

**TOWN OF RYE – PLANNING BOARD
MEETING**

**Tuesday, July 10, 2018
7:00 p.m. – Rye Town Hall**

Members Present: Chairman Bill Epperson, Vice-Chair Patricia Losik, Jeffrey Quinn, Selectmen's Rep Priscilla Jenness and Alternate Nicole Paul.

Others Present: Attorney Michael Donovan and Kimberly Reed, Planning & Zoning Administrator

I. Call to Order and Pledge of Allegiance

Chairman Epperson called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

II. Designation and appointment of alternates

Chairman Epperson seated Alternate Nicole Paul for Member Steve Carter.

III. Approval of Minutes

• April 10, 2018

Motion by Jeffrey Quinn to approve the minutes of April 10, 2018 as amended. Seconded by Nicole Paul. All in favor.

• May 8, 2018

Motion by Patricia Losik to approve the minutes of May 8, 2018 as amended. Seconded by Jeffrey Quinn. All in favor.

• June 12, 2018

Motion by Jeffrey Quinn to approve the minutes of June 12, 2018 as amended. Seconded by Patricia Losik. Vote: 4-0-1 Abstained: Priscilla Jenness.

**IV. Submittal of Applications for Determination of Completeness
(Not a public hearing) – Action Required:**

- a. Conditional Use Permit Application** by Thomas Bear for property owned and located at 110 Perkins Road, Tax Map 5.2, Lot 176, for an Accessory Dwelling Unit per Section 506 of the Rye Zoning Ordinance. **Property is in the General Residence District. Case #15-2018.**

Motion by Bill Epperson to declare the Conditional Use Permit Application by Thomas Bear complete. Seconded by Patricia Losik. All in favor.

- b. Minor Site Development Plan** by RJ Joyce for property owned by Isonlina LLC and located at 2263 Ocean Blvd., Tax Map 5.3, Lot 3, to amend the agreement signed with the building department to allow the use of the garden area for guest of the restaurant and to allow the business to use 20 parking spots for paid parking during the summer months. **Property is in the Business District. Case #16-2018.**

Motion by Jeffrey Quinn to declare the Minor Site Development Plan by RJ Joyce to be complete. Seconded by Patricia Losik. All in favor.

V. Public Hearings on Applications:

- a. Conditional Use Permit Application** by Thomas Bear for property owned and located at 110 Perkins Road, Tax Map 5.2, Lot 176, for an Accessory Dwelling Unit per Section 506 of the Rye Zoning Ordinance. **Property is in the General Residence District. Case #15-2018.**

Thomas Bear, applicant, presented to the board. He explained that he purchased the home in October, which was approved for an accessory dwelling in 1997. At the time that he purchased the home, the basement was being utilized as an accessory apartment. It is his understanding that if ownership changes, the new owner has to reapply. He noted that he had submitted a list showing that the apartment meets the ADU criteria.

Vice-Chair Losik asked for clarification on the parking.

Mr. Bear explained that six cars can be parked in the driveway. One side of the driveway would be for the accessory unit. He clarified that the tenant gets one side and he would get one side.

The Board reviewed the parking.

Referring to drawing 3, Member Quinn asked if this is the owner's living space.

Mr. Bear confirmed.

Member Quinn asked if drawing 4 is the apartment.

Mr. Bear confirmed. He pointed out that the apartment is underneath his unit.

Vice-Chair Losik stated that in looking at the file, it looks like the apartment has been the subject of some notices from the building department before Mr. Bear's time. It looks like there was a period of time it was not used as an apartment.

Mr. Bear explained the ownership has changed twice in the last two years. The previous owner purchased the property from someone who had it in his family forever. The previous owner (Shawn McCarthy) only owned the property for six months. He continued that Shawn McCarthy received a violation for the apartment, which transferred to him.

Selectman Jenness commented that this was originally approved as an in-law apartment. Once it was no longer used that way, it was supposed to revert to a non-apartment.

Vice-Chair Losik noted that it had discontinued use. More could have been done by the building department, in terms of inspections.

Mr. Bear pointed out that the Building Inspector knew about the house. Mr. Rowell told him what he needed to do because it was already in place.

Vice-Chair Losik asked if there is anyone living there now.

Mr. Bear explained the last tenant was asked to leave. At that time, he was also in the process of purchasing the property.

Referring to the Fire Department's inspection report, Member Quinn asked if it satisfies any concerns the Building Inspector would have relative to the occupancy.

Chairman Epperson stated that he believes this was the last inspection that was required by the Building Inspector. The answer would be "yes".

Vice-Chair Losik asked if this has to be conditioned based on it meeting the building regulations because of its history.

Attorney Donovan stated that this could be conditionally approved based on compliance with code. However, he wonders if there is really a concern about life safety codes, which should be met. He pointed out that the building codes are probably not met because the house is quite old. He thinks the Board should be wary of making a condition that it has to meet building code because those requirements are probably not met by any dwelling more than 20 years old.

Vice-Chair Losik stated that since they have the Fire Department's sign-off on their inspection, she would be inclined to approve this without a condition.

Motion by Patricia Losik to take jurisdiction over the application. Seconded by Jeffrey Quinn. All in favor.

Referring to the water meter worksheet, Chairman Epperson commented that the fixture count is 21.5. According to the specifications, at 22 the 5/8 meter has to go to an inch. He asked if there are any plans to add a commode or dishwasher.

Mr. Bear replied that there is no room to add anything else. It is a tiny house.

Chairman Epperson opened to the public for comments.

Nancy DeJohn, 98 Perkins Road, stated that she is present because she thought something drastic was being done. She is fine with the proposal.

Hearing no further comments, Chairman Epperson closed the public hearing at 7:20 p.m.

Motion by Patricia Losik to approve the application of Thomas Bear for property owned and located at 110 Perkins Road, Tax Map 5.2, Lot 176, for an Accessory Dwelling Unit under Section 506 of the Rye Zoning Ordinance under the Conditional Use Permit abilities. Seconded by Jeffrey Quinn. All in favor.

- b. Minor Site Development Plan** by RJ Joyce for property owned by Isonlina LLC and located at 2263 Ocean Blvd., Tax Map 5.3, Lot 3, to amend the agreement signed with the building department to allow the use of the garden area for guest of the restaurant and to allow the business to use 20 parking spots for paid parking during the summer months. **Property is in the Business District. Case #16-2018.**

RJ Joyce, applicant, spoke to the Board. He explained that the proposal is to use the parking for the summer months and to use the garden area in the back.

Chairman Epperson stated that it appears that an agreement was made with the town, back in March of this year, in which a document was signed stating that there would not be any external tables and the parking lot was not going to be used for fee. He asked what happened between March and June where things were changed.

Mr. Joyce explained that the Building Inspector had said that the previous owner had done some things that the town was not comfortable with. It was agreed that these things would not be done until it came before the Board.

Chairman Epperson pointed out that the documentation shows that the town is not comfortable nor is Police Chief Walsh with regard to the parking.

Mr. Joyce stated that Chief Walsh's concerns were about the two parking spaces in the breakdown lane being used as paid parking spots. He noted that they are not going to use those spots. They are only going to use the listed spots.

Chairman Epperson commented that Chief Walsh's letter goes a little deeper than that. He continued that there is a letter from Peter Rowell, Building Inspector, dated July 10th. Both, the Police Chief and Building Inspector, have reservations on both these applications. He asked how something was signed in March with it coming to the Board in July with a change in the spirit of the document.

Mr. Joyce stated that Mr. Rowell had said that the past owner had done things that the town did not care for in the past. If they wanted to continue to do those things, it had to come before the Board and be applied for in the correct way.

Chairman Epperson stated that Chief Walsh was concerned about the lack of crosswalks in this area. He was concerned about people walking across the street where there is no crosswalk. The Building Inspector is asking the Planning Board to request a site plan for this site. That site plan would include the garden area with the tables. It would also have to cover the parking and crosswalk accessibility. He is not sure how the Board can approve something when there are two officials of the town, the Building Inspector and Police Chief, stating that they are not in favor of this as it appears today.

Vice-Chair Losik stated that in looking at the Land Development Regulations (LDR) and all the information that was submitted in the application package, she came away feeling that the whole property could not be appreciated. Although she liked the sketches of the building, it would make sense if there was a site plan. Sometimes it is also helpful, depending on what comes back to the Board, for a site review to be held. She thinks this is what the Building Inspector is asking for.

Member Quinn asked how recent the painted parking lines are in the parking lot.

James Woodhouse, owner/partner of the Carriage House, pointed out that the egress lines in the back are fresh; however, the front has not been done since they took over the property.

Member Quinn asked if the lines are worn.

Mr. Woodhouse stated that the lines are clear enough so people know where to park.

Member Quinn asked about the issue with the deliveries and Brown Avenue.

Mr. Woodhouse explained that one of the areas that the trucks pull into is clear of all the parking spaces and is along the left-hand side. There is room for a truck to pull in for deliveries.

Attorney Donovan stated that this needs site plan review or at least a site plan that memorializes what is there. The Board should not accept jurisdiction for that reason.

Member Quinn stated that from what he can tell from the application, both issues, the outside waiting and parking, are only in the summer months for a short period of time. It is now July 10th. It is a practice that has been in place for some time now. He asked if the Board can allow them to operate on a condition for the remainder of the summer and have the applicant put a comprehensive site plan together so it can be approved at a later date.

Vice-Chair Losik commented that she does not think it is a current practice to have seating and alcohol being served in the garden area.

Referring to the previous owner, Mr. Joyce commented this was something that was done quietly.

Planning Administrator Reed commented that parking spaces have been sold in the past.

Mr. Joyce noted that they could address the parking separately.

Selectman Jenness stated that the town has had complaints from people living on Brown Avenue about being blocked in and not being able to get out at times.

Mr. Woodhouse stated that in the past, the paid for parking was probably not managed as well as it could have been. He and his partner are asking for the opportunity to do this right with the proper system that would be respectful of the neighbors and with all the requirements that need to be met. He pointed out that it has taken quite a bit of their time to manage people from not parking in the lot. It looks bad on their part to tell people they cannot park there, even for money, when they have done so in the past.

Referring to the paid parking, Chairman Epperson asked if the amount of money that was expected to be generated was part of the business plan.

Mr. Woodhouse confirmed.

Member Paul asked if the restaurant is open for lunch.

Mr. Woodhouse replied that they are only open for Sunday Brunch with dinner starting at 5:00 p.m. the other days.

Mr. Joyce pointed out that when they started in March they had intended to open for lunch but could not staff those hours.

Member Paul commented that the paid parking would not conflict with lunch patrons.

Member Quinn asked if there will be a dedicated employee to manage the parking if the approval is given.

Mr. Joyce replied yes.

Member Quinn asked how the hours of parking are handled. When does the parking transition from beach parking to restaurant parking?

Mr. Joyce explained the paid parking would go until 4:00 p.m. The restaurant opens at 5:00 p.m.

Member Quinn asked how they would control the waiting traffic in the garden, given the noise that neighbors have complained about in the past. He asked how they would control the volume of people that are waiting in this area and the length of time they are waiting.

Mr. Woodhouse explained they would do it the same way they would with the guests inside. If someone's enjoyment is taking over the room and hindering the enjoyment of others in the restaurant, it would be addressed.

Member Quinn asked if they have ever been so crowded that there were people waiting the vestibule, out the door and down to the parking lot.

Mr. Joyce replied not quite. There are benches inside the doorway and chairs upfront for people to wait. They have not been so crowded that there was a line that runs to the parking lot.

Member Quinn stated that if the outdoor garden is created for people to wait and order a drink, and this becomes a practice, not just for overflow, he wonders what the ramifications would be.

Member Joyce stated that they would be careful to make sure there are not too many people in the garden at any given time. He thinks they would address the outside in a more strict way because they are conscious of the neighbors.

Mr. Woodhouse stated that in speaking with some of the neighbors, they have acknowledged that it is hard to tell exactly how it is going to go. They are trying to find a way be fair and have the opportunity do it, and have it be done right, while at the same time, giving them the opportunity to shut it down if it is not working. He wonders if there can be a one year or six month provision to try this and see if it becomes a problem.

Chairman Epperson asked if they are going to be open year round.

Mr. Joyce confirmed.

Attorney Donovan stated that there may be an issue as to whether paid parking is an allowed use under the town ordinance. That may be one of the reasons why the Building Inspector put the note "no fee parking" in there. There was in an issue in the past over the commercial parking behind The Dunes. He believes a variance was needed for that. There were also a couple of cases against commercial parking in a residential district. There may be an issue as to whether fee parking is even allowed.

Chairman Epperson opened to the public for comments or questions.

Kathy Blaisdell, 5 Perkins Road, stated that her property backs up to the garden. Noise is a primary concern. The fence that separates the properties is on the boundary. It is probably about 20ft from her garage and less than 30ft from her bedroom window. She continued that she went over the restaurant and the owner took her out to the garden area. It is right in her backyard. There was a discussion about how it is hard to control the volume of conversations with patrons. She stated that the owners sent a letter to her and said that they wanted to do what was done in the past.

However, this is actually more than what was done in the past. She thinks it is important that all the abutters have a clear understanding of the intent and how the noise would be controlled. In the conversation there was discussion about a possibility of trying this to see if it becomes a problem for neighbors.

Member Quinn asked for clarification on the complaints that were made in the past.

Ms. Blaisdell noted that she never complained. It didn't happen often, however, occasionally she could hear people talking in the garden but it wasn't late and it wasn't loud. She continued that she had no knowledge of whether this was something that was approved or allowed. She is not sure where those complaints came from.

Chairman Epperson commented that there is a potential for more complaints if there are more people and hours involved.

Ms. Blaisdell stated that she really believes these gentlemen want to be good neighbors. They are very willing to work with the neighbors. However, she wouldn't want anything to be grandfathered for any future owner.

Mr. Joyce noted that he has letters of support from three abutters. (He submitted the letters to the Board.)

Speaking to Ms. Blaisdell, Member Paul asked how long she has owned her property.

Ms. Blaisdell explained that the property has been in the family since 1959. She and her husband own the home now with other relatives.

Chairman Epperson asked if she lives there year round.

Ms. Blaisdell replied no.

Hearing no further comments, the public hearing was closed at 7:50 p.m.

Chairman Epperson stated that he thinks they do not know enough about the application to take jurisdiction, make an approval or denial. A site plan is needed with a thorough and comprehensive study to show what is going to happen with the parking and the garden.

Selectman Jenness commented that it would be nice if the site plan established where the road is on the side of the building.

Member Paul noted that she would like to see the designation of the parking spaces on the site plan. She is not sure how there are 20 spaces on that lot.

Member Quinn stated this has been going on for a long time. The town has set a precedent to let this operate in the fashion they are trying to petition for; however, they do need to come up with a plan. He stands on the side of allowing them to function for the remainder of the summer with the

thought that they would come back with a comprehensive plan. It is July 10th. They are obviously trying to make the most of the summer season. He thinks at this hour, the Board should be able to allow them to function, at least as it has been functioning in the past. He asked if the previous owner sold parking spots.

Mrs. Reed replied that the previous owner sold parking spots but he did not use the patio. There is nothing in the files that shows the previous owner used the patio for overflow or alcohol in the past.

Selectman Jenness commented that people would wander around the garden when they were leaving the restaurant. The previous owner would use it to grow edible flowers that would appear on the plates in the restaurant. She pointed out that there was no alcohol just people who briefly wandered around to look at what was there.

Chairman Epperson pointed out that if the previous owner had gone to the Police Chief to ask to use the parking spaces for fee, he would have been denied without a guarantee that there is going to be some safety features instituted in that particular area.

Speaking to Member Quinn, Mrs. Reed asked if he is saying that he would like to allow the applicant to have paid parking and use the patio for the summer.

Member Quinn replied until Labor Day. He understands the restaurant is year round. At dinner time, there may be some overflow and this provides people with a place that is shaded outdoors and a place to walk when waiting for their table. He does not think it is going to be such an impact that it should be disallowed out of hand.

Selectman Jenness stated that this has been a business for a very long time. Long before the Carriage House, most of the fences in the neighborhood, and along that strip, were not there. When people put up "walls" up and down the seacoast, it made a huge difference and everything is now constricted and blocked off.

Vice-Chair Losik stated that she understands the season is short and this is a new business. She would assume that the applicants could go back and get some answers from Peter Rowell and Chief Walsh in order to get something back for the next meeting. Her concern as a Board, is what they can do. She pointed out that LDR 200.2 covers expansion of uses. She sees a trail here that kind of points to an expansion of use. The applicants agreed on March 2nd to a list of uses and are now saying that they want to amend that in these two areas. She reiterated that she does not have an appreciation of the site in the detail that she would like to make a better decision.

Member Paul stated she appreciates the fact that it is a short season and understands the sense of urgency. Although it would be nice to accommodate the applicants, they could've submitted their application at an earlier date. The onus is not on the Board to speed the process. The Board needs the facts before them in order to make a well-informed decision.

Chairman Epperson stated that his decision is clear. He thinks they need to abide by a site plan so the Board will know for sure what is going on there long term.

Motion by Patricia Losik to continue to the August Planning Board meeting, for further information, the Minor Site Development Plan by RJ Joyce for property owned by Isonlina LLC and located at 2263 Ocean Boulevard, Tax Map 5.3, Lot 3, to amend the building agreement signed with the building department for the use of the garden area for guest of the restaurant and to allow the business to use 20 parking spots for paid parking during the summer months. Seconded by Nicole Paul. All in favor.

- c. Major Subdivision, Lot Line Adjustment and Conditional Use Permit by The Housing Partnership for property located at 0 Airfield Drive, Tax Map 10, Lot 15-4, for construction of a residential development consisting of a mixture of multi-family dwellings with a portion being dedicated as Workforce Housing. Property is in the Commercial Zoning District and the Multi-Family Dwelling District Overlay and Aquifer and Wellhead Protection Districts. Case #07-2017.**

Attorney Donovan explained that the “marching orders” from the Board at the previous meeting was that they would like to get a set of conditions of approval for the July meeting. He continued that he was working with The Housing Partnership and Attorney Brown on drafting conditions of approval, which are in front of the Board and dated July 2nd. For the most part, the conditions are acceptable to The Housing Partnership, with the exception of one or two items. The second issue was that the mechanism for assuring the affordability of the units over time had not been presented. That is front of the Board as well. He continued that the first step may be to review any changes that may have been made to the plan since the last meeting. The Board could then go over the draft conditions and Mr. Chapman could make a presentation on the mechanism for affordability.

Attorney John Colliander introduced himself and noted that he is standing in for Attorney David Brown.

John Chagnon, Ambit Engineering, stated that he submitted a letter on June 26th to the Board in response to the June 11th Sebago Technics review letter. The first three items were more for informational purposes. They went on to ask for some clarification on grades and contours. Those are in the plans. He noted there was clarification on the grading between units 6 and 7 and between units 29 and 32. Additionally, a culvert was added that had been left off in the previous design. He continued that comment 5 was about grading and there were minor changes made to the plan to address those comments.

Attorney Donovan noted that there is a letter dated July 6th from Sebago saying that all of their concerns have been addressed.

Mr. Chagnon pointed out the changes were very minor. He noted that a fence was added to address the neighbors’ concerns, which is shown on the site plans.

Referring to the fence, Vice-Chair Losik asked if it was added to the legend.

Mr. Chagnon replied that this could be done. He noted that Attorney Donovan also requested that the word “stockade” be added.

Attorney Donovan stated that he sent the Board a memo dated June 29th regarding the June 26th plans. There were about a half dozen suggested changes to the plans. If those haven’t been done, those could be made conditions of approval.

Referring to the June 29th memo with regards to the “no cut buffer”, Vice-Chair Losik stated that the no cut area goes along lots 10-24, 10-25 and 10-26. The buffers on 202.10 does not say “no cut”. She asked if they talked about that being no cut, along with the area near 10, 15-3.

Attorney Donovan stated that they did not talk about whether the other zoning ordinance buffer should be no cut. The description of the buffer in the zoning ordinance is different and not really a “no cut buffer”.

Vice-Chair Losik commented that if something is done with the commercial property, along the side of Drive A, it could increase exposure.

Attorney Donovan agreed. He pointed out that the requirement for the buffer is that the buffer shall include natural or added planting of evergreens which will screen non-residential uses from residential areas during the winter months. There is nothing to preclude the Board from putting a “no cut buffer” provision along this area as well.

There was review of the plan for possible “no cut buffer” areas.

Referring to Attorney Donovan’s June 29th memo, Mr. Chagnon noted that it said the raingarden fence was still an outstanding issue.

Attorney Donovan stated that it seemed the discussion tended to sit on the lines that there should not be a fence so the children could play in the raingarden/rain lawn.

Robbi Woodburn, Woodburn Associates, Landscape Architect, explained that two seed mixes are being used in the raingarden, one which is an erosion control and restoration mix for basins and moist sites. It has a mix of grasses and perennials that spans the range from very wet to very dry. That is also mixed half and half with a wildflower mix. She continued that it is not going to be a lawn. There was discussion at the previous meeting about whether or not that change was going to be made. The decision was to stay with the natural look.

Vice-Chair Losik asked if the recommendation with this mix is to mow once per year.

Ms. Woodburn replied that it would be at least once per year.

Member Quinn asked if there will be a fence.

Mr. Chagnon replied that they are not proposing a fence. There was discussion that during a 50 year storm there would be 8 inches of water. A 100 year storm was 18 inches of water. They would prefer not to have a fence and feel it should be safe given those depths for water.

Vice-Chair Losik commented that this was also the sense of the Board at the site walk.

Attorney Donovan asked if the seed mix, that was just described, is the seed mix that is listed on the June 26th plan.

Ms. Woodburn confirmed.

The Board reviewed the conditions of approval as drafted by Attorney Donovan.

Conditions of Major Subdivision/S.U.P Approval Discussion:

Referring to his memo of June 29th regarding “no cut buffer”, Attorney Donovan stated that it needs to be clear as to what the Board wants for the “no cut buffer”. He pointed out that he has it for the three Random Road lots. It was decided to not be done along the White Birch area. He asked the Board if they want to make the statutory buffer along the school area near the fence a “no cut” in addition to what the zoning ordinance requires.

Mr. Chagnon asked if they are required to have a 25ft vegetative buffer.

Attorney Donovan replied that it is 50ft. He noted that they are discussing the buffer along Drive A and the fence. The landscaping plan shows plantings in those areas. Unless the Board requires more than what is proposed for the buffer.

Ms. Woodburn explained that the buffer will be whatever is left, which is depicted on the plans, and the fence. They felt the depth was adequate because it is a commercial use.

Attorney Donovan commented that maybe the “no cut buffer” should be along the fence.

Mr. Chagnon stated that the fence is going to do more than the trees. It might be useful to be able to cut some of those trees if needed. He continued that a 25ft vegetative area has to be maintained.

There was discussion on whether the buffer should be “no cut” and review of the plan.

Vice-Chair Losik noted that the second floor of the units will be above the fence.

Ms. Woodburn stated that there would be no question that they would be looking at each other if the trees came out. It would be to the benefit of the units to keep the buffer and not take it down. It doesn't seem necessary to have “no cut” there because residents will want it. That will leave some freedom if things should grow out and change happens.

Vice-Chair Losik stated that in looking across from that corner of the lot, the Rickert property and the intersection can be seen.

Mr. Chagnon stated that the top of the retaining wall is going to be at 110ft and the first floor walkout at 97ft. It might be just a little bit of the roof that will be seen, not the bulk of the unit.

Vice-Chair Losik commented that she is thinking about what the unit owner will be looking at.

Mr. Chagnon explained the unit owners will be looking at a wall with a fence behind it and then a building in the distance. The owners could plant things on top of the wall to enhance their view.

Ms. Woodburn explained the purpose of the “no cut buffer” is to protect the surrounding property. In this instance, the fence offers more of a separation for the school on the other side.

Vice-Chair Losik stated that neighbors think different about buffers. There could be one neighbor who wants to cut. This area is a difficult area. It is the one where it is commercial to residential and it doesn't quite feel terrific. She asked if the best situation has been created.

Ms. Woodburn replied that they are planting right at the edge of the woodland. She would not add the “no cut”. In this situation, where the buffer is protecting the people on this site, she does not think there is a reason to put the “no cut” limitation on the buffer.

There was more review of the buffers on the plan. The review of the conditions of approval continued.

Referring to number 10 of the conditions, Attorney Donovan stated that the surety has been set and approved by the town's engineers in the amount of \$958,450. He noted that this does not cover the septic systems, which are not typically covered by surety. Mr. Chapman had said that the intent is to build the street infrastructure all at once. No matter how fast the units are built, the whole street system would be built. If it is to be phased, it should be part of what the Board approves or it would have to come back for an amendment.

Referring to condition number 21, Attorney Donovan stated that there is a draft document regarding the ownership and maintenance responsibility for Airport Drive. (***The Board reviewed the draft ownership and maintenance agreement for Airfield Drive.***) He has two concerns. He has a condition that the amended road and utility maintenance agreement shall be signed by Rickert Investment LLC and The Housing Partnership and recorded at the time of the transfer of the property. The said agreement would be reviewed and approved by town counsel. The other issue he had is whether the Board thought there should be a condition regarding improvements to Airfield Drive, at a certain point in the development project, such as repaving or at least crack sealing. Referring to draft number 6, equal share of repairs and maintenance, Attorney Donovan asked if this is split two or three ways.

Marty Chapman, The Housing Partnership, stated that he thinks it is going to be three ways ultimately; White Birch, Rickert's skate park and the association for this development.

Attorney Donovan explained that the Board required a maintenance agreement for the road for White Birch so it is clear who is responsible for maintaining Airfield Drive.

Mr. Chapman stated that he is not quite clear conceptually what this is. He asked if this is an agreement between private owners of a private road. He asked why the town would need this.

Attorney Donovan explained that the town has to be sure the road is going to be maintained and plowed. He reiterated that this was done with White Birch.

Mr. Chapman stated that he did not realize that the agreement with White Birch was something the town mandated.

Attorney Donovan stated that the next question is whether the Board wants to require any specific upgrading of Airfield Drive. He commented that he drove out there and the road is starting to crack. He knows that it was required to be built to certain standards when White Birch was approved. That was done but it was at least ten years ago.

Mr. Chapman explained the road was built to town standards when it was originally built. When White Birch was approved, the Board required that it be recorded to prove that it was built to town standards. There were also some additional overlays and improvements that were required. The road has had plenty of attention.

Attorney Donovan stated that unless the town makes a requirement for a certain level of approval, the road could be allowed to deteriorate by the parties. It is up to the Board to decide. For example, there could be a requirement that when the project is 50% built out, there needs to be an overlay done.

Mr. Chapman stated there are sixty-six tax paying lots on that road, once these are built, in addition to Mr. Rickert's skate park. All of this tax is generated with no service for the road by the town.

Mr. Chagnon noted that there is a damage responsibility clause. If the road is damaged during construction, the developer has to fix it.

Attorney Donovan stated that the Board may want to think about this for another month and go out and take a look at the road. They may also want the opinion of the Public Works Director. He pointed out that there is nothing to assure that if the road falls apart it is repaired. He suggested that the Board may want to table this and have the Public Works Director weigh in.

Attorney Colliander suggested that the town become a party to the agreement. This would give the town the ability to enforce the agreement without the necessity of having a bond or escrow.

Attorney Donovan commented that it would give the town the ability to enforce adequate maintenance.

The Board agreed to this addition to the maintenance agreement. The review shifted back to the conditions of approval draft.

Referring to number 22 on conditions of approval, Attorney Donovan stated that this is one that The Housing Partnership takes issue with.

Mr. Chapman stated that they were looking for something with a little more flexibility in terms of the build-out. He commented that he thinks this can be worked out.

Attorney Donovan noted that it basically says that every group of five (5) units there will be one (1) workforce housing unit. He continued that with regard to number 23, the Board needs to understand that if the units are not marketable as owner-occupied units, they may be rented to tenants who meet workforce housing criteria.

Chairman Epperson asked if this means they could be sold at market value and rented at a reduced rate.

Mr. Chapman replied that he took this as meaning that if the unit could not be sold the developer would have the right to rent it to have the cash flow.

Attorney Donovan explained that The Housing Partnership will own the units until they are sold. If they are not able to be sold, they may rent them

Chairman Epperson asked if the rent has to be within the affordable housing guidelines.

Mr. Chapman replied that if it was a workforce housing unit it would have to be. He continued that the one concern he has is that condominium associations usually have a limit on how many units can be rented at any given time. This might have to be tied into the condo docs.

Attorney Donovan commented that they should talk about how long the units should be on the market before they can be rented. He asked if it should be ninety days.

Member Paul stated that it should be a long window. If the unit cannot be sold within a year then it should be able to be rented. She doesn't want the developer saying that they do not want to sell the unit at the workforce housing market rate and just rent it to recoup the cost. The goal is to have this as a sale for workforce housing. Renting should be a last resort. To her, ninety days is way too short.

Mr. Chapman explained that in terms of the economic aspect, there is no way to recoup the cost by renting, especially if it is a workforce housing unit subject to workforce housing rent levels. He noted that they are very motivated to sell the units; however, it would be nice to have that out.

There was discussion on the timeframe for marketing the units before it can be rented.

Attorney Donovan stated that he left it to The Housing Partnership's discretion as to when they felt they needed to rent them out. In terms of a timeframe, he noted that there is no way to really define when the market starts.

Attorney Colliander stated that if there can be an agreement on the timeframe, Attorney Donovan and Attorney Brown can work out when it would start.

Chairman Epperson asked if the Board would be agreeable to six months with the attorneys working out the start date.

Vice-Chair Losik stated that if a timeframe is assigned, and there are some dominoes economically, that can tie up the developer a bit. She asked if this is something they really want to define.

Attorney Donovan stated that when they get to talking about the actual mechanism and covenants, there will probably be more details and the Board may want to kick some of these conditions to next month to review.

Mr. Chapman pointed out that the use that is being approved is a residential use. He asked if the Board has the ability to say rent or sell. The Board is approving housing. The idea of controlling the use between renting and selling may not be a jurisdiction the Board has anyways.

Member Paul stated that there are different questions and analysis the Board would make if it were a development for rent versus a development for rent. It is a different kind of project.

Attorney Donovan agreed.

Chairman Epperson stated that the Board has a responsibility towards the Workforce Housing Ordinance to make sure it remains that way and is true to that use.

Mr. Chapman commented that it could be workforce rentals or workforce for sale.

Attorney Donovan pointed out that owner-occupied was applied for.

Mr. Chapman stated that he applied for a multi-family development and that is what is being proposed.

Chairman Epperson asked if he is saying that they could all be rented and not sold.

Mr. Chapman confirmed.

Attorney Donovan stated that the reason this is in the conditions is because he always had concerns about the density of the layout, not being able to sell the units and what would happen if that were the case. This provision would allow them to turn this into a rental project if they could not be sold. He suggested that they come back to this discussion.

The review of the draft conditions of approval continued. The Board then went on to review the draft conditions of approval for the Conditional Use Permit.

Conditions of Conditional Use Permit Approval Discussion:

Referring to number 4 regarding inspections of wastewater systems, Member Paul asked if there should be a proviso that it has to be a positive inspection before it goes from six months to annual. If the first two inspections did not come in proper or adequate, should they continue to test every six months until the system gets to a level that is proper before it goes to a one year sampling?

The Board agreed.

Note: Chairman Epperson took a break from review of the conditions to allow a member of the public to ask questions.

Leslie Hill, 18 Random Road, asked questions in regards to the location of the fence. She also asked about whether a determination has been made in regards to blasting.

Mr. Chapman explained that there will not be any blasting. If there is any bedrock that needs to come out it would be hammered and the hours would be limited.

Chairman Epperson noted that the Board does not support blasting in this area, generally speaking. A condition of approval would probably be no blasting.

The Board continued to review the draft conditions for the Conditional Use Permit.

Referring to number 6 regarding pumping the tanks, Attorney Donovan stated that it wasn't clear to him what that requirement should be. He asked Doug LaRosa and he said every two to three years. He continued that there are four or five tanks before the effluent gets to the leachfield. He asked how many of those need to be pumped and the frequency.

Mr. Chagnon stated that he thinks Mr. LaRosa was saying that the first tank, which takes the solids out, needs to be pumped every two to three years.

Attorney Donovan asked if any of the subsequent tanks need to be pumped.

Mr. Chagnon explained that those would fall under the Norweco maintenance, not septic tank maintenance.

Chairman Epperson asked if they have a criteria for their maintenance schedule.

Mr. Chagnon confirmed.

Chairman Epperson pointed out that they really don't know what is going to happen in the first six months to two years. He suggested that they say evaluate every six months for the first two years and pump if necessary. It could then go to a two or three year pumping schedule. It would help to make sure that after six or twelve months, there isn't an unexpected volume in there that could be a problem two years down the road.

Vice-Chair Losik commented that they are talking about people who are on a budget and what a reasonable timeframe should be for the systems to be pumped.

Mr. Chagnon stated that every two to three years is usually the standard. The pre-treatment tank is what would be pumped. The maintenance of the Norweco system is going to be handled separately. They have a more frequent schedule for monitoring. The Norweco system should be maintained according to the manufacturer's instructions. The tanks should be pumped not less than every three years. He explained the septic tank is the pre-treatment chamber. The rest of the tanks are the Norweco system.

Attorney Donovan suggested the pre-treatment chamber shall be pumped every two years. Maintenance and monitoring shall include the other chambers (names listed) and shall assure pumping and maintenance as required by the manufacturer's instructions.

The Board finished their review of the draft conditions.

Workforce Housing Discussion:

Mr. Chapman explained that workforce housing is essentially a new term for what used to be called "affordable housing" or "low-income housing". Workforce housing is housing that is built using some form of taxpayer external subsidy that makes the development possible because the market is either unwilling or unable to provide housing to a certain segment of the working population. In the case of rental housing, the subsidy comes in as equity from investors who receive tax credits. Having a private corporate taxpayer as a partner, in essence, provides the oversight for the low-income affordability. If the managing partner does not keep it affordable and rent it to people who qualify, the investors could pay back their credits over time and they don't want to do that. This is a built-in mechanism for oversight. In the case of home ownership, there is little money available on the development side. Most of the incentives are on the home buyer side. He assumes that the eight buyers in this development will apply for down payment assistance, for example. For the developer, the incentives have to come internally. In essence, the subsidy is the town's ordinance, which is allowing more units to be built than what would normally be allowed and creating more revenue. The additional revenue, in theory, offsets what will be a loss, or break even, scenario on the workforce housing units. He continued that because the owners, The Housing Partnership and the investors, are not there to enforce the affordability when these are sold to individuals, the issue becomes how these are going to be preserved for the commitment to affordability that was given in exchange for the ordinance that the town has given.

He stated that his first condition is how the affordable units are distributed through the development. Following the guidelines in the ordinance, out of the ten buildings, eight of the buildings will have one workforce housing unit in each building. He commented that they don't want to have the units in the first eight buildings and have two buildings side by side, at the end, with no workforce housing units. He would like a little flexibility that at any given time throughout the development they would commit, as part of the certificate of occupancy, that 20%

of the units are workforce housing and there is not more than one unit of workforce housing in any one building.

Mr. Chapman stated that RSA 674 is the Workforce Housing Ordinance that was written several years ago, in which the town responded to and made an ordinance. He noted that the ordinance has very strict definitions about what affordable means and what workforce housing affordable means. (*He read from RSA 674.*) He noted that 30% of the annual household income is the baseline for “affordable”. The income limit that is going to be used for workforce housing is set by the Department of Housing and Urban Development. Every year, those numbers are revised for a certain set of regions. Rye is in the Portsmouth/Rochester Region. The median income is determined for that region and that is the cutoff for this mechanism. For example, the median income in 2018 for a family of four is \$99,200. Thirty percent of that number is \$29,760 and that is divided by 12. In essence, a buyer who is 100% at the median has \$2,480 per month to dedicate to the purchase price and still meet the definition of affordable. This would be a \$300,000 home price with 5% down, which would leave a \$285,000 first mortgage. With a mortgage interest rate of 5%, estimated property taxes, homeowner’s insurance and homeowners’ association fee, it works out to be \$2,480. He continued that this is the way that the sale price of the home is going to be determined. It does not mean that everyone who walks in will have the median income. They may have less than that income and that is okay. The 30% of the median income applies to how the sale price is determined.

He stated that the question then becomes how to enforce over time that the unit stays affordable and is not sold in the future to someone who is not qualified. The way this is done is through a deed restriction, also called restrictive covenants. The restrictive covenant does two things. It lays out the obligations of the seller for when the home is sold and it lays out value (subsidy lien). Under the covenant, the owner’s rights are going to be like any other homeowner. However, when the owner does sell the property, they have to give a good faith effort to sell it to someone who qualifies under the original formula. If they can’t find someone to qualify, or the maximum purchase price is too high for someone to qualify, they can sell it to anyone they want subject to the restrictions that are in place. The obligation to the municipality, or its designees, is to get a fair market appraisal when the owner notifies them that they want to sell. In addition to that, applications are going to be taken from qualified purchasers and a list will be created of qualified buyers. The subsidy value will be determined based on the numbers. He continued that the question is what happens when the original owner wants to sell but cannot find a qualified buyer within a reasonable period. The covenant allows for the seller to sell to a purchaser with a higher income. Instead of 100%, they may be at 110% or 120%. The property itself will continue to remain “affordable” according to the definition. This may sound a little contradictory; however, the affordability itself is tied to the property, not to the buyer. The property still has that affordability built in. Next time the property is sold, perhaps a qualified buyer will come in. The other question is what happens when the sale price, because of the increase in property values, exceeds the formula for affordability. There are two ways to deal with that under the covenants. The sales prices can be adjusted back down to a level that is affordable and then a qualified buyer can be found. The covenant also allows for the town to release the lien with the proceeds of that subsidy amount being put into the town, which would

be used to create another affordable unit somewhere else in town. He continued that he was going to propose that the covenant language be approved by the Board, the Board is the signatory on the covenant and The Housing Partnership, and/or its successors, be designated to do the work that needs to be done.

Attorney Colliander asked what happens in the case of a foreclosure.

Mr. Chapman explained that the foreclosure wipes out the encumbrances on the deed. The covenant would go away in the case of foreclosure. He commented that he thinks the formula is reasonable. It is certainly not low income but it's probably not an income that could afford a \$500,000 home anyways. He thinks the idea of releasing the lien and letting the affordable unit go in exchange for cash is a little problematic. However, these are individual owners that need to have the right to trade their property when they want to. There may be no other choice but for the town to release it.

Planning Administrator Reed stated that this could be a nightmare when it goes into the general fund and it's held because there isn't another workforce housing proposal.

Mr. Chapman stated that if The Housing Partnership was named the administrator of the deed, he would suggest that the money go back to them and they would restrict it on their books to create another affordable housing development or unit in Rye. It could also be used as rent subsidy towards affordable units in Rye. He continued that another option is that the municipality could be given the first right of refusal to purchase the home in a case where a buyer cannot be found. If that were The Housing Partnership, they would be happy to have a first right of refusal but would not want to be mandated to purchase the property to keep the home affordable.

Planning Administrator Reed pointed out that the draft says thirty (30) years. She asked the Board if they have determined a number of years.

Mr. Chapman stated that in the affordable housing industry the term permanent never means the "end of time". It is usually tied to whatever the funding source is. The minimum is usually about 20 or 30 years. He thinks for home ownership 30 years is reasonable.

Attorney Donovan stated that there are some points that the Board should understand. First, it's drafted by the N.H. Housing Finance Authority. This particular model has not been used yet. Reading through, it constantly refers to the municipality. It allows for the municipality to designate an agent. The Housing Partnership, under the agreement, would be designated to carry out the administrative duties. There is also a 2% fee at the closing that would cover the expense of that. The governing body is the signatory, which should probably be the Planning Board so the Selectmen don't have to get involved in approving the covenant. He noted that one of the things that he and Attorney Brown need to think through is the whole recapture provision. Also, in going through the document, it made him think that there may be some fine tuning of the ordinance that needs to be made that can be discussed at a future date. The agreement should allow for any amendments to the ordinance to be wrapped up into the agreement automatically.

Chairman Epperson opened to the public for comments.

Peter Crawford, 171 Brackett Road, commented that it would be nice if sewer was available to the developer.

Chairman Epperson agreed. He continued that it is a function of timing more than anything else. If the sewer can be done during this phasing process, accommodations would be made for them; however, right now, it is not known what is going to happen.

Mr. Crawford commented that it would be unfair to make this developer wait. He knows there are other projects waiting in the wings. He wonders if the Board, with voter approval, could put in some sort of moratorium. The more properties that are developed along Route 1, the fewer people there will be to help the sewer get done. He pointed out that eventually the market is going to turn down and the opportunity will be lost. He continued that he is a bit concerned about the foreclosure wiping out the lien.

Attorney Donovan stated that the basic law of foreclosure wipes out all other liens. That is a standard mechanism in the law.

Lot Line Adjustment:

Motion by Patricia Losik to approve the requested lot line adjustment by The Housing Partnership for property located at 0 Airfield Drive, Tax Map 10, Lot 15-4 and Lot 16. Seconded by Jeffrey Quinn. All in favor.

Conditional Use Permit – Aquifer Protection District, Section 306:

- 1. The proposed use will not detrimentally effect the quality of groundwater by directly contributing to pollution or by increasing the long-term susceptibility to groundwater and potential pollutants.**

Priscilla Jenness – Agree
Jeffrey Quinn – Agree
Bill Epperson – Agree
Patricia Losik – Agree
Nicole Paul – Agree

- 2. Adequate safeguards will be in place to prevent accidental spillage of substance or materials which may be harmful to groundwater from reaching the aquifer.**

Priscilla Jenness – Agree
Jeffrey Quinn – Agree
Bill Epperson – Agree
Patricia Losik – Agree
Nicole Paul – Agree

3. **The proposed use will discharge no waste water on site other than a typically discharged by a domestic waste water disposal system and will not involve the onsite storage of toxic or hazardous waste, as herein defined.**

Priscilla Jenness – Agree
Jeffrey Quinn – Agree
Bill Epperson – Agree
Patricia Losik – Agree
Nicole Paul – Agree

4. **The proposed use will not cause a significant reduction in the long-term volume of water contained in the aquifer or the storage capacity of the aquifer.**

Priscilla Jenness – Agree
Jeffrey Quinn – Agree
Bill Epperson – Agree
Patricia Losik – Agree
Nicole Paul – Agree

5. **The proposed use complies with all other applicable sections of this section.**

Priscilla Jenness – Agree
Jeffrey Quinn – Agree
Bill Epperson – Agree
Patricia Losik – Agree
Nicole Paul – Agree

Motion by Patricia Losik to approve the Conditional Use Permit, under 306.5C (1), (2), (3), (4) and (5) subject to the conditions of approval as modified this date. Seconded by Jeffrey Quinn. All in favor.

Major Subdivision:

Motion by Patricia Losik to tentatively approve the draft conditions of the S.U.P approval, as amended this date, with the exception of numbers 8, 21, 22 and 23. Seconded by Jeffrey Quinn. All in favor.

Motion by Patricia Losik to continue the major subdivision application to the August Planning Board Meeting. Seconded by Nicole Paul. All in favor.

VI. New Business

- **Conceptual Consultation** by AMBIT Engineering, Inc. for a Minor Subdivision of 85 Brackett Road, Tax Map 22, Lot 67, property of the Lee H. Roper Family Trust, into three lots. **Property is in the Single Residence District.**

Paul Dobberstein, Ambit Engineering, presented the conceptual for a minor three lot subdivision at 85 Brackett Road. The property is currently in a family trust and the parents have passed away. The sons would like to do a minor subdivision of the property to create two new lots with the existing house being on the remainder of the property. He noted that there is a large wetland that cuts across the entire property. They are not proposing anything in that area. All work will be in the front where there are two small wetlands that are less than an acre. He continued that there is enough frontage on Brackett Road for the three lots. Suitable soil has been able to be identified for three receiving areas. The lots will meet all the requirements. He noted that they would like to limit the boundary survey, as well as the topographic and soil survey to the area that is being subdivided and not the entirety of the lot. There is a large section that is wetlands and they are not proposing to go back there. With just the information for the front, it can be proven that all the lots meet the requirements of the town.

Selectman Jenness asked if what is being done will make it impossible to have access to the rest of the property.

Mr. Dobberstein explained that the rest of the property will go with the existing house lot. The proposed lot that has the existing home on it would be approximately 22.5 acres.

Vice-Chair Losik asked if there are plans to conserve any of that land at this point.

Mr. Dobberstein stated that the client has talked about it and is not opposed to it. He is not exactly sure about what the ownership plans are once this is subdivided.

Chairman Epperson asked what the future plan is for the existing house.

Mr. Dobberstein replied that right now the plan is to keep the home as it is. The house is in good shape and there is an existing septic that is functioning.

The Board reviewed the plans.

VII. Pay Escrows

- **Attorney Donovan:**
 - **The Housing Partnership – 0 Airfield Drive - \$637.78**
 - **Tuck Realty – 0 Ocean Blvd. - \$86.18**
 - **Verizon Cell Tower – 120 Brackett Road - \$965.30**

- **Rockingham Planning Commission (RPC)**
 - **Tuck Realty – 0 Ocean Blvd. - \$1,000.00**

Motion by Patricia Losik to pay Attorney Donovan in the amount of \$637.78 for The Housing Partnership, 0 Airfield Drive; \$86.18 for Tuck Realty, 0 Ocean Blvd; \$965.30 for the Verizon Cell Tower, 120 Brackett Road; and to pay RPC in the amount of \$1,000.00 for Tuck Realty, O Ocean Blvd. Seconded by Jeffrey Quinn. All in favor.

VIII. Subcommittees

- **Long Range Planning – Next Meeting July 12th**
- **Rules & Regulations – Next Meeting July 25th**

Adjournment

Motion by Patricia Losik to adjourn at 11:05 p.m. Seconded by Jeffrey Quinn. All in favor.

Respectfully Submitted,
Dyana F. Ledger

RYE PLANNING BOARD

10 Central Road Rye, NH 03870 (603) 964-9800

Notice of Decision

Applicant: The Housing Partnership

Owner: Rickert Inv Real Estate LLC

Property: 0 Airfield Drive, Tax Map 10, Lot 15-4
Commercial District

Case: Case #07-2017

Application: Major Subdivision, Lot Line Adjustment and Conditional Use Permit by the Housing Partnership for Property located 0 Airfield Drive, Tax Map 10, Lot 15-4 for construction of a residential development consisting of a mixture of multi-family dwellings with a portion being dedicated as Workforce Housing. Property is in the Commercial Zoning District and the Multi-Family Dwelling District Overlay and the Aquifer and Wellhead Protection District.

Date of Decision: Tuesday, July 10, 2018

Decision:

<input type="checkbox"/>	Approved
<input type="checkbox"/>	Conditionally Approved
<input type="checkbox"/>	Denied
<input checked="" type="checkbox"/>	Preliminarily Approved

The Planning Board voted to tentatively approve the July 2, 2018 draft Conditions of Approval as amended July 10, 2018 for the Special Use Permit (S.U.P) for the development of workforce housing with the exception of items #8, #21, #22 and #23. (Renumbered as #'s 7, 19, 20, 21 on attached). These will be continued to the August Planning Board meeting.

7/12/18
Date



William Epperson, Chairman
Rye Planning Board

❖ *Planning Board Approvals do not include building permits; please check with the Building Inspector's office before any and all construction.*

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July 10, 2018

Tentatively Approved Except for Nos. **7, 19, 20, 21 & 30 (emboldened)**.

CONDITIONS OF APPROVAL
THE HOUSING PARTNERSHIP MAJOR SUBDIVISION/S.U.P. APPROVAL

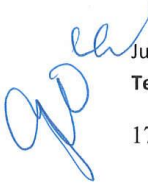
1. All conditions of approval of the Conditional Use Permit required by the Aquifer and Wellhead Protection District shall apply to the subdivision/land development.
2. The plans shall be revised as follows:
 - a. Street names shall be submitted to the building department and approved by the building inspector and added to the plans.
 - b. Items Nos. 2 -6 of Attorney Donovan's 6/29/18 memorandum need to be added.
 - c. Add the fence to the legend on all applicable plan sheets.
 - d. Make the revision date on Sht. C3A current.
 - e. Show the stockade fence on the utility drawings.
3. A condominium association shall be created for the development. Town counsel shall review and approve the *Declaration, Bylaws and other condominium instruments* and any other legal instruments required to form the association.
4. A Drainage Easement from Rye Airfield RCD I, Inc. to the applicant over Lot 15-3 to benefit Lot 15-4 shall be reviewed and approved by town counsel.
5. A pedestrian easement from Rickert Investment Real Estate, LLC to the applicant over Lot 10/16 to benefit Lot 15-4 shall be reviewed and approved by town counsel.
6. The applicant shall grant the town an easement relative to maintenance and repair of the rain garden and forebay. The easement shall: (1) require the applicant/condominium association to be responsible for maintenance and repair of the drainage facilities; and (2) provide that, if the applicant or association fails to maintain or repair the facilities, the town, after notice, shall have the right, but not the obligation, to do so. In such case the association shall be responsible for reimbursing the town for its expenses. If the town has to commence a legal action to obtain payment, the town shall be entitled to its costs and reasonable attorney's fees. This easement shall be reviewed and approved by town counsel.



July 10, 2018

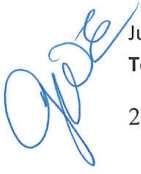
Tentatively Approved Except for Nos. 7, 19, 20, 21 & 30 (emboldened).

7. **The mechanism for assuring compliance with the work force housing requirement shall be approved by town counsel and the TRC.**
8. The Stormwater Inspection and Maintenance Plan shall be approved by planning board engineer. The association shall be responsible for compliance with this plan. Said responsibility to be set forth in the *Declaration*. The plan should be revised to indicate that mowing takes place once a year at the minimum.
9. Surety in the amount of \$958,450 and in the form of a self-calling letter of credit and/or cash escrow shall be posted to guarantee the completion of all infrastructure, including the private drives, all drainage facilities, water lines, sidewalks, retaining walls and fences. Surety to be approved by town counsel.
10. Sufficient funds shall be placed in escrow with the planning board to pay final statements of planning board engineer, town counsel and Consultant Truslow.
11. Applicant shall sign an Escrow Agreement and post escrow for planning board engineer's monitoring of infrastructure improvements. Amount to be determined by planning board engineer.
12. DES approval of septic systems and an AoT permit shall be obtained.
13. Planning board chair may sign plans when foregoing conditions Nos. 2-12 are met.
14. Plan Sheets Nos. C2, C3a and C3b shall be recorded along with a Certification of Major Site Development Review Approval and the Boundary Line Adjustment Plan.
15. The condominium shall be registered by the Attorney General as required by the N.H. Condominium Act.
16. Any changes to the *Declaration, Bylaws and other condominium instruments* or to any other legal instruments required to form the association required by the Attorney General that do not affect the Town of Rye's land use approvals may be made by the developer after review by town counsel.

 July 10, 2018

Tentatively Approved Except for Nos. 7, 19, 20, 21 & 30 (emboldened).

17. The easements required by Conditions Nos. 4, 5 and 6 shall be recorded with the deed transferring the property to the developer. Copies shall be provided to the planning board and town counsel.
18. The *Declaration, Bylaws and other condominium instruments* and any other legal instruments required to form the association shall be recorded with the deed transferring the property to the developer. Copies shall be provided to the planning board and town counsel.
19. **Condition on ownership and maintenance responsibility for Airport Drive??**
20. **One (1) workforce housing unit shall be established for each group of five (5) dwelling units built. After the initial five (5) units have been permitted, building permits will not be issued for subsequent units unless 20% of all prior permitted units have been established and occupied as work force housing.**
21. **If workforce housing units are not marketable as owner-occupied units, they may be rented to tenant families who meet the workforce housing definition of RSA 674:58.**
22. The build out of the development shall comply with the Growth Management Ordinance.
23. The Fire Chief or the Police Chief may order windrows of snow along the drives to be removed if in his/her opinion piled snow inhibits access by emergency vehicles.
24. Water lines, hydrants and appurtenances thereto shall be constructed in accordance with Rye Water District requirements.
25. The number of bedrooms served by each septic system shall not exceed the maximum number of bedrooms set forth in the "Site Septic Loading Table" on Sht. SS1.
26. "Monumentation shall be installed as required by the *Land Development Regulations*. A certificate of Monumentation shall be provided to the Planning Board and Building Inspector prior to the first occupancy permit being issued. Grading of lots shall not disturb installed monumentation. If development disturbs or covers monuments, the monuments shall be reestablished by a surveyor and a new Certificate of Monumentation provided.
27. For the purposes of RSA 674:39 "Active and Substantial Development or Building" shall be commencement of excavation for construction of the drives.
28. As-built plans for roadway, drainage, sidewalks, septic systems and the retaining wall shall be submitted to the planning board (3 sets).



July 10, 2018

Tentatively Approved Except for Nos. 7, 19, 20, 21 & 30 (emboldened).

29. Per Section 303.7 of the *Land Development Regulations*, this conditional approval shall expire in 18 months if the chair has not signed the plan as the result of the applicant's failure to meet those conditions necessary to permit the chair to sign the plan.

30. Need to add a requirement for emblems marking "No Cut Area" and spacing of them.

RYE PLANNING BOARD

10 Central Road Rye, NH 03870 (603) 964-9800

Notice of Decision

Applicant: The Housing Partnership

Owner: Rickert Inv Real Estate LLC

Property: 0 Airfield Drive, Tax Map 10, Lot 15-4
Commercial District

Case: Case #07-2017

Application: Major Subdivision, Lot Line Adjustment and Conditional Use Permit by the Housing Partnership for Property located 0 Airfield Drive, Tax Map 10, Lot 15-4 for construction of a residential development consisting of a mixture of multi-family dwellings with a portion being dedicated as Workforce Housing. Property is in the Commercial Zoning District and the Multi-Family Dwelling District Overlay and the Aquifer and Wellhead Protection District.

Date of Decision: Tuesday, July 10, 2018

Decision: ☐ Approved
 ☒ Conditionally Approved
 ☐ Denied

The Planning Board voted to approve the Conditional Use Permit (C.U.P) for the Aquifer and Wellhead Protection District subject to the conditions of approval as discussed and modified July 10, 2018 and attached.

7/17/18
Date



William Epperson, Chairman
Rye Planning Board

❖ *Planning Board Approvals do not include building permits; please check with the Building Inspector's office before any and all construction.*

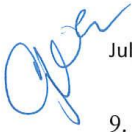
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July 10, 2018



CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT APPROVAL

1. A condominium association shall be created for the development.
2. Six (6) Norweco Hydro-Kinetic 1500 FEU wastewater systems shall be installed as portrayed on the approved plans
3. Prior to the establishment of a condominium association the applicant shall designate a qualified entity to conduct inspections and maintenance of all Norweco systems. After the establishment of a condominium association, the association shall be responsible for designating the qualified entity. The association shall have an inspection and maintenance agreement in place with the entity designated by the applicant or the successor association for the lives of the systems for all six (6) systems.
4. For each system, inspections, sampling and maintenance monitoring should be conducted at 6 months from the date the issuance of an occupancy permit for the first unit. A second sampling and inspection shall occur 6 months after the first one. Thereafter, provided the preceding inspections and samplings have been satisfactory, inspections, maintenance and monitoring shall be annually. As part of this, the effluent should be sampled for nitrate-nitrogen (nitrate-N) and Total Kjeldahl Nitrogen (TKN) at each inspection.
5. Effluent levels shall contain less than 10 mg/L nitrate-N. A 10 mg/L or greater concentration of nitrate-N will trigger confirmation sampling and may require septic system maintenance, repair or replacement if issues are not resolved.
6. Pre-treatment chambers shall be pumped at least every two years. The frequency of pumping of anoxic chambers, aeration chambers, clarification chambers, influent chambers and media chambers shall be in accordance with the Norweco Hydro-Kinetic 1500 FEU manufacturer's recommendations.
7. The development shall be designated a "no salt area", with signage placed along the proposed drives (to be depicted on the plans) identifying it as a "no salt area".
8. Nitrogen based fertilizers are prohibited.



July 10, 2018

9. Prior to the establishment of the Condominium Association the applicant shall retain a Designated Oversight Manager (DOM) who shall have the following responsibilities:
 - a. Collecting and keeping on file the required inspection and maintenance agreement for the septic systems. The DOM shall certify to the planning board and building inspector in January of each year that the required agreement is in place.
 - b. Collecting and keeping on file the required inspection reports and providing them within 15 days of receipt to the building inspector, the planning board and planning board consultant Danna Truslow or such other consultant as may be identified by the planning board.
 - c. Reviewing the inspection reports. If a report indicates that the standard of No. 5 herein has not been met, the DOM shall notify the association to have the system inspected again and a confirmatory sample collected.
 - d. Keeping records of the pumping of all pre-treatment chambers and anoxic chambers, aeration chambers, clarification chambers, influent chambers and media chambers.
 - e. Providing a report to the planning board and the building inspector in January of each year. The report should summarize the inspections made, the pumping of pre-treatment chambers and anoxic chambers, aeration chambers, clarification chambers, influent chambers and media chambers and any deficiencies that were identified and the corrective action taken.
 - f. Conduct annual inspections to ensure that required no cut buffer zone emblems remain in place and that there are no violations within the buffer area. Notify the association, planning board and building inspector of any observed violations. Provide an annual report to the planning board of the results of the inspections in January of each year.
10. The applicant shall provide the name of the DOM and contact information to the building inspector, planning board and planning board consultant Danna Truslow or such other consultant as may be identified by the planning board. Upon the establishment of an association the responsibility of retaining an oversight manager shall transfer to the



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association. The DOM and any changes of the DOM shall be approved by the planning board's Technical Review Committee.

11. Concurrently with the transfer of the property to the developer, the applicant shall record the *Declaration, Bylaws and other condominium instruments* and any other legal instruments required to form the association, which shall run with the land and which shall apply to all lots. The Declaration shall be reviewed and approved by town counsel and shall include provisions allowing the association and the town to enforce. The restrictions and requirements shall include:

- a. No use of salt in the development.
- b. No use of nitrogen based fertilizers.
- c. Replacement septic systems shall be Norweco systems or other systems providing equal or better treatment and de-nitrification.
- d. No garbage disposals.
- e. Storage or use of regulated substances as defined by 40 C.F.R. 302 is prohibited, including for home occupations.
- f. Double walled oil storage tanks required if units have oil furnaces.
- g. Restrictions applicable to "No-Cut Area". In the "No Cut Buffer" cutting of live trees greater than four and one-half inches in diameter measured at a height of four and one-half feet above ground level is prohibited. These restrictions do not apply to removal of dead and blown down material or invasive species removal.

12. The responsibilities of the association shall include:

- a. Assuring that the required inspection and maintenance agreements for the septic systems are in place.
- b. Assuring that the required inspections and sampling of the septic systems have been done.

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- c. Assuring that any required maintenance, repair or replacement of septic systems has been done.
 - d. Assuring that all required pumping of chambers has been done.
 - e. Monitoring the use of snow removal substances and fertilizers in the subdivision.
 - f. Maintenance, repair and replacement (if required) of all drainage facilities owned by the association.
 - g. Assuring that there are no violations of buffer restrictions.
13. The association shall certify annually in January of each year to the planning board (with copies to the building inspector and planning board consultant Danna Truslow, or such other consultant as may be identified by the planning board) that:
- a. All required septic system inspection and maintenance agreements are in place.
 - b. All required septic system inspections have been conducted and the reports provided to all required parties.
 - c. Any required maintenance, repair or replacement of septic systems has been completed or will be completed by a time certain.
 - d. All required pumping of chambers has been done.
 - e. Nitrogen based fertilizers are not being used in the subdivision.
 - f. Salt is not being used in the subdivision.
 - g. There are no garbage disposals in the subdivision.
 - h. All drainage basins have been inspected by a qualified professional engineer and maintained in accordance with these conditions and are functioning properly.
 - i. There are no violations of buffer restrictions.
14. The requirements of Condition No. 9 allow the association to assign the responsibilities set forth in Conditions Nos. 12 and 13 to a Designated Oversight Manager (DOM).

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Notwithstanding this, the association has the ultimate responsibility for complying with Conditions Nos. 12 and 13.

15. Three monitoring wells (MW-1, MW-2, MW-4) will be maintained for future monitoring. MW-3 will be properly abandoned according to NHDES requirements and the abandonment report submitted to the building inspector, planning board and planning board consultant Danna Truslow or such other consultant as may be identified by the planning board. Monitoring and sampling of these wells will commence upon agreement if the results of septic effluent sampling indicate a significant exceedance of the 10 mg/L nitrate-N concentration.
16. In December following the issuance of the first building permit the applicant shall pay the town a fee \$5000 (to be held in escrow) to be used to defray the expenses of its consultant and/or the building inspector in monitoring inspection reports on the septic systems and the annual certification of the association and such other work as may be necessary to effect compliance with these conditions, including annual inspections of drainage facilities. When the escrow is depleted the association shall be responsible for payment of the expenses of such work. Failure to pay such expenses shall constitute a lien on the condominium and the units.
17. All Conditions of Major Site Development/S.U.P Approval are incorporated herein by reference. All conditions above (and all Conditions of Major Subdivision/SUP approval) shall be exhibits to the Condominium Declaration.
18. There shall be no blasting on the site whatsoever. This includes construction of infrastructure, septic systems and dwellings.

RYE PLANNING BOARD

10 Central Road Rye, NH 03870 (603) 964-9800

Notice of Decision

Applicant: The Housing Partnership

Owner: Rickert Inv Real Estate LLC

Property: 0 Airfield Drive, Tax Map 10, Lot 15-4
Commercial District

Case: Case #07-2017

Application: Major Subdivision, Lot Line Adjustment and Conditional Use Permit by the Housing Partnership for Property located 0 Airfield Drive, Tax Map 10, Lot 15-4 for construction of a residential development consisting of a mixture of multi-family dwellings with a portion being dedicated as Workforce Housing. Property is in the Commercial Zoning District and the Multi-Family Dwelling District Overlay and the Aquifer and Wellhead Protection District.

Date of Decision: Tuesday, July 10, 2018

Decision: x Approved
 — Conditionally Approved
 — Denied

The Planning Board voted to grant the Lot Line Adjustment for Tax Map 10, Lots 15-4 and Lot 16 as amended and presented to the Planning Board.

7/12/18
Date



William Epperson, Chairman
Rye Planning Board

❖ *Planning Board Approvals do not include building permits; please check with the Building Inspector's office before any and all construction.*

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RYE PLANNING BOARD

10 Central Road Rye, NH 03870 (603) 964-9800

Notice of Decision

Applicant/Owner: Thomas Bear

Property: 110 Perkins Road, Tax Map 5.2, Lot 176
General Residence District

Case: Case #15-2018

Application: Conditional Use Permit Application by Thomas Bear for property owned and located at 110 Perkins Road Tax Map 5.2, Lot 176 for an Accessory Dwelling Unit per Section 506 of the Rye Zoning Ordinance. **Property is in the General Residence District. Case #15-2018.**

Date of Decision: Tuesday July 10, 2018

Decision: x Approved
 Conditionally Approved
 Denied

The Board voted to that the application is complete and to accept Jurisdiction over the application.

The Board voted to approve the ADU application.

7/12/18
Date



William Epperson, Chairman
Rye Planning Board

❖ *Planning Board Approvals do not include building permits; please check with the Building Inspector's office before any and all construction.*

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RYE PLANNING BOARD

10 Central Road Rye, NH 03870 (603) 964-9800

Notice of Decision

Applicant/Owner: RJ Joyce for property owned by Isonlina LLC

Property: 2263 Ocean Blvd., Tax Map 5.3, Lot 3
Business District

Case: Case #16-2018

Application: **Minor Site Development Plan** by RJ Joyce for property owned by Isonlina LLC and located at 2263 Ocean Blvd., Tax Map 5.3, Lot 3 to amend the agreement signed with the building department to allow the use of the garden area for guest of the restaurant and to allow the business to use 20 parking spots for paid parking during the summer months. **Property is in the Business District. Case #16-2018.**

Date of Decision: Tuesday July 10, 2018

Decision:

<input type="checkbox"/>	Approved
<input type="checkbox"/>	Conditionally Approved
<input type="checkbox"/>	Denied
<input checked="" type="checkbox"/>	Continued

The Board voted that the application was not complete and the applicant is to work with the building inspector and police chief to clarify their concerns and come back with a complete plan and layout of the property, parking spaces and distances to side streets. The Plan does not need to be by a licensed surveyor but it does need to be accurate.

7/12/18
Date



William Epperson, Chairman
Rye Planning Board

❖ *Planning Board Approvals do not include building permits; please check with the Building Inspector's office before any and all construction.*

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