they do not have the hydro study. He is fine with having a conversation about the depth of the lot and whether it meets the requirement. He thinks another data point is needed at the Washington Road end.

Member Finn stated he agrees with Member Carter that an extra data point is needed closer to the road to get the average depth. He asked if Lot 130-1 meets the requirement for 150' near the hammerhead.

Mr. Garrepy replied that he believes it does. He believes all the lots meet the requirements.

Member Paul commented she agrees with what has been said so far.

Selectmen's Rep Epperson stated that one of the reasons it was deemed not complete last time was the additional test pits. He asked if those were just not done or if it was felt it was not necessary to do them.

Mr. Garrepy explained those were not done because the lot configurations were modified. In his opinion, it became a moot point and the additional test pits were not needed. If the Board feels additional test pits are needed, they will certainly do that. With the modifications of the lot configurations and the repositioning of the 4k areas, it was felt that additional test pits were not needed.

Selectmen's Rep Epperson commented that no one is trying to delay this application in anyway. However, when it was known that additional test pits were required and they were not done for whatever reason, that should have clearly been communicated to the Planning Administrator so the Board would not be asking these questions tonight.

Alternate Wright concurred with the other sediments that the application is not complete. Perhaps the Board can give Mr. Garrepy guidance on the issue of lot depth. He thinks that is an important issue.

Referring to Lot 130-3, Vice-Chair Lord stated they ought to have the other line in the front. He does not know how it can be left out because it is part of the entire lot. Outside of that issue, he thinks they are starting to get piecemealed information. The Board has no way of knowing where the fields and test pits are in relationship because there is nothing on the plan. This is a really incomplete plan. All the information needs to be on the plan. To him, it is not even close to being complete. In regards to Lots 130-1 and 130-2, he would like to know which of those back lines is the real rear property line.

Mr. Garrepy replied this was discussed at the last meeting. He believes it was the consensus that the back line was the southern line because the orientation of the lots is such that it faces the hammerhead.

Vice-Chair Lord pointed out that Lot 130-1 looks to have about 20' of the hammerhead being used as frontage to determine the depth. In looking at the overall plan, it looks like a good portion of the roadway frontage is eliminated in determining the depth for Lot 130-1. He commented it would be interesting to see the same type of calculations on Lots 1 and 2, as were done on Lot 3. He does not believe they quite agreed the southerly property is the back property line. He believes the thought was the easterly line on Lot 1 because of layout and the way the driveway was going. When he reads the ordinance, it is perpendicular to the frontage. There has to be more than 20' of frontage to really pass the straight-faced test when it comes to the depth of the lot. He believes the majority of the frontage should be the front part of the lot. The property line to the rear of that should be the rear property line. It is really a stretch to look at it any other way.

Mr. Garrepy commented it is unfortunate the ordinance doesn't have specificity in how to calculate lot depth. The intent of why that ordinance is in place has to be looked at.

Vice-Chair Lord stated it is fairly clear. It says the average distance between the front street line of the lot and the rear property line perpendicular to the street line. It's the average distance. He thinks they should take the average on Lot 1 and not just 20' of the frontage. He reiterated that he does not think the application is complete at all.

Chair Losik commented she does not think the application is complete. In regards to the test pits, at the TRC Meeting on February 3rd, a question from an abutter came through in regards to the ledge on the property. The Board is interested in knowing about the ledge and knowing the characteristics. In regards to the interval calculations, she does not know how they are going to get at depth. Some of the Board members raised good questions about how this is going to be calculated. The Board just went through this at 711 Long John. They did an analysis using 1' intervals. Right now, in looking at A-1, the Board is not seeing solutions in front of them. She noted that everyone wants to be as efficient as possible.

Mr. Garrepy asked how they would do the analysis because there is no guidance. He commented that they probably would not have gone before the Planning Board at the last meeting had they not gone to the Technical Review Committee Meeting and had unanimous support and recommendation of completeness at that meeting. It was mentioned that a hydro study was not needed. He was shocked at the last meeting because the recommendation from TRC was glowing and fully supportive of completeness.

Chair Losik commented she will look at the record in regards to the hydro study. The TRC does not speak for the Planning Board. A determination of forwarding it to the Planning Board based on the concepts that were reviewed in TRC is not a determination of completeness.

Attorney Donovan stated the reason there cannot be a determination about the test pits is because not enough information has been supplied. The DLA's have apparently been relocated, but what is needed is a sheet that shows the new DLA's, all the other test pits and the exposed ledge. That

is the reason he recommended the need for more test pits. He pointed out that he put a sketch plan on his memo as to where he thought test pits need to be taken, based on the other locations. The Board just does not have the information to make a determination. Secondly, the emphasis was on the lot that clearly did not make depth requirement; Lot 3. There was discussion about Lot 1, but now the frontage and depth relationship has been completely changed on Lot 1 by flipping the hammerhead and elongating the prongs. That makes it a whole new ballgame in terms of understanding depth. He thinks the applicant has to document how it meets the depth requirement. The other thing the applicant and the Board has to be aware of is that although the applicant may be grandfathered against the stay on hammerheads, which was recently put into the LDR, the applicant is not grandfathered against the amendment to the LDR that was passed on December 8, 2020 which dealt with subdivision design standards, irregularly shaped lots and gerrymander lot lines. ***Lot line shall not be gerrymandered to obtain required frontage, depth, yard space or lot area.*** Referring to Lot 2, Attorney Donovan noted the southerly lot line comes off at an acute angle, creating a very narrow section on that lot. It is clearly put in that location to establish frontage for Lot 2, similar to the other lot line. One has to consider if the shape of Lot 2 is irregular enough to not meet the requirements of the LDR. He pointed out that the only place the Board has approved curved frontages in past, is on cul-de-sacs and loops, not on the convex side of a hammerhead. He thinks it has to be considered whether a waiver has to be requested for the applicable sections of LDR 202-6.2, as amended on December 8th. He does not think it meets the requirements.

Mr. Garrepy replied he would respectfully disagree; however, they will look at that. A hammerhead is presently allowed for the right-of-way and road design. The hammerhead is the only thing that is creating any irregularity to that otherwise square lot with a wonderful building envelope. There was mention of the fact that there may be some question about the grandfathered status with respect to the hammerhead. He believes the Board made the determination that this project, along with the Nadeau project, are vested.

Attorney Donovan stated the question comes down to at what point does an application change enough so it is a new application and is no longer grandfathered under the statute.

Member Carter asked if a loop was considered, as more frontage might be gained for the back lots.

Mr. Garrepy replied they looked at a loop, but a hammerhead is preferred. It is more efficient and provides the requisite amount of frontage. Lots 130-3 and 130 have well in excess of the required frontage. He commented they are not trying to create a situation for irregularity just to create lots. He reiterated they will go back to the drawing board to see if they can modify lot configuration even more. Plans are refined all the time during the process. Never has he had a board determine that plan revisions resulted in a new application.

Vice-Chair Lord stated that they have spent an hour on what he would say was a concept review of a plan. This plan isn't half way complete, in order to be able to start to make decisions. This

is really a concept plan still. He does not think this is an extension of the old plan. He thinks the old plan has gone away. This is not to a point where there is a real set of plans.

Motion by JM Lord that the application is not complete because there is not enough information for ledge with additional test pits, the hydro study is not complete and the distances for the lot lines are not fully determined. Seconded by Jim Finn.

Chair Losik called for a roll call vote on whether the application is complete:

Rob Wright – not complete; Steve Carter – not complete; Jim Finn – not complete; Nicole Paul – not complete; Bill Epperson – not complete; JM Lord – not complete; Patricia Losik – not complete

Motion made by JM Lord to declare the application not complete passed by a unanimous vote.

**Motion by Bill Epperson to continue Case #01-2021 to the April meeting.
Seconded by Jim Finn.**

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

Motion passed to continue the application.

Mr. Garrepy stated that he is about to embark on a fairly expensive hydrogeologic study. The issue of the vested hammerhead is critical to proceeding. He would like to know there is not going to be an issue with the hammerhead.

Attorney Donovan commented that there are some questions he cannot provide an answer to. The application is not complete because the Board feels the hydrological study has to be completed. There are some threshold issues that have to be resolved. He noted that he only saw the new drawing a couple of days ago. The question is whether this is grandfathered to the old hammerhead. This is not the old hammerhead. It is a different hammerhead. He needs to think about this and give the Board some proper legal advice before they make that determination. To a certain extent, this is asking the Board to make off-the-cuff, not thought through, decisions. By next month, there should be an answer. He commented that the hydro study does not have to be started until there is an answer.

Mr. Garrepy asked if he has to wait an entire month for a legal opinion to be rendered on whether a slight reconfiguration of a hammerhead design is vested.

Attorney Donovan explained that he will render a confidential legal opinion to the Board. The Board needs to take it under advisement and make a decision.

Mr. Garrepy stated he is going to make the assumption they are vested because they need to move forward.

Attorney Donovan reviewed the items that are incomplete:

- 1) No hydrogeological study, which needs to be presented before the application is complete.
- 2) A complete set of plans with the new layout was not submitted, so the Board could not determine if additional test pits are necessary.
- 3) Further documentation needs to be provided for all lots as to how the depth is calculated and how it complies.
- 4) Additional test pits.

Note: Alternate Robert Wright was unseated and Alternate Jeff Quinn was reseated for remainder of meeting.

- **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 a the lot line and 26' wide at the road surface. **Property is in the General Residence District. Case #03-2021.**

Motion by JM Lord to declare the application for 146 Perkins Road complete and move it to a public hearing.

Roll Call: Jeff Quinn – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes;

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

Motion passed

- **Lot Line Adjustment by Marc Grondahl Revocable Trust of 2006, Marc Grondahl Trustee** for property located at 65 Wallis Rd Tax Map 19, Lot 161 and Rye Conservation Commission property located at 0 Marsh Road, Tax Map 19, Lot 121 to adjust the lot lines between lots 161 and 121 to donate +/- 12 acres to Rye Conservation Commission. **Properties are in the General Residence, Single Residence and Conservation District. Case #04-2021.**

Motion by JM Lord to declare the application by Marc Grondahl Revocable Trust of 2006 as complete and to move it to a public hearing. Seconded by Jim Finn.

Roll Call: Jeff Quinn – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes;

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

Motion passed.

IV. Public Hearings on Applications:

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

- **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.**

John Chagnon, representing the applicants, spoke to the Board. He noted that Mr. Cook spoke with Public Works Director Dennis McCarthy about the driveway width. Mr. McCarthy has agreed to a width of 20' as being appropriate for this application. There is a letter signed by him, which will become part of the file. The drainage improvement plan has been revised to show the new driveway width. He commented that he would be happy to answer any questions.

Member Carter commented that he assumes the dry wells are not the Board's problem. He pointed out that the Board has been receiving information about the dry wells in the back.

Chair Losik stated that she agrees that is in the purview of the Building Department. She is sure the Board has been through all the information. There are just a couple of items that she would like to point out. She continued that Dennis McCarthy makes a note in an email to Chuck Marsden (Building Inspector) and Mr. Cook in regards to the issues with stormwater management reporting, which reflected there was an increase in flow off the site and there should not be. Mr. McCarthy thought that the gutter drains and another basin would handle it. He talked about how there should not even be a little bit more water, but he felt that it was handled. In the recent Notice of Violation (NOV) from the Building Department, it discussed the slight increases under 190-5.7(A)(B), which have been taken care of.

No further questions were heard from the Board. Chair Losik opened to the public for comments. Hearing none, she closed the public hearing at 7:02 p.m.

Motion by JM Lord to approve a waiver from Section 202 Appendix 5-E:F for a driveway 20' wide a the lot line and 24' wide at the road surface condition upon CEO's approval of the project. Seconded by Jeff Quinn.

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

- **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 noted that the Board has received some additional information, since this was heard a month ago. Information has been received from Truslow Resource Consulting. There has been a new set of plans. There is also a letter from the Town's engineer, Sebago Technics, which is dated February 28th. She continued that waivers were addressed at the last meeting. There is one waiver request under 202-6.8(C)(1) that is still open. She also noted that the Board has a draft of conditions of approval from Attorney Donovan. She opened to the applicant for an update.

Corey Colwell, TF Moran, addressed the Board. He introduced Hannah Giovannucci from TF Moran, Attorney Tim Phoenix, and applicants Jay and Karen Nadeau. He continued that at last month's hearing, the Board expressed four concerns. The first had to do with the bioretention raingardens that are being proposed and whether they should be grassed or planted with woody vegetation. The second question that came up was in regards to the location of the water main going beneath one of the bioretention areas. The third concern was the ledge removal and the depth; to make that clearer. Lastly, there was one waiver; ***woodlands within the right-of-way shall not be disturbed within 3' from a street ditch***. To address those concerns, the application has been supplemented with several items. First, literature has been provided from U.N.H Stormwater Center on planted versus grass bioretention systems, which supports the decision for grassed raingardens. (He presented a chart on the screen for the Board's review.) He noted that the first chart shows a graph with a grassed bioretention area in green and a vegetated bioretention in blue. It can be seen that a grassed bioretention slightly outperforms a planted bioretention swale in removal of total suspended solids. It also does the same for total phosphorous and dissolved inorganic nitrogen. Essentially, the grassed swales are better in terms of water quality. Also, the infiltration rates for a grassed bioretention area increase over time; whereas, the infiltration rate for a planted bioretention will actually decrease. The reason for that is maintenance. The grassed raingardens require much less maintenance with mowing typically being the only maintenance required. The planted raingardens require a lot more maintenance. For these reasons, he stands behind the design and maintain that they would like to stay with grassed raingardens. He pointed out that a letter was received from Truslow Resource Consulting that concurs that the grassed raingardens are better, as far as removing these stormwater features. The letter also had some recommendations, which his team did not agree with, which were for bioretention areas 2, 4 and 5. Danna Truslow recommended some plants for these smaller raingardens, while the larger raingardens remain with grasses. He maintains that all five are better remaining with grasses, based on this research and the information supplied from the U.N.H. Stormwater Center.

Mr. Colwell continued that the second piece of information they supplied to the Board was an email from the Rye Water District regarding the water main design from Arik Jones, RWD

Superintendent; *Per our phone discussion and review of the plans, the proposed 5' to 5.5' of cover is more than satisfactory to meet the Water District's requirements of new main installation. In the event this cannot be met, field inspection and proper insulation techniques may be a requirement but accepted.* Mr. Colwell noted they are maintaining the 5' to 5.5' of cover under the raingarden. The Rye Water District had no concern about the location and felt the water main was adequate as designed. He continued that the third piece of information that was supplied had to do with the last waiver. That waiver has to do with 202-6(B)(c)(1), which states existing woodlands within a right-of-way shall not be disturbed 3' from the street ditch. He pointed out that a supplemental drawing has been supplied to show why the waiver was requested. He explained that they staked out the right-of-way line and then staked out the area in the right-of-way located 3' from the back of the ditch. It is a very narrow area and ranges in width from 2.5' to 3'. Any vegetation that had to be removed in that strip was inventoried. What was found was that there is one tree and six saplings that have to be removed. To offset, seven additional plantings are proposed and are shown in the landscape plans. The caliber of the plants being proposed is 2.5 to 3", so basal area would be increased. There would be more vegetation post-construction than what exists. He noted that a list of the trees and saplings were provided for the Board. A revised subdivision plan was also provided, which addresses this matter.

Mr. Colwell pointed out that added to the subdivision plan is a 10' wide no tree cutting restriction along the abutting property line. The concern about ledge has also been addressed with more specific removal depths on the site preparation plan. Note #3 has also been added which indicates ledge removal must conform to the Rye Blasting Ordinance, the Department of Environmental Services, and other applicable local, state or federal agencies. Lastly, the landscape plan has been updated to show the seven additional trees. He concluded his review of the changes made since the previous meeting.

Speaking to Vice-Chair Lord, Chair Losik noted that he had questions about the ledge. She asked him if he has any concerns now.

Vice-Chair Lord stated that when he sees the blasting plan, it just emphasizes how much ledge there is on this property. As long as they follow the regulations, he is okay.

Alternate Quinn stated the he is unclear as to the depth of the hammerhead. He also did not know if there was any guidance on the kind of septic system that was going to be used. He had a question relative to the Truslow letter. He was surprised that Danna Truslow recommended a mixture.

Chair Losik asked Attorney Donovan to address where they are and what they are accepting as a Planning Board.

Attorney Donovan explained that advanced treatment septic systems are not being proposed for this subdivision. In the draft conditions of approval that have been prepared, there are no

extensive requirements for inspections and standards that have been seen in other draft conditions of approval. If this subdivision is approved, the applicant would be able to develop septic systems, as long as the design is approved by the Building Department and DES. The conditions of approval that have been drafted, do not require lot development plans, as such. He pointed out that the applicant came back with a fairly extensive list of objections and concerns about the draft conditions of approval. He noted that he has not read the applicants' response, so he is not in a position to discuss the conditions. He suggested that the Board continue the application and review the conditions for next month.

Speaking to Danna Truslow, Chair Losik asked if she could address the comments from Mr. Colwell in regards to her recommendations.

Danna Truslow, Truslow Resource Consulting, stated that she read the information that was submitted and had a chance to speak with Jamie Houle at Stormwater Center about a few items. In looking at the layout, she thought that for the larger bioretention areas, it made sense to have grasses. However, the two-tiered reason for raingardens is for water quality improvement and to provide some habitat, since the quality of the land is being changed by adding manmade features. The smaller ones would be difficult to mow and the maintenance of these small areas would not be difficult if they were planted. She thinks that staying away from the shrubby plants makes sense so a root map is not created that is going to be problematic. A combination of herbaceous plants and native wetland grasses would be a good combination for the smaller areas. This would add some habitat improvement and water quality improvement. This is her reasoning behind the suggestions that were made.

Chair Losik asked Ms. Truslow to speak to the fertilizer recommendation.

Ms. Truslow explained there would need to be some fertilizer for establishment of the grasses and the other plant materials. However, because the raingardens are really taking up nitrogen and phosphorous, there would be much less need for regular fertilization. If there are going to be these grassed areas, they need to look at only what is needed. Very little phosphorous would need to be used after the first year or two, once the grasses are established. Because the bioretention areas take up the nitrogen and phosphorous, it would minimize the need for any fertilizer.

Member Carter asked if the bioretention areas with grass would be mowed once per year or if they are mowed regularly.

Ms. Truslow replied it would only be occasionally to keep the woody materials out; otherwise, it will change the effectiveness of the bioretention areas.

Speaking to Mr. Colwell, Member Carter asked if a lot of ledge removal will need to be done to get the water main installed.

Mr. Colwell replied potentially. From doing forty test pits firsthand, he has seen the ledge and has walked on it. The ledge was removable in some areas and in other areas it was more solid. His opinion is that not all of it is going to need to be blasted.

Hannah Giovannucci, TF Moran, explained that although the ledge removal areas have been identified, it is only potential. They are unsure where the ledge is actually located. Although depths are provided, there may not be ledge in some areas.

Attorney Tim Phoenix, representing the applicants, spoke to the Board. He understands the position of the Board and Attorney Donovan with respect to the response to the conditions of approval. He hopes that there is a chance to address them generically. He asked that the Board address the final waiver request. He commented that he would also like to address the timing of escrows because this development is not going to proceed now. He wants to be sure the conditions of approval address the proper timing of payment of bonds and escrows.

There was some discussion about addressing the conditions of approval at this meeting or waiting until the response from the applicant can be reviewed. Attorney Donovan and Attorney Phoenix agreed to discuss the conditions of approval outside of the meeting.

Chair Losik opened to the public for comments.

Planning Administrator Reed noted that **Christian Derderian (655 Long John Road)** is not able to speak; however, his concern is listed in the chat room for the Board.

Chair Losik read Mr. Derderian's question; ***What analysis, if any, has been completed to be sure this and/or future development on the site will not negatively impact the already sensitive Parson's Creek Watershed?***

Ms. Truslow explained it will be like any development. There is going to be some change to the overall flow. As long as the bioretention areas work as they should, there will be infiltration before it discharges out to the wetland. It is a very large wetland. There is also another lot between this particular development and the wetland, so there is some distance for additional treatment. There may be some impact, but there has been work done to minimize that impact; as long as, the systems that are put into place continue to work as they should.

Vice-Chair Lord asked what the impacts would be from the blasting.

Ms. Truslow replied there is probably going to be some secondary fracturing from the blasting, which will open up some of the bedrock permeability. It may be slightly more permeable at the surface, so there might be more water flow beneath the site.

Chair Losik commented that Lot B flows across to the abutter (Lot 136-1) and goes toward the wetland area of Parsons. She asked if this is the wetland area of concern.

Ms. Truslow stated that she did not look at it in those terms. In looking at the test pits, the depth to bedrock is lowest closer to the road. For the bioretention area closest to the road, that will probably have the most blasting done. The soils seem to be deeper closer to the wetland. This will help with the bioretention being more effective.

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

The Board agreed the attorneys should work on the conditions of approval. Chair Losik asked the Board to address the remaining waiver request to Section 202-6.8(C)(1).

Motion by JM Lord to approve the waiver to Land Development Regulation 202-6.8(C)(1) prohibiting disturbance of the tree line beyond 3' from the back edge of the ditch, based on the information from the tree location exhibit, presented by the applicant, and the applicant's revised landscaping plan to replace one tree and six saplings.

Seconded by Bill Epperson.

Roll Call: Jeff Quinn – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes;

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

Motion passed

Motion by JM Lord to continue the application by Jak Nadeau Revocable Trust to the April 13, 2021 meeting. Seconded by Jeff Quinn.

Roll Call: Jeff Quinn – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes;

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

Motion passed.

- **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, introduced Corey Belden from Altus Engineering, Applicant Mike Labrie and Builder/Designer Ben Auger. He noted that on February 9th the Planning Board voted to accept the application as complete. Due to the lengthy agenda, the application was not heard for a public hearing. Following that meeting, revised plans were submitted to Sebago, as an interim set of plans to their comments. That is the plan set that is before the Board this evening. Following that submission, a letter review was received from Attorney Donovan, as well as follow up from Sebago. He continued that they are going to go forward with the February 17th plan set because the comments don't have a big change on the design, as they were answering questions and providing additional information. A memo has been submitted to the Board identifying how those comments are going to be addressed.

(Mr. Weinrieb presented the plans on the screen for the Board's review. He noted the locations of the roundabout, Atlantic Grill and the old Cavaretta cabins. He pointed out the wetland system and the perennial stream that runs through the site. He also pointed out an additional contiguous wetland system and a smaller isolated wetland.) Mr. Wienrieb stated the access to the site is proposed to be opposite the Atlantic Grill, which is about 200' from the roundabout. There will be permeable pavers for the parking stalls and traditional pavement for the travel ways where there is higher traffic flow and more wear and tear. (Referring to the plan, he pointed out the locations of the 75' and 100' wetland buffer from the perennial stream. He then presented the landscape plan on the screen, which was developed by **Terrence Parker of Terra Firma Landscape Architect.**) He noted that the landscape plan is conforming with the Town's regulations. There have been some revisions to the plans to address some of the concerns regarding plant size at maturity.

Mr. Weinrieb stated that part of the Site Plan Review Regulations requires the applicant to provide information on climate change coastal vulnerability, as well as a natural resource map. When he read through the natural resource map requirements, it sounded like it was exactly what was provided in the existing conditions survey; the wetlands, tree line, surface coverage, etc. (Mr. Weinrieb reviewed the natural resource maps: Extent of Projected Tidal Flooding, and Natural Resource Protection Map.) He continued that the comments that were raised by the Board and by the department reviews were pretty minimal. He is comfortable with everything that was brought up and most everything has been addressed. One thing that came up was whether or not there is adequate site distance. From the throat of the cul-de-sac of the roundabout, there is 180' looking left. To where traffic is coming in, there is a site distance of 200'. There is more than 65' looking south. He continued that Attorney Donovan brought up a question about providing an exhibit showing the path that would be taken for interaction with Atlantic Grill and this site. An exhibit has been prepared which highlights the access to the kitchen/office at the Atlantic Grill, along with the pedestrian crosswalk and how it flows to the main door of the new facility. He noted that this will be the route that employees will use going between the two properties. Golf carts, or a similar vehicle, will be used to transport the materials back and forth from the Atlantic Grill. The Atlantic Grill will also be used for trash disposal. There are no loading docks required for the new site. Deliveries happen during non-business hours at the Atlantic Grill. If there were any deliveries to this facility, it would be done at that time; however, primary food preparation will occur at the Atlantic Grill. This site will have little to no deliveries.

Mr. Weinrieb stated that in the original submission there were two waivers. One was for a site-specific soil survey. This was asked for because the site is highly disturbed and there will not be any lot loading on the site, as it is tied into municipal sewer. The second waiver was for a parking isle and drive widths of less than the requirement. The third waiver was for a regulation that Attorney Donovan brought up. There is a requirement that lights cannot be within a certain height range of the property line. He pointed out that there are no abutters close to the property line, so a waiver has been requested for that requirement.

Corey Belden, Altus Engineering, pointed out that the waiver is to Section 202-10.2(B), allowable height of a pole is 3+ the distance over 3 from the property line. He noted that 14' high

light poles are being proposed for this area. They would be required to be 33' away from the property line. (Pole S-3 shown on the plan.)

Selectmen's Rep Epperson asked if dark sky lighting is proposed.

Mr. Weinrieb replied yes. He noted the cut sheets will be available in the next submission package.

Speaking to Attorney Donovan and referring to his February 23rd letter, Chair Losik asked if his questions have been addressed.

Attorney Donovan stated that Mr. Weinrieb's letter, dated March 9th, responds to all of comments in one way or another. The waiver requests for the parking isle and soils have been in front of the Board for a couple of months. It would not seem unreasonable to act on those waivers tonight. If the waiver is not granted for the lighting pole, it would have to be about 6' high.

Mr. Weinrieb pointed out there are no residential properties near that light.

Attorney Donovan read from 202-10.2(B); ***Any luminary with a lamp or lamps radiating a total of more than 1800 lumens, and all flood lights and spot lights more than 900, shall be mounted in a height equal to or less than the value $3 + D \div 3$, where D is the distance in feet to the nearest property boundary. Maximum height of the luminary shall not exceed 20'.***

Attorney Donovan continued that the luminary in question is proposed to be 14' high. In running through the formula, it would only be allowed to be 8' or 9'.

Mr. Weinrieb noted that it would require more lights to be along that area, but there would still be dark spots in the travel way. The lights would just not be able to shine out enough.

It was noted that the pole is about 16' from the property line.

Mr. Weinrieb pointed out that the lights are going to be on timers to be set to shut off at 9:00 p.m., when there are no events. There will be a manual override, so they can be shut off an hour after an event in order for staff to finish cleaning up and safely leave the premises.

Attorney Donovan commented that it has been said there are fixtures on the building. He didn't see those on the plans.

Mr. Weinrieb pointed out the location of the fixtures, as shown on the plans.

Mr. Belden stated that a drainage report has been submitted for the project, which was reviewed by Sebago Technics. The proposed project is providing infiltration for stormwater runoff primarily through the use of the porous pavers for the parking areas throughout the site. There is also a small stormwater pond for retention at the Sagamore driveway side of the project. This provides

some small retention and there is a culvert that crosses underneath the driveway and back to Witches Creek. The calculations have been modeled using the additional 15% increase in all stormwater flows from the NRCC rainfall data. He continued that there are drip edges around the building that provide infiltration and some reduction in peak flows. Those were not modeled into the analysis. Even though a reduction for peak storm events is shown in the model, it is conservative in the analysis. The flows in all conditions for the site will be reduced.

Mr. Belden continued that one additional analysis that was gone through with Sebago was the time of concentration that was used for the porous paver analysis. U.N.H. Stormwater Center recommends a 790-minute time of concentration for porous pavement systems. That's based on a 41" base thickness and this base thickness is a little less. In this design, the underdrain is being raised up a foot into the base, which will promote additional infiltration. The time of concentration was dropped from 790 minutes down to 520 minutes. The models were run again with the exact same results. The infiltration from the porous paver systems is offsetting that peak because it is such a small site and it is a fast time of concentration. He commented that the design meets the intent of the regulations for stormwater management. An inspection manual was prepared for the project, as well.

Referring to the pavers, Chair Losik asked how the parking stalls will be designated.

Mr. Belden explained they will still be able to stripe the parking stalls over the pavers.

Chair Losik asked about deliveries to the site.

Mr. Weinrieb explained there will be some deliveries to the site. However, the primary deliveries that need preparation will be occurring at the Atlantic Grill. Those deliveries will be occurring during non-business hours.

Mike Labrie, applicant, added that food deliveries would be rare on this site. Perhaps some farm or garden supplies; however, there are not going to be any walk-in coolers or bulk storage at this facility. There is ample refrigerated storage at the Atlantic Grill. Most of the time there will just be teaching and classes taking place at this facility. Any food preparation that might occur would probably be picked or foraged off the site and processed in the teaching kitchen. In the event of a small function, the food would be prepped in the function kitchen at the Atlantic Grill and brought over to the site. Deliveries of food would be a rare occurrence at this site.

Chair Losik clarified that the solid waste will be stored in the Atlantic Grill dumpsters.

Mr. Weinrieb confirmed. He pointed out the location of the dumpsters on the plan.

Vice-Chair Lord asked where the trash would be staged until it is brought over to the Atlantic Grill.

Mr. Weinrieb replied inside.

Referring to the crosswalk, Selectmen's Rep Epperson asked if there is going to be any signaling or cautionary signage.

Mr. Weinrieb pointed out the crosswalk is the one that the State installed. There is a crosswalk at each access point on the roundabout.

Selectmen's Rep Epperson asked if it was marked.

Mr. Weinrieb confirmed.

Chair Losik noted that on that corner right now, there are some pines that are kind of thick, which impacts visibility heading east towards the Atlantic Grill driveway. However, those pines are going to come down. In looking at the landscaping plan, all of the plants are low in that area. She thinks there is going to be a fair amount of light in that location. It is going to feel more open.

Mr. Weinrieb replied that as much as the pines have provided a nice screen over the years, as they age, they lose the bottom branches. The goal is to have people see the building. The pines are not the right tree for this facility. The proposed landscaping is going to make it feel more open, while providing shade as the plants mature.

Selectmen's Rep Epperson asked Mr. Weinrieb to give some consideration to the crosswalk.

Member Paul stated that her concern is there being a 200-person wedding at that busy corner.

Mr. Labrie replied that is not possible. This is not a function venue that is being built. It is primarily a teaching facility. With a barn and site like this, he could see getting requests for small events; such as, rehearsal dinners, ceremonies and showers. It will be more likely that there will be lectures or small fundraisers. Primarily, there will be teaching in the cape, which is set up as a teaching kitchen not a function volume kitchen. There may be preparation of food in there and they may retreat into the barn to enjoy it.

Member Paul questioned the capacity.

Mr. Labrie replied the legal capacity may be 100 people, if that was the only consideration.

Chair Losik pointed out the cape itself is only about 1,000sf. The barn is 2,000sf.

Member Paul commented that her concern is if this site held an event and the Atlantic Grill held an event, with the traffic, that corner would be a nightmare.

Mr. Labrie noted they would not program to the point of overwhelming the site. There have not been any complaints in regards to his operation in six years.

Referring to Sheet A-1.1, Attorney Donovan stated the floor plan for the barn shows a setup of 96 seats around tables (6 per table). There could be an 80-to-100-person function easily with food catered from the Atlantic Grill.

Mr. Labrie agreed this is possible. He foresees they may book something like that from time to time; however, that is not the thrust of the business. That is not the reason the site is being developed. This site is meant to support his restaurants, the chefs and their non-profit partners; such as, The Science Center and Strawberry Banke Museum.

Selectmen's Rep Epperson reiterated that he would appreciate some consideration on anything that can be done to mitigate the situation at that corner.

Mr. Labrie agreed. He noted they are all about safety.

Alternate Wright asked if there are 52 parking spaces at the new site.

Mr. Labrie replied there are about 55.

Alternate Wright asked the comparison to the existing Atlantic Grill parking lot.

Mr. Labrie noted that the Atlantic Grill has 113 spaces.

Alternate Wright clarified that from a loading perspective, south bound, it is about half of what the Atlantic Grill has presently.

Mr. Labrie agreed. He noted there is a lot less interior space that can be occupied. This is about 3,000sf and the Atlantic Grill is 12,000sf.

Referring to Selectmen's Epperson's comment about pedestrian traffic, Attorney Donovan suggested that the applicant take a look at whether the bollard lights around the vicinity of the sidewalks would help illuminate the sidewalk for pedestrians at night.

Mr. Labrie agreed.

Mr. Weinrieb stated that he thought they did a pretty good job putting lights with the bollards up close to the property line, but not going beyond. He thinks they did a pretty good job of providing lighting in that area. At night, there are pretty intensive street lights by the State in that area. He thinks that area is pretty well lit.

Chair Losik opened to the public for comments/questions.

Kate Murphy, 62 Elwyn Road, (present with her husband Arlen Murphy), stated this feels like a slow unfolding nightmare that a wedding barn may be opening beside their home. She noted that they live on 43-acres, 23 of which are wetlands that drain directly into Witches Creek. She pointed out that the creek floods within 10ft of her house. In flood scenarios, the creek floods even larger. She is extremely concerned about 54 parking spots draining into that creek, which could possibly cause backup and flooding onto her neighbors, and her own lot, and into their homes. She would love for the Planning Board to consider not granting the variance for higher poles and removing the light from the back of the barn. She would like the Board to think sincerely about what it would mean for the neighbors, who are extremely concerned about music late into the night. She does not want to have to worry about a 100-person wedding. She wants to be sure there are not tents put up on the site to host larger events. A wedding barn is truly her worst nightmare.

Larry Dukes, 18 Elwyn Road, stated that because the drainage has been increased across the street, it may be incumbent to make sure that drainage is clear along that side, as it can back up. He is not so concerned about the runoff because the runoff will be caught with gutters. As long as the gutters are pointed towards the Sagamore section of the building, it will compensate for a lot of that issue. His only concern is the lighting on the back of the building. He would like it to be a covered light. He asked if the light is going to go out at night. He continued that the lighting coming from the restaurant itself, it's not offensive. The way the lighting is at the Atlantic Grill is not bad. It doesn't block any view or give any up lighting. If they stick true to plan, which Mr. Labrie has with his restaurant, he can't find a big issue. He understands the concerns about the creek and that may be something the Town can address by getting some of the sediment out of that section of the creek, so it flows a lot faster and out the drainage system. He thinks the Town should get together with Mr. Labrie and the neighbors to try to come up with a solution for getting the water from Witches Creek to flow faster through this area.

Emmanuel Macmillan, 14 Elwyn Road, commented that they have done a spectacular job at the Atlantic Grill. If that is any indication of the kind of diligence and effort that will be put into this project, he would look forward to seeing how it turns out. In regards to the lighting on the back of the barn, he noted that he is very close to that and abuts it on two sides of his property. He really does not have any concerns about this project. Judging by the way they have handled drainage and things like that at the Atlantic Grill, he is confident this is a good plan. As far as the variance for the height of the light, he does not have any problem with that and would be in support of that variance.

Jen Hordon, 15 Elwyn Ave, stated that she agrees the Atlantic Grill has done a great job with lighting. From one side of her house, she can see the lighting, but it is not overwhelming. She is curious about the lighting on the side of this building (side facing Elwyn Ave); how visible it will be and when it will be set to go off at night. She also wonders about the potential for landscaping at the back of the property. There are wetlands in this area, so she is not sure if that is prohibited.

The landscaping would help to minimize any light or any potential noise. She asked if a traffic study has been done to see if there will be an impact.

In regards to traffic, Mr. Weinrieb explained that they looked through the ITE for traffic counts and there is really no facility that marry up well to this use. Steve Pernaw has been engaged to prepare a traffic memorandum of what the expected peak rates will be, based on the number of seats and such. He continued that they do not anticipate there will be any issues. In regards to the lighting on the two sides of the building, he commented that they want to be sure there are safety lights around the building; however, they will work with the abutters to find a way to minimize the impact of the lighting.

Referring to the comment about landscaping to the back of the property, Mr. Weinrieb stated they really do not want to provide any additional landscaping on the backside of the building because the intent is to embrace the beauty of the structure and allow it to be seen. As far as masking for the Murphys, he pointed out that they are on 43-acres and are not a direct abutter. From what he can tell, they are on the other side of the Sawtelle property, upgradient of this site. There are also woods that are not being cleared. He does not see how they would be impacted with stormwater, parking, lighting or any other aspect of this project.

Ms. Murphy commented that this leaves her concerned that Witches Creek flood patterns has not been properly studied.

Mr. Weinrieb replied that he has studied the Witches Creek flood pattern for a long time. His firm was involved with the State, representing the Labries, before the roundabout was constructed, to ensure the culverts under that were installed in a manner that reduced and eliminated the flooding where possible. He reiterated that he is extremely aware of the runoff in this area. When the Cavaretta Market was in this location, the culverts went under the market and that area was subject to flooding on a frequent basis. It would flood across what is now the Atlantic Grill parking lot and run downgradient in that direction. Since the roundabout has been installed, there has been no flooding in that area.

Ms. Murphy noted that her comment stands.

Speaking to Mr. Weinrieb, Chair Losik clarified that he did go through the research under the LDR, Climate Adaptation and Resilient Standards, 202-6.9(C)(1), Rye Tides to Storms Vulnerability Assessment looking at the Sea-Level Rise 1.7', 4.0', 6.3'. Also, the other mapping projecting high risk flood areas. She commented all of that information has been presented.

Mr. Weinrieb explained he brought the Sea-Level Rise Storm Surge. It shows that it comes up to the edge of Pioneer Road. It does not appear to cross the road. He continued that in addition to the stormwater, they modeled it in accordance with the LDR and Sebago Technics is comfortable with everything that has been done. He commented that the work has been done right and has been vetted by the Board's review consultant.

In regards to other comments by Ms. Murphy, Chair Losik noted that it does not sound like a site that is going to be encouraging noticeable noise filled events.

Mr. Labrie stated that is not what this business is all about. He is not sure why she chooses to call this a “wedding barn” because that is not what it is. It is a beautiful recreation of the Nathaniel Foye Farmstead, which existed on the site in the mid-19th Century. The intent for this development, is to continue with the village concept for Foye’s Corner. It will be a beautiful group of buildings to greet people as they enter Rye. He continued that he is not aware of a single complaint leveled at the Atlantic Grill in six years of operation. He noted they are very conservative and responsible operators. They operate multiple hospitality venues and operate them all extremely responsibly. They do not like to schedule late night events.

Chair Losik closed the public hearing at 8:50 p.m.

Speaking to the Planning Board, Chair Losik noted they have been requested to consider three waivers.

Motion by Jeff Quinn to grant the waiver from 202-6.3(E)(1)(b) for 18ft parking stall lengths and 24ft, which are industry standard and recommended dimensions of the Association of the American State Highway Organization. These dimensions would provide adequate vehicular movement and are in the spirit of the ordinance. Strict conformity would significantly reduce the development area for the site or require reduced setbacks to either the wetlands or front yard, which is not desirable, and would pose an unnecessary hardship. Seconded by JM Lord

Roll Call: Jeff Quinn – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes
Motion passed: 7-0

Motion by JM Lord to grant the waiver from 202-3.3(B)(5)(c) from the Rye Land Development Regulations that deal with topographic and soils plans because specific circumstances relative to the site plan review, or conditions of the land in such site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations, as the existing project site is already a developed site that has manipulated the existing soil cover. The underlying soils are identifiable on the NRCC web soils survey and are used in lieu of a site-specific soils survey. All wetlands have been mapped for the site; therefore, the waiver will still carry out the spirit of the regulations.

Seconded by Jim Finn.

Roll Call: Jeff Quinn – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes
Motion passed: 7-0

Motion by JM Lord to grant the waiver from 202-10.2(B) for a light fixture shown on Sheet S-3 on the north edge of the parking field to allow for a 14ft height, as strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations. There are no residential properties in the area, the light levels at the property line are limited to 3/10ths of a foot candle and light will be eliminated after hours. Strict conformity would not make a noticeable difference in lighting levels at this portion of site.

Seconded by Bill Epperson.

Roll Call: Jeff Quinn – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes;

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

Motion passed: 7-0

Motion by JM Lord to continue the application to the April 13th Planning Board Meeting.

Seconded by Jim Finn.

Roll Call: Jeff Quinn – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes;

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

Motion passed: 7-0

- **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 not complete (please see above).*
- **Lot Line Adjustment by Marc Grondahl Revocable Trust of 2006, Marc Grondahl Trustee** for property located at 65 Wallis Rd Tax Map 19, Lot 161 and Rye Conservation Commission property located at 0 Marsh Road, Tax Map 19, Lot 121 to adjust the lot lines between lots 161 and 121 to donate +/- 12 acres to Rye Conservation Commission. **Properties are in the General Residence, Single Residence and Conservation District. Case #04-2021.**

Attorney Monica Kieser, representing the applicant, presented to the Board. She introduced Attorney Tim Phoenix and Chris Salter from JBA Survey. She explained that Mr. Grondahl owns the property at 65 Wallis Road, which extends to the corner of Brackett and Clark Road. There is a large area on the Brackett Road side that will be given to the Conservation Commission. This will be done through a lot line adjustment. (Attorney Kieser pointed out the location of the lot line adjustment on the plan presented on the screen.) She noted that abutting lot (Lot 121) is owned by the Rye Conservation Commission. The lot line along that lot will be abandoned and the land being donated will be added to Lot 121. The Conservation Commission will own Lot 121, which will extend out to Brackett and Clark. (She pointed out the rest of the land that will remain with Lot 161, which is Mr. Grondahl's house lot.)

Member Finn asked the rationale for this transfer.

Attorney Kieser explained these discussions essentially emerged because of Lot 136. There was an application to place a driveway across that lot to provide access. During the context of that project, the Conservation Commission had some concerns and went through a process to try to address those concerns. One of the things that was thought to be helpful, would be to provide the Conservation Commission essentially more land along Parson's Creek. She continued that Mr. Grondahl wanted to maintain privacy around his house. There will eventually be a house built on Lot 136 and the intent is to maintain the existing property line for that lot. This was thought to be a way to substantially improve the Conservation Commission's holdings along Parson's Creek, while still maintaining Mr. Grondahl's own privacy and the privacy of the eventual owner of Lot 136. Part of the discussion also involved taking Lot 140 and merging it with Mr. Grondahl's house lot. It will no longer be a potentially buildable lot. She noted there are some obligations that were taken on for Lot 136 to make sure it would never be subdivided. In the context of that entire discussion and all the considerations, this is the agreement the parties reached. She thinks the Conservation Commission is pleased and are ready to accept the donation.

Member Finn clarified it is mainly wetlands.

Attorney Kieser confirmed.

Hearing no further questions from the Board, Chair Losik opened to the public.

Suzanne McFarland, Conservation Commission Chair, pointed out that she sent a letter in to the Board. She asked if there were any questions for the Conservation Commission.

Vice-Chair Lord asked if there would be trails through this land.

Ms. McFarland replied no. The land is for the absorption of the water that's rising and for saltmarsh migration.

Hearing no further comments, Chair Losik closed the public hearing at 9:05 p.m.

Motion by JM Lord to approve the lot line adjustment by Marc Grondahl Revocable Trust of 2006 for property located at 65 Wallis Road, Tax Map 19, Lot 161 and Rye Conservation Commission property located at 0 Marsh Road, Tax Map 19, Lot 121 to adjust the lot lines between Lots 161 and 121 to donate +/- 12 acres to Rye Conservation Commission.

Properties are in the General Residence, Single Residence and Conservation District; Case #04-2021. Seconded by Bill Epperson.

Roll Call: Jeff Quinn – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes;

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

Motion passed.

V. New Business:

- Voluntary Lot Merger Marc Grondahl Revocable Trust of 2006 Tax Map 19 Lots 140 and 161 properties address 65 Wallis Road, Rye NH

Attorney Monica Kieser pointed out Lot 140, which was shown on the presented plan. She explained the proposal is to take Lot 140 and merge it with Lot 161. The lots are in common ownership and are not subject to any mortgages. She has provided the deeds for the Board's review.

There were no questions from the Board.

Motion by JM Lord to approve the voluntary lot line merger for Marc Grondahl Revocable Trust of 2006 for Tax Map 19, Lots 140 and 161, property address of 65 Wallis Road, Rye, NH. Seconded by Bill Epperson.

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

VI. Old Business/Other

- **Subdivisions** (Goss, Stoneleigh)

Stoneleigh:

Referring to Lot 5, Vice-Chair Lord noted that Christian Smith, Beals and Associates, has put together a final plan that shows the right-of-way for the Conservation Commission, the driveway to get into the detention pond area and various areas around the property that have to be revegetated with the same applications that have been put between the various lots (Lots 6/7 and Lots 5/6). There was quite a bit of an area that was cutout for the new access road. He commented that at this point "it is what it is".

Chair Losik agreed. She pointed out it is about 3800sf. There have certainly been larger overcuts on some of the other lots. She commented that Stratham Hill made some great choices last fall with some of the other overcut areas and they look pretty good.

1244 Washington:

Chair Losik noted that the last information the Board has is Sebago's report, dated February 7th. She asked Planning Administrator Reed to give an update.

Ms. Reed stated the project is progressing at a good rate. There have been no issues with the Rye Water District or with Sebago Technics. The developer and his team have continued to work with the Building Department. There have been no complaints.

Chair Losik commented that Danna Truslow had some concerns about the monitoring wells that could be damaged.

Danna Truslow explained that she has seen how close the construction is getting to some of the monitoring wells. She has brought this up to Tim Stone at Stonehill Environmental. He is going to speak with the developer. She continued that they are going to work on decommissioning some of the wells and protect the wells that need to be protected for future use. There were a couple of flush-mount wells, which are at ground level, that got damaged during the initial work. However, they are going to make sure they don't do anymore damage to those particular wells. Those wells were not installed for this project. They were found when the work started. She commented that from an environmental perspective, they will get good information from Stonehill, as long as they continue to work with them.

Selectmen's Rep Epperson pointed out that the wells were monitored by the State because of an increase in a prohibited chemical.

Ms. Truslow noted the large well that is close to Washington Road was the water supply well. That will need to be decommissioned. Some of the other wells are going to be maintained for future monitoring.

Selectmen's Rep Epperson asked who will be monitoring the wells.

Ms. Truslow replied there are a couple of wells that are monitored by CMA Engineering, as part of the Breakfast Hill Landfill. The wells that Stonehill put in are going to be monitored just as part of that project in a due diligence monitoring.

Speaking to Planning Administrator Reed, Chair Losik asked her to get word to Steve Harding, so he is aware as well.

Ms. Reed agreed.

Goss:

Chair Losik noted that the Board has received a report back in early February in regards to the Goss Subdivision (dated Feb. 5th). Sebago was looking at the submission package for Lot 59-1.

Ms. Reed explained there is a new property owner, who has been working with Chuck Marsden the Building Inspector. The Building Inspector, Sebago Technics and the new developer for this lot have been working really well together. There is not much for the Planning Board to be concerned about because it is all falling into place. Mr. Marsden has hired Sebago and they are checking over the applications. At this point in time, there are no issues and no future actions the Planning Board will have to take because of the conditions of approval and the additional work by Sebago on behalf of the Building Department.

- **Fertilizers**

Chair Losik noted the Board has received a lot of information from Danna Truslow; the recent report dated March 9th and the February 18th fertilizer information.

Ms. Truslow stated there is background in the original letter about fertilizers; what has nitrogen and what has phosphorous, and the implications of when fertilizers are used and the importance of soil testing. She spoke with Kristen Murphy, who is the natural resource planner for Exeter, about their fertilizer regulations. In each one of Exeter's overlay districts, they have specific fertilizer use requirements. They took recommendations from a regional group, who are working on fertilizer use and reductions in water quality impacts, and had laid out what they felt were reasonable fertilizer use requirements in these various zones. Exeter does not have an active oversight policy. It is self-enforcing. However, they have had some outreach sessions in the past, which were well received at that time. Ms. Truslow commented she did not think the Planning Board was looking at regulations, as much as guidance for those areas where there are specific needs within the Aquifer Protection District and other areas.

Chair Losik agreed. She commented it could certainly be taken up from an ordinance perspective when Rules and Regulations start.

Selectmen's Rep Epperson stated that his take away is that specific pieces of property have specific requirements for phosphates and nitrogen. That should be looked at before fertilizers are just banned all together.

Ms. Truslow stated that she provided a lot of fertilizer information to the Conservation Commission at their last meeting. They were really interested in taking the next steps in getting the fertilizer information out to residents, either in the form of mailings or as a workshop, especially now that it is the season where fertilizer use is going to increase. She continued that Julia Peterson and her group at U.N.H. Cooperative Extension have a great way of communicating with folks at all levels. It would be helpful for board members, as well as residents and local landscapers, to provide education about the guidelines, restrictions and the potential impacts to water quality. She noted that Dennis McCarthy, Public Works Director, has also expressed support because it helps him to satisfy MS-4 requirements. The Conservation Commission is going to be looking at moving that forward. They would love to have the Planning Board's involvement.

Ms. Reed explained that Ms. Peterson is looking for a sponsor, which usually comes from a water quality organization. Dennis McCarthy has said that he would love to partner/sponsor this. Dennis McCarthy and the Rye Conservation Commission are going to be great organizations to partner and get the word out. The Planning Board can assist when there are subdivisions and projects within the aquifer. The Board can refer back to the information that is going to come forth from this collaborative effort. In the meantime, Ms. Peterson mentioned that Rules and Regulations might want to look at strengthening the wording in the aquifer when it comes to

fertilizers. Ms. Reed commented that as they go further along this path, they will have some guidance for Rules and Regs.

Chair Losik asked Ms. Truslow to review the information she recently sent to the Board.

Ms. Truslow explained that as part of the fertilizer review, she felt it was time to check in on some existing projects. She checked in with the Cedar Run project. They have been submitting reports that include all the compliance requirements, except for the septic systems. She contacted Don Cook who thought they were being sent to the Building Inspector; however, they weren't. He has now included that in their yearly reports. She continued that she looked at Marjorie Way. The SeptiTech was the required septic system, but there were some operational issues early on. She reviewed the Building Inspector's information and they hadn't gotten 2020 data. She reached out to the current homeowners' association director, Lauri Holbrook, who sent the August SeptiTech information. There were still a couple of systems that had slightly higher than required nitrate results. Ms. Holbrook said that they were going to be instituting some additional sampling to make sure things are operating properly. This year, they are going to do the maintenance in April and sampling in May. Hopefully, there will be more consistent results moving forward. Ms. Truslow commented that Ms. Holbrook was not aware of the nitrogen limits that are in place. It would make sense to remind the homeowners' association about what they have to look for when they get their results and be prepared to do maintenance or additional testing, if needed.

- **Shot Clock extension on 120 Brackett Road, Verizon Wireless Application**

Motion by JM Lord to extend the shot clock for the Verizon Wireless Application, 120 Brackett Road, to December 31, 2021. Seconded by Steve Carter.

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

Motion passed.

VII. Committees

- Update from Long Range Planning on Visioning Session

Member Carter reported that the committee will be meeting next Monday to prepare to meet with various town committee and commissions, between April and June, about the future visioning session. The plan is to solicit input from the various committees to develop the focus questions from the actual vision session(s), which will probably occur in late August or early fall. He noted they are not doing the whole master plan. This is just a visioning session that will result in a Vision Chapter, which will be the opening chapter. Julie LaBranche and Kim Reed have been working on a grant of \$10,000 from the State to help fund this effort.

VIII. Escrows

- See attached sheet.

Motion by JM Lord to approve the following escrows:

- Attorney Donovan;
 - \$1,430.71 - 711 Long John Road
 - \$1,004.70 - 850 Washington Road
- Sebago Technics;
 - \$2,819.00 - 711 Long John Road
 - \$753.50 - Stoneleigh
 - \$745.21 – 1244 Washington Road
 - \$393.00 – 1215 Ocean Blvd.

Seconded by Bill Epperson.

Roll Call: Jeff Quinn – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes;

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

Motion passed.

IX. Other

- **Approval of Minutes**
 - **February 9th**

The following corrections were noted:

- Page 7, last paragraph, 3rd sentence should read: **Most subdivisions are not going to disturb more than 50,000sf.**
- Page 9, third paragraph, 1st sentence should read: **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.**
- It should be noted that roundabout throughout minutes should be: **roundabout**
- Page 10, 1st paragraph, middle of paragraph should read: **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 not the only project.**
- Page 14, 3rd paragraph, last sentence should read: **The intent is to have a homeowners' association that would be responsible for maintenance and inspecting the stormwater improvements.**
- Page 20, last paragraph, middle of paragraph should read: **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 established principles of subdivision.**

- Page 23, last paragraph, last sentence should read: **If it were square all the way across, then he could say it is not so irregular.**
- Page 29, 1st paragraph, 2nd sentence should read: **They are allowing the intent of keeping existing woodlands by preserving woodland area.**
- Page 28, middle paragraph, 3rd sentence from bottom should read: **This gives her some concern.**
- Page 28, 3rd paragraph from bottom, 1st sentence should read: **Ms. Giovannucci explained that they looked at other opportunities to use catch basins; however, the Town dislikes curbing.**

- **February 23rd**

The following corrections were noted:

- Page 5, 3rd paragraph, 5th sentence should read: **He applauds Attorney Donovan for including all of the matters that were alleged to have been conditions precedent by the neighbors through their attorney; rather than just the two the judge held were conditions precedent and therefore, had to come back to the Board.**
- Page 10, 6th paragraph, 1st sentence should read: **Attorney Donovan pointed out this is the dilemma he got into with the Nadeau subdivision because he raised the question of lot depth.**
- Page 11, middle of the page, 4th 5th sentence should read: ***Attorney Donovan explained that statues say the Board my put into the LDR provisions for a waiver and it sets out two of the reasons that a waiver could be granted.***
- Page 12, 3rd paragraph from bottom, last sentence should read: **If they want a forum to talk to people in the area where they are going to be cutting, why couldn't they do that on their own before going to the Planning Board?**
- Page 14, 2nd paragraph from bottom, 4th sentence should read: **The Planning Board is already overtaxed and having them do this work is not the right approach for a town with 2.4 billion in assets.**

Motion by JM Lord to accept the minutes of February 9th and February 23rd as amended.

Seconded by Nicole Paul.

Roll Call: Jeff Quinn – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes;

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

Motion passed.

- **Deadline for Applications and Submittals**

Chair Losik noted that according to Planning Board Procedures, applications are supposed to be in by the next to last Tuesday of the month before the regular meeting. It is found that people are adding to their applications. There is a barrage of information, particularly, in the last day or two before a Planning Board meeting. She is always worried about whether people have time to read it and go through the information. The Board knows how complex the applications can be and

everyone wants to do their best work. She does not feel they can do that when information is coming in the day of or even the day before. If people who have a work schedule during the week and they can get something maybe the Tuesday before, they could look at the information and understand it. She does not think it serves the Planning Board well when things come in at the last minute. She noted that she is referring to additional submissions for applications.

There was some discussion on submittals being received at the last minute. It was agreed that it is difficult to go through the information thoroughly when it is received close to the meeting date.

Adjournment

Motion by Jeff Quinn to adjourn at 10:17 p.m. Seconded by Jim Finn.

Roll Call: Jeff Quinn – Yes; 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