

## **TOWN OF RYE – PLANNING BOARD**

**Tuesday, August 8, 2017**

**7:00 p.m. – Rye Town Hall**

*Members Present: Acting Chair Patricia Losik, J.M. Lord, Mel Low, Jerry Gittlein, Selectmen's Rep Priscilla Jenness and Alternate Anne Arnold*

*Others Present: Planning Administrator Kimberly Reed*

### **I. Call to Order and Pledge of Allegiance**

Acting Chair Losik called the meeting to order at 7:05 p.m. and led the Pledge of Allegiance.

### **II. Designation and appointment of alternates**

- Alternate Anne Arnold was seated for Bill Epperson.

### **III. Approval of the July 11, 2017 and July 18, 2017 meeting minutes**

- July 11, 2017  
(Approval moved to the end of the meeting. See below.)
- July 18, 2017

**Motion by Jerry Gittlein to move the approval of the July 18, 2017 meeting minutes to the September 12, 2017 Planning Board meeting. Seconded by Mel Low. All in favor.**

**Motion by J.M. Lord to take Public Hearing Item A out of posted agenda order. Seconded by Jerry Gittlein. All in favor.**

**Note: The following agenda item was taken out of posted agenda order. (As shown below.)**

**Priscilla Jenness recused herself from the following Public Hearing Item A.**

**Public Hearings:**

- a. Major Subdivision, Lot Line Adjustment and Conditional Use Permit by Harbor Street Limited Partnership of Stratham NH for properties located at 421 South Road, Tax Map 4, Lots 25, 27, 31 & 32 for a 22 Lot subdivision. Properties are in the Single Residence District and within the Aquifer and Wellhead Protection District. Case #13-2016. **Continued for the Notice of Decision. Not open to the public for discussion.**

Acting Chair Losik stated that on July 18<sup>th</sup> the Planning Board voted to deny the 0applicant's Conditional Use Permit (CUP) and subdivision applications. During board deliberations, board members discussed their concerns about the subdivision. Some board members articulated their concerns in writings and those are attached in documents to the July 18<sup>th</sup> minutes. On July 18<sup>th</sup>, the Board asked town counsel to prepare a draft notice of decision for review and finalization at tonight's meeting. Town counsel did that and sent it to the Board about 2 weeks ago prior to leaving on vacation. Again, there is not a public hearing on the draft notice. The public hearing has been closed.

Review of Notice of Decision:

**Notice of Decision**

**Applicant: Harbor Street Limited Partnership of Stratham NH**

**Property: 421 South Road, Tax Map 4, Lots 25, 27, 31 & 32 for a 22 Lot Subdivision.**

**Case #13-2016**

**Application: Major Subdivision, Lot Line Adjustment and Conditional Use Permit by Harbor Street Limited Partnership of Stratham NH for properties located at 421 South Road, Tax Map 4, Lots 25, 27, 31 & 32 for a 22 Lot subdivision. Properties are in the Single Residence District and within the Aquifer and Wellhead Protection District.**

**Case: 13-2016.**

**Date of the meeting: Tuesday, July 18, 2017**

**Date of decision: Tuesday, August 8, 2017**

**Decision Denied**

STATE OF NEW HAMPSHIRE  
TOWN OF RYE PLANNING BOARD  
STONELEIGH PRESERVE APPLICATIONS  
Case No. 13-2016

NOTICE OF DECISION

The tract proposed for development presents more difficult environmental challenges than any other tract approved for major subdivision in Rye. Among the characteristics of the tract which constrain its development potential are:

- Substantial amounts of exposed bedrock. Some outcroppings are massive.
- Shallow to bedrock soils over much of the tract.
- The presence of shallow to seasonal high water table soils.
- The difficulties presented by the soils on the tract are evidenced by the fact that almost 200 test pits and ledge probes were required in order to locate soils suitable for leachfields for the 17 lots of the final proposal.
- High water table subject to rapid fluctuations in elevation after major storm events.
- Wetlands inter-dispersed throughout the site.
- Four (4) vernal pools.
- A rare Atlantic White Cedar Forest located 170 feet to the north of the area proposed for development, part of which is on the applicant's tract. The Atlantic White Cedar Forest is partly owned by The Nature Conservancy. It is considered exemplary by the NH Natural Heritage Bureau and is home to "Old Knobby", the State Champion Atlantic White Cedar.
- The presence of lineaments. Lineaments are photo linear features that are likely the result of underlying zones of fractured bedrock.

Unlike most of the land which has been developed as major subdivisions in Rye, this tract from the onset of early settlement was not farmable and was mainly used for woodlots or grazing of sheep, cows and goats.

The tract is within the Rye Water District (RWD) Wellhead Protection District Established by NH DES and protected by the Aquifer and Wellhead Protection District of the Rye Zoning Ordinance (RZO). This district is intended to protect the RWD's Cedar Run and Bailey Brook wells. Two lineaments cross the tract in a SE to NW direction towards the RWD wells. The lineaments could represent zones of preferential ground water flow.

I. Denial of the Conditional Use Permit (CUP).

In order to grant the CUP required by the RZO Aquifer and Wellhead Protection District the planning board must determine that each of the requirements of RZO § 306.5, C. (1-5) are met.

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

The board voted 6-0 that this requirement is not met.

The high quality of Rye's drinking water is one of the town's most valuable assets, if not the most valuable. The board reviewed dozens of pages of reports from hydrogeologists and others relative to water quality issues and listened to substantial amounts of public testimony on water quality. The bottom line is that, despite the applicant's willingness to prohibit blasting, no one can guarantee that the development of this subdivision as proposed will not pose a threat to the quality of the groundwater or that it will not threaten the quality of water in the Rye Water District Wells.

The planning board's hydrogeologic peer review consultant suggested that further geophysical investigation of subsurface bedrock characteristics could identify probable zones of weakness and shallow ground water flow. The applicant did not conduct the further investigations suggested.

The town's experience with innovative septic system technology indicates that such



systems cannot be relied upon to function as represented. See discussion of septi-tech systems in Part II of this Notice of Decision.

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

The board voted 5-1 that this requirement is met.

3. *The proposed use will discharge no waste water on site other than that typically discharged by domestic waste water disposal systems and will not involve on-site storage or disposal of toxic or hazardous wastes as herem defined.*

The board voted 6-0 that this requirement is not met.

The record indicates that at least 8 lots which back up to wetlands lots will have steep driveways requiring salting in the winter. The runoff from salted driveways, parking areas and walkways will harm ground water and surface water quality.

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

The board voted 4-2 that this requirement is not met.

The Rye Water District indicated there is a summer problem with reduction in water volume due to lawn irrigation. The proposed 17 lot subdivision will worsen this problem.

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

The board voted 6-0 that this requirement is not met because the proposed use does not comply with RZO Sections 306.2, A-D or with Section 306.6.D.

*306.2 Purpose: The purpose of the Aquifer and Wellhead Protection District is to protect, preserve and maintain the groundwater resources and groundwater recharge areas in the Town of Rye. The objectives are:*

- A. *To protect the public health and general welfare of the citizens of Rye.*
- B. *To prevent development and land use practices that would contaminate or reduce the recharge to the identified aquifers.*

C. To assure the availability of public and private water supplies for future growth of the Town in accordance with the Master Plan.

D. To encourage land uses that can appropriately and safely be located in the aquifer recharge areas.

§ 306.6. D. **Salt, De-icing.** Streets, roads, driveways and parking areas shall be constructed so that the need for direct application of road salt and de-icing substances is eliminated or minimized to the greatest extent possible. Runoff from such surfaces shall be channelized to avoid, or minimize to the greatest extent possible, groundwater contamination, consistent with Best Management Practices for Urban Stormwater Runoff, NHDES, January 1996, or revisions thereto. (Rev 2/10/15).

After voting on each of the above five requirements the board voted 6-0 to deny the Conditional Use Permit because four of the requirements of RZO § 306.5, C. were not met, specifically C.1, C.3, C.4 and C.5.

## II. Denial of Major Subdivision Application.

The board voted 6-0 to deny the major subdivision application, as revised to a 17 lot proposal. The applicant **did not** establish that the application complied with the following sections of the Rye *Planning Board Land Development Regulations* (LDR's).

### SECTION 606 STANDARDS FOR THE PRESERVATION OF NATURAL FEATURES AND THE ENVIRONMENT

#### 606.1 General

The land developer shall identify and take suitable steps as required by the Planning Board to preserve and protect significant existing features such as trees, scenic points, brooks, streams, rock outcroppings, water bodies, wetlands, other natural features and historic landmarks.

#### 606.2 Character of Land for Development

Land judged by the Planning Board to be unsafe for building development because of exceptional danger to health or peril from fire, flood, tidal water, poor drainage, impermeable soil, excessive slope or other hazardous conditions shall not be approved for development until appropriate measures have been taken to eliminate the hazards.

#### 606.4 Woodlands and Trees.

*Within a proposed street ROW, existing woodlands shall not be disturbed behind a line three feet from the back edge of the ditch line paralleling the street. Trees within existing Town rights-of-way shall not be disturbed without the specific approval of the Planning Board, which may require a suitable replacement.*

606.7 Groundwater Protection.

*Land Developments shall not adversely affect the groundwater resources of the Rye Water District; of the water districts of surrounding towns; or of individually owned wells.*

611.2 Natural Features.

*The design of site developments shall fit the existing natural and man-made environments with the least possible disturbance.*

*A. Site Preparation: Site preparation is to be conducted with minimal disturbance to existing vegetation. Stripped topsoil is to be piled and reused on the site where needed. A minimum of 4 inches of topsoil is to be placed on the disturbed area. The site shall be adequately seeded and or landscaped.*

*B. Grading and Filling: Grading and filling shall be minimized.*

*C. Landscaping: Landscaping must be provided with proper regard to adjacent properties, public streets and highways and the aesthetics of the site itself and its intended use. Landscape treatment shall consist of natural, undisturbed vegetation or features, and/or ground cover, shrubs or trees as appropriate.*

With respect to the foregoing italicized requirements, the board determined that.

1. Due to the topography of the site and the presence of bedrock outcroppings and shallow bedrock, the proposed subdivision unreasonably destroys too much of the natural terrain, including woodlands. The cross-section drawings indicate that more than 70% of Stoneleigh Way and more than 96% of Francis Path will require alteration (i.e. destruction) of the natural terrain, including destruction of woodlands, through filling or excavation that extends beyond the typical 50 ft. wide ROW specified in Figure 1 of the LDR's. More than 30% of Francis Path and 20% of Stoneleigh Way will extend alteration of the natural terrain to a width beyond 70 ft. Four (4) cross-sections of Stoneleigh Way extend > 50 ft. to the left side of the centerline.

The clearance of woodlands and re-grading for development of homes, driveways and lawns and for the gravel wetland and bio-retention pond and their access ways unreasonably increases the alteration of the natural terrain.

Adequate woodland buffers of abutting properties are not preserved on Francis Path and adjacent to the gravel wetland.

2. The proposed subdivision poses an unreasonable risk to the Atlantic White Cedar Forest (AWCF) because of:

- The nitrate plumes entering the wetlands which flow into the AWCF.
- Sheet runoff from lots adjacent to the wetlands which flow into the AWCF.
- Drainage from the level spreader on the boundary of Lots 5 & 6.
- Phosphorous.

The buffers proposed by the applicant are not sufficient to guarantee that there will be no harm to the Atlantic White Cedar Forest. The applicant's representation that the buffer will be approximately 700 ft. is misleading. First, the 700 ft. is measured from the forest, not from the wetlands which feed the forest. Second, on Lots 7 & 8 only one protrusion of the buffer is 700 ft. from the forest. Most of the buffer on Lot 5 is 500 ft. from the forest. As measured from wetlands which feed the forest about half of the buffer on Lot 7 is 250 ft. or less, and some of the buffer on Lots 5 and 6 is less than 100 feet.

Experience with the septic-tech systems installed in the Marjorie Way Subdivision indicates that the lower nitrate levels which the systems are supposed to produce may not be achieved. The effectiveness of these systems relies, in part, on stewardship by homeowners and homeowners associations to enforce required inspections, maintenance and repair in perpetuity. The town cannot be assured that this will be done.

Similarly, relying on deed restrictions and restrictions in condominium declarations to enforce buffer restrictions in perpetuity does not assure that encroachments and destruction of buffers will not occur. Experience shows that homeowners and homeowners associations do not pay much attention to these restrictions, and the town does not have the personnel resources to continually monitor and enforce such restrictions.

3. The proposed subdivision poses an unreasonable risk to the vernal pools and other wetlands on the tract. As board member Lord has pointed out several times, the culvert at Stoneleigh Way Sta. 11+00 will drain the 16,428 sf wetland on Lot 15, thereby destroying it.

± 550 ft. of Stoneleigh Way will outlet into the level spreader which is at the edge of the large vernal pool on Lot 2. The risk of road runoff contaminants harming the vernal pool is unreasonable, particularly given that a different drainage layout could avoid this.

The natural constraints of the tract have caused the applicant to use five (5) different drainage features to treat road drainage: a gravel wetland (a first for Rye); a bio-retention facility; and three (3) level spreaders which outlet directly into wetlands, including the vernal pool on Lot 2. There is no guarantee that any of these features will be adequately maintained and repaired to function as intended. The use of the level spreaders poses an unreasonable risk of contamination of the

wetlands. The effectiveness of level spreaders in removing contaminants flushed during periods of very heavy rainfall is questionable.

As noted in Part I of this Notice of Decision, 8 lots which back up onto wetlands will have steep driveways requiring salting in winter.

4. At the April 26, 2017 work session when retention of woodlands was discussed, the applicant stated that based on his experience with his Brackett Road subdivision, the houses will need a fall zone to protect them from blow downs. Blow downs are more common where shallow ledge and soils which get saturated with water exist. Also, it's common knowledge that when some trees on the edge of a stand of trees are removed, the remaining trees are more susceptible to being blown down. If homeowners try to establish a 60 ft. fall zone around new homes there will be impacts on 17,700 sf of wetlands buffer and 6250 sf of wetlands.

Apparently because of his desire to allow future lot owners to remove trees, the applicant has not proposed any restrictions on tree cutting on lots, other than for the buffer of the Atlantic White Cedar Forest and the wetlands buffer of the RZO. The board notes that the RZO wetlands buffer does not have woodland preservation as an objective, per se. It allows 50% of the basal area within the buffer to be cut.

5. As the  $\pm 200$  test pits and ledge probes indicate, shallow ledge and/or high water tables exist on many of the proposed lots. That limits the infiltration of groundwater so that the surfaces get easily saturated. This requires that houses on 10 of the lots will require sump pumps, 13 of the lots will require mounded up septic fields and 6 of the sites will require mounded up home sites. This represents an unreasonably excessive filling and grading which does not maintain the character of the land, which does not fit into the natural environment and which is an unreasonable disturbance of the environment. E.g. Lot 1

6. The construction of Francis Path as it passes the Seiner property (Sta. 3+00 to 4+00) has a shallow 1 ft. deep ditch with an embankment on the east side of the ditch which slopes down towards the Seiner lot. The elevations are such that the ditch may overflow onto the Seiner property during heavy storms.

7. The gravel wetland occupies  $\pm 14,000$  sf (1/3 of an acre) of Lot 4, not including the 300 ft. access road also located on Lot 4. This large drainage feature is incompatible with residential living. Additionally,

- It is too close to the abutting residential property with an insufficient wooded buffer.
- It may be a structure which would require a variance from the RZO 30 ft. rear setback requirement.

8. LDR § 601.1 requires that all land developments comply with the provisions of the Rye Zoning Ordinance. RZO § 507.2 re: storm water management states:

*§ 507.2 Drainage Onto Adjacent Properties: No use of land; no construction, reconstruction, alterations, replacement, or expansion of buildings, structures and impervious surfaces; no grading of the land; and no destruction or alteration of natural vegetation or ground cover shall increase the surface water drainage flowing onto an adjacent property unless a drainage easement allowing such flowage in perpetuity is recorded*

There are two (2) locations where drainage from the proposed subdivision flows into wetland systems which extend onto abutting lots: (1) the level spreader on Lot 9; and (2) the outlet to the gravel wetland on Lot 4. The applicant has not established that increased drainage into these wetlands will not violate § 507.2. Also, the road cross-section adjacent to the Seiner property may drain onto the Seiner lot. (See No. 6 above).

9. The applicant has suggested that the proposed homeowner's association can provide the monitoring and stewardship necessary to enforce the many requirements on which protection of the town's water supply and other important natural features depends. The subdivision, if built, will extend long after the developer has gone. Lots will change ownership. The town's experience is that the stewardship does not happen. The town does not have the resources to monitor and enforce all of the requirements necessary to protect the natural resources impacted by this proposed subdivision.

In addition to all of the reasons previously set forth in this Notice, the board denies the major subdivision application because:

1. The conditional use permit has been denied, thus the major subdivision application cannot be approved. The impact on ground water also violates LDR § 606.7 for the reasons stated in Part I of this Notice of Decision.
2. It includes proposed Lot 2 which requires a special exception or a variance from the ZBA for the driveway crossing of wetlands buffer. The ZBA denied the applicants requests for special exception and variance relief.
3. It includes Lot 12, which requires a waiver of LDR requirements for the Designated Leachfield Area. The planning board denied the requested waivers.
4. Driveway sight distance easements required to assure safe egress from driveways on some lots have not been depicted on the Easement Plan.
5. The amount of bedrock to be jack hammered for infrastructure, house and septic system construction will be a noise nuisance to the neighborhood. LDR § <sup>7</sup>~~6~~ requires that land developments comply with the Rye Zoning Ordinance. RZO § 202.9 prohibits any use of thing which is injurious, noxious, or offensive to the neighborhood.

6. Lot 16 does not comply with the anti-gerrymandering provision of LDR § 602.1, A. (3).

III. Denial of Lot Line Adjustment Application.

The motion to deny the major subdivision application included denial of the Lot Line Adjustment Application.

Notice of Decision Approved: August 8, 2017

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William Epperson, Chairman  
Rye Planning Board

DRAFT

Acting Chair Losik asked the Board if they have any revisions to the draft Notice of Decision.

Planning Administrator Reed asked the Board if she could fill in the LDR section on page 8.

The Board agreed.

**Motion by Patricia Losik to reconsider the non-compliance to Section 306.C (4). Seconded by Jerry Gittlein. All in favor.**

**Motion by Patricia Losik that the application complies with Section 306.C (4). Seconded by J.M. Lord. All in favor.**

Acting Chair Losik stated that in thoroughly reviewing the notice of draft, which the Board has had for the last two weeks, it is believed it accurately and comprehensively states the reasons the Board voted to deny the application, except for the revision regarding RZO 306.C (4) and the minor revision that Administrator Reed mentioned. She asked each board member to comment on the draft NOD.

Member Gittlein stated it is well done and covers the areas that are valuable and important for the decision.

Member Arnold stated it comprehensively explains the reasons it was denied.

Member Low agreed.

Member Lord agreed, along with the insertions of the changes just made.

**Motion by Mel Low to approve the Notice of Decision as revised and authorize the chair or vice-chair to sign once revised. Seconded by Jerry Gittlein. All in favor.**

Acting Chair Losik noted the court appeal period begins with tonight's approval of the NOD. The applicant has thirty (30) days to appeal to Superior Court.

**Note: Anne Arnold was excused from the meeting at 7:33 p.m.**

**Priscilla Jenness was reseated for the remainder of the meeting.**



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

- a. Major Subdivision, Lot Line Adjustment (Lots 15-4 and 16) 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 single-family and multi-family dwellings with a portion being dedicated as Workforce Housing. Property is in the Commercial Zoning District. Case #17-2017. **Continued to the September meeting.**

**Motion by Mel Low to continue the application of the Housing Partnership to the September 12<sup>th</sup> meeting. Seconded by Jerry Gittlein. All in favor.**

**V. Public Hearings on Applications:**

- a. Major Subdivision, Lot Line Adjustment and Conditional Use Permit by Harbor Street Limited Partnership of Stratham NH for properties located at 421 South Road, Tax Map 4, Lots 25, 27, 31 & 32 for a 22 Lot subdivision. Properties are in the Single Residence District and within the Aquifer and Wellhead Protection District. Case #13-2016. **Continued for the Notice of Decision. Not open to the public for discussion.**
  - *Taken out of posted agenda order. Please see above.*
- b. Major Site Development Plan by WBTSCC Limited Partnership for property owned and located at 60 Wentworth Road, Tax Map 24, Lot 61-26, to replace an existing 50' golf net and nine (9) 50' wood poles with a ninety 90' golf net and nine (9) 90' steel poles. Property is in the Single Residence District. Case #06-2017. **Continued to the September meeting.**

**Motion by Mel Low to continue the application of WBTSCC Limited Partnership to the September 12<sup>th</sup> meeting. Seconded by Priscilla Jenness. All in favor.**

- c. Major Subdivision, Lot Line Adjustment (Lots 15-4 and 16) 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 single-family and multi-family dwellings with a portion being dedicated as Workforce Housing. Property is in the Commercial Zoning District. Case #17-2017. **Continued to the September meeting.**

**Motion by Mel Low to continue the Public Hearing for the application submitted by the Housing Partnership. Seconded by Priscilla Jenness. All in favor.**

- **Submittal of Applications for Determination of Completeness Not a public hearing.** – Action Required:
  - b. Amendment to the Breakers Condominiums approve by the Planning Board in January 1980, recorded at the RCRD D-9440 on April 18, 1980 for James J. Freiburger of 784 Ocean Blvd. #1, Tax Map 23.1, Lot 29-11, to replace a deck with an addition of a 16"x10' bench. Property is in the Business, Coastal Overlay District. Case #09-2017.

Acting Chair Losik stated this case was recently before the ZBA. It has come to the Planning Board for an amendment to the site plan.

Planning Administrator Reed noted there are some submittals in the board's packets. One of which is a notice of denial by the building inspector. There were two residents that went before the ZBA on the same night. The building inspector's assistant used the same letter for each applicant and did not change out the information. She asked the Board to disregard the statement in the notice saying that it was in the Town's right of way. That refers to the property of Andrew Foss, which is 800 Ocean Blvd, not to James Freiburger. Mr. Freiburger's property is at 784 Ocean Blvd and was for a deck with a bench, which was approved by the ZBA.

Acting Chair Losik asked the Board if they have any questions regarding the completeness of the information submitted.

The Board did not have any issues.

**Motion by Jerry Gittlein to declare the application complete. Seconded by J.M. Lord. All in favor.**

**Motion by J.M. Lord to take jurisdiction. Seconded by Jerry Gittlein. All in favor.**

#### **Public Hearing:**

**Jim Freiburger, 784 Ocean Blvd**, stated that this is an existing deck. It is rotted and does not meet the specifications. The proposal is to renew the deck and add 11x4ft on the ocean side. It will not obstruct any views. He continued the deck was built in 2000. There was a variance gained for a small section that is State property inside the wall that was built. He pointed out this is a single family, one bedroom unit. It is a four condo complex. (He pointed out the extension on the plans for the Board.)

Member Lord asked if all the deck is going to be replaced.

Mr. Freiburger replied yes.

Member Lord asked if the railing and steps are going to be replaced.

Mr. Freiburger replied yes.

The Board reviewed the site plan and the schematics submitted in the packets.

Speaking to Mr. Freiburger, Acting Chair Losik asked him to speak to the 16x10 bench.

Mr. Freiburger explained that in the area that is being extended there will be a bench but it will be inside the railing.

Acting Chair Losik stated this is where the Planning Board comes in because it is an alteration to the approved site plan.

No questions were heard from the Board.

Acting Chair Losik opened to the public for comments or questions.

**Maureen Murtagh, 795 Ocean Blvd**, stated that she lives across the street from the property. She asked to see a picture of the proposal.

Acting Chair Losik showed her a picture of the existing from the GIS.

Ms. Murtagh stated that she has lived across from the Breakers for 30 years. When she moved in she had a beautiful view but no longer has a beautiful view. She commented that a wall was put in about three years ago. Now she has a view of the wall.

Acting Chair Losik stated that the Board is looking at rights under the current regulations. She pointed out that if there was a view easement in her deed that protected the view it would be helpful.

Ms. Murtagh commented that there was an agreement when the condo went in that it would not obstruct the view. Things were allowed to happen at the Breakers and the view was taken away.

Acting Chair Losik noted that they are only discussing Mr. Freiburger's porch. She asked if there were any other concerns, other than the view, more specific to the porch.

Ms. Murtagh replied no. She just does not want them to take away any more of her view.

Acting Chair Losik noted that the only item before the Board tonight is the replacement of the deck with the 16x10ft bench. There may be concerns generally about the property; however, this is one very specific item.

**Walter Martin, 763 Ocean Blvd**, stated that when he read the abutters' notice it said 784. He thought it was a lower level of that unit. He thought it was one that had just been put in illegally a couple of years ago. The new owners of the property have completely killed the views. When the wall was washed away in the 90's, it was rebuilt higher than it ever was before. His contention is they do not need any more intrusions. He thinks the Board has to make sure that things are not built that keep taking away from the view that they are paying for through their taxes. (He pointed out on the map the location of his house.)

Acting Chair Losik stated that she appreciates both of them coming forward. However, what is before the Board is Mr. Freiburger's porch.

Ms. Murtagh asked what the proper venue would be to express their concerns.

Planning Administrator Reed noted that they should go to the building inspector.

Ms. Murtagh commented that she has been to the building inspector and did not get results.

Planning Administrator Reed commented that something should be put in writing and sent to the Selectmen.

**Peter Crawford, 171 Brackett Road**, stated that the agenda says 16 inches by 10 feet. It was also referred to as a storage area.

Acting Chair Losik clarified that the storage area is coming from the building department. The plan says it is to add a 16"x10' bench, with a storage box under, to the existing deck. She asked the applicant if the bench would have a seat that lifts up for storage underneath.

Mr. Freiburger confirmed.

Mr. Crawford pointed out that the applicant mentioned a figure of 4x11.

Member Lord explained this is the extension of the deck.

Mr. Freiburger stated that he is on the board at the Breakers and they have been trying to do things the right way. He is sorry that there has been miscommunication on this. It is in the best interest of the people who live there to make the community safe and not a hazard.

Acting Chair Losik asked for any other comments related to the case before the Board regarding the replacement of the deck with the addition of the 16"x10' bench.

Hearing no comments from the public, Acting Chair Losik closed the public testimony at 8:15 p.m.

No comments were heard from the Board.

**Motion by Jerry Gittlein to approve the application of James Freiburger as written and presented to the Board. Seconded by Mel Low. All in favor.**

**VI. Old Business**

- None

**VII. New Business**

Acting Chair Losik noted that the two proposed zoning amendments have been addressed by the Rules and Regulations Committee and are minor in their scope. The amendments came via the building inspector.

- a. Proposed Zoning Amendment 2018-01: Temporary Permits for Mobile Homes or House Trailers

The Board reviewed Proposed Zoning Amendment 2018-01.

**PROPOSED ZONING ORDINANCE AMENDMENT 2018-01**

**Re: Temporary Permits for Mobile Homes or House Trailers**

Amend Section 400.1 to change the reference to (from) Section 400.7 to Section 400.8, as follows: (Note: Deleted language ~~struck through~~. New language ***emboldened and italicized***).

**400.1 General:** The use, rental or maintenance of mobile homes or house trailers shall be permitted within the Town of Rye only in approved developed park sites and mobile home subdivisions or under temporary permits as per ~~§ 400.7~~ ***§ 400.8***.

Explanation

*This is a housekeeping amendment to correct a typographical error. § 400.8 allows the Board of Adjustment, after public hearing, to grant a temporary permit not to exceed ninety (90) days for a single mobile home or house trailer to be placed upon a lot in any district and used by the owner or owner's immediate family.*

**Motion by Priscilla Jenness to move Proposed Zoning Amendment 2018-01 to the September Planning Board meeting for a public hearing with the amendment to change the word “to” to “from”. Seconded by Jerry Gittlein. All in favor.**

b. Proposed Building Code Amendment 2018-01: Septic Systems in Wetlands Buffer

The Board reviewed Proposed Building Code Amendment 2018-01.

**PROPOSED BUILDING CODE AMENDMENT 2018-01**

**Re: Septic Systems in Wetlands Buffer**

Amend Section 7.9.4.1 of the Building Code as follows. (Note: Deleted language struck through. New language ***emboldened and italicized.***)

§ 7.9.4 Prohibited Conditions. The following are considered unsuitable for the disposal of septic and effluent and may not be remediated by the addition of fill, blasting, excavation or other methods.

7.9.4.4 The Wetlands ***Buffer*** of Section ~~301.7~~ ***301.8, A*** of the Zoning Ordinance ~~and all land within 100 feet of these protected wetlands~~ ***except replacement of existing septic systems pursuant to § 301.8, B. (2) of the Zoning Ordinance.***

Explanation

*The amendment makes the building code consistent with the Wetlands Ordinance as amended by voters in 2017. It also corrects an erroneous reference to the zoning ordinance section describing Wetlands Buffer.*

Planning Administrator Reed noted that a septic system can be replaced in kind. It cannot be made newer or bigger. If any changes are made it has to go to the ZBA.

Acting Chair Losik pointed out that the other thing about septic systems in 301.8,B. (2) is that existing systems located in the buffer must be replaced NH DES only, if no public or private sewer.

**Motion by J.M. Lord to move Proposed Building Code Amendment 2018-01 to the September Planning Board meeting for a public hearing. Seconded by Jerry Gittlein. All in favor.**

## **VIII. Pay Escrows**

- c. Danna Truslow - \$603.75 – Harbor Street – 421 South Rd Escrow
- d. Attorney Mike Donovan - \$499.88 – Harbor Street – 421 South Rd Escrow

**Motion by Mel Low to pay Danna Truslow in the amount of \$603.75 and Attorney Donovan in the amount of \$499.88 from the 421 South Road Escrow. Seconded by Jerry Gittlein. All in favor.**

### **• Rules and Regulations Committee**

Acting Chair Losik stated that the Rules and Regulations Committee is working through other amendments that have come up from building. The Committee is looking at impervious area coverage in 203.3 E, 204.3 E and 304.5 to conform those areas consistently in language. The Committee is working on Aquarion Well 5A and will be meeting with an Aquarion representative on August 22<sup>nd</sup>. The Committee is also looking at freeboard and wetlands. She continued that last year the Board convened a subcommittee of the Rules and Regulations Committee to address the wetlands ordinance study and proposed changes. That came about from the body of work that was undertaken by the Committee and included Tracey Degnan, Rockingham Conservation Commission, which was in the year of 2015. There were many changes suggested and a public hearing was held in December 2015. The public hearing was well attended. There was a great deal of information presented both pro and con. The sense was that the proposed ordinance was robust. There was some pushback and that is when it was decided to convene the subcommittee of Rules and Regs last year. The subcommittee met in August, September and October and brought some amendments that carried the support of the Committee. The Committee's views were diverse and a lot of time was spent looking at the components.

She continued that the consultant looked at the ability for the town to bring under one heading all of the wetland (water) assets. What that meant is that instead of the current definition it was expanding to include surface waters. Right now, the definition does not include surface waters. The Wetlands Subcommittee talked about where the town should go with surface waters. Because of the problems with buffer restrictions and grandfathering, an agreement could not be found amongst the Committee to a common solution. It was discussed that when the town had the resources it would be ideal to utilize a consultant to look at this again.

Planning Administrator Reed stated that right now there is a permit with EPA and DES on what is called MS-4. That is going to be coming June or July of 2018. At that point in time, the DPW Director is going to have to work with the Planning Board and the Sewer Commission. A committee will need to be formed to look at stormwater. At that time, some of the other issues of the Zoning Ordinance and LDR will have to be looked at. To hire a consultant at this time, might be too soon because the MS-4 Permit is going to have to be considered. The Rules and Regulations Committee agreed to have a comprehensive look at this at a later date. In the



meantime, the Rules and Regulations Committee talked about what could be done by the subcommittee. Both the Committee and the Building Inspector agreed that surface waters is one area that could be looked at in the meantime.

Acting Chair Losik stated that Rules and Regs does not want to lose the stream in regards to the work the subcommittee did last year. The Committee does not have the time nor the resources to address this in a significant way. The State of New Hampshire Protection Act enacted in 1991 establishes minimum standards for use and development of shore lands adjacent to the State's public water bodies. All of the State's shore land areas are covered under 483:B. A lot of the 483 language will expand buffers significantly. If the Town is silent, the State law will come into play. Some towns define them as prime and some have other designations. In looking at the language, sometimes a whole lot could be in a buffer. She thinks they are trying to balance two sides. The Committee can only do so much without the ability to hire a consultant. However, on the other side there is this group that has worked together and maybe there are things that can be looked at.

Acting Chair Losik noted that they do not have a consultant. There could be about six to eight meetings the committee could hold. She asked the Board if they should go ahead and continue the work to look at these areas.

Member Gittlein asked if it has been a problem with homeowners and builders with regard to the definitions.

Acting Chair Losik explained that the building inspector has expressed his concern on 301.8, Wetlands Buffer. One of the things he wants to do is look at the monuments and markers. Once they are on the properties the homeowner and abutters know the wetland boundary. He also suggested that it would be easier for the owners and the enforcement staff if the town's ordinance were in line with the DES Shoreland Protection Act, which is 483:B. That way owners would have to comply with one set of rules.

Member Gittlein asked how she feels about this.

Acting Chair Losik stated that she is loath to give up that good work. She felt the committee was invested and there were many areas of view represented. In terms of setting the stage as a collaborative group and working towards what may happen next year, it may be worthwhile. She read from Durham's and Rye Beach's ordinance, which follows RSA 483:B.

There was some discussion on the markers as suggested by Peter Rowell.

Planning Administrator Reed asked the Board if they would like the Rules and Regulations Committee to reconvene a Wetlands Committee to look at surface waters.

Member Lord stated that he thinks they should. It seems that they have been "kicking the can down the road" for a couple of years now.



Member Gittlein stated that he thinks it has merit to reconvene.

Member Low commented that they should come up with a figure for a consultant.

Acting Chair Losik pointed out this would be a different step for next year.

Selectman Jenness commented that she is fine with reconvening the subcommittee.

Acting Chair Losik stated that the charge will be to reach out to the subcommittee and reconvene. She can write up three central tenants in terms of what was discussed tonight. This will be an interim step towards the work that will be done in 2018 in regards to stormwater and the MS-4 Permit.

Member Gittlein commented the subcommittee did a lot of good work that should be built on.

- **Approval of Minutes of July 11, 2017**

The following corrections were noted:

- Page 2, 1<sup>st</sup> paragraph, 1<sup>st</sup> sentence should read: **Mike Busby, engineer for Eversource, noted that two existing transformers will be replaced that currently feed west Rye and Route 1 south.**
- Page 2, 1<sup>st</sup> paragraph, 4<sup>th</sup> sentence should read: **The substations are being replaced to get rid of the capacity issue, age issue and to allow other substations to tie into this substation, which will allow for backup during power outage situations.**
- Page 7, last paragraph, 2<sup>nd</sup> sentence from bottom should read: **As to the height, it is his opinion that the Club has the right to allow, and the members have the right to use, any and all clubs they can use if it is reasonable, possible and safe.**
- Page 7, last paragraph, last sentence should read: **They determined that it is not always safe in 2017 to use large head golf clubs so they want to raise the net.**
- Page 9, 2<sup>nd</sup> paragraph from bottom, 3<sup>rd</sup> sentence should read: **He pointed out that the trees are at a certain height now; however, he assumes they are still growing.**
- Page 12, 4<sup>th</sup> paragraph, it should be noted that it is **Jerry Quirk, 561 South Road.**
- Page 12, 6<sup>th</sup> paragraph, 3<sup>rd</sup> sentence should read: **She and her husband met with Mr. Diodati in February regarding this proposal and he said that right now they do not allow woods on the days the Ice House is open.**
- Page 14, 5<sup>th</sup> paragraph from bottom, 1<sup>st</sup> sentence should read: **Member Lord stated that at the last meeting he heard Mrs. King talk about 'East Coast Flyway'.**

- Page 14, 5<sup>th</sup> paragraph from bottom, 2<sup>nd</sup> sentence should read: **He looked that up and there are 350 varieties of birds that fly up and down the coast.**
- Page 18, 5<sup>th</sup> paragraph, 1<sup>st</sup> sentence should read: **Attorney Kuzinevich stated that the second waiver request is for the buffer from any kind of ledge or rock, within 24 inches of the surface, be reduced from 75ft to 55ft.**
- Page 19, 6<sup>th</sup> paragraph, last sentence should read: **The State has some technologies that are out now that are doing passive renovation which is quite substantial.**
- Page 14, 5<sup>th</sup> paragraph from bottom, 6<sup>th</sup> sentence should read: **In his mind, it comes down to business risk assessment.**
- Page 15, 2<sup>nd</sup> paragraph, 4<sup>th</sup> sentence should read: **In looking at the picture with the poles at 90ft, she is visually offended by the height of the net.**

**\*Note:** Priscilla Jenness recused herself from correction of the minutes for pages 16 to 25.

**Motion by Mel Low to approve the minutes of July 11, 2017 as amended. Seconded by Jerry Gittlein. All in favor.**

#### **IX. Communication**

- None

#### **Adjournment**

**Motion by Jerry Gittlein to adjourn at 9:10 p.m. Seconded by Mel Low. All in favor.**

Respectfully Submitted,  
Dyana F. Ledger

# RYE PLANNING BOARD

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

## Notice of Decision

**Applicant:** Harbor Street Limited Partnership of Stratham NH

**Property:** 421 South Road Tax Map 4, Lots 25, 27, 31 & 32 for a 22 Single Residence District

**Case:** Case #13-2016

**Application:** Major Subdivision, Lot Line Adjustment and Conditional Use Permit by Harbor Street Limited Partnership of Stratham NH for properties located at 421 South Road Tax Map 4, Lots 25, 27, 31 & 32 for a 22 Lot subdivision. Property is in the Single Residence District and within the Aquifer and Wellhead Protection District. Case #13-2016.

**Date of Meeting:** Tuesday, July 18, 2017

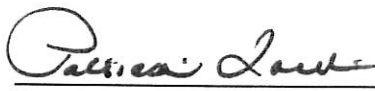
**Date of Decision:** Tuesday, August 8, 2017

**Decision:**

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

*See Attached reasons for denial*

8/8/17  
Date

  
\_\_\_\_\_  
Patricia Losik, Vice-Chairman  
Rye Planning Board

STATE OF NEW HAMPSHIRE  
TOWN OF RYE PLANNING BOARD

STONELEIGH PRESERVE APPLICATIONS  
Case No. 13-2016

NOTICE OF DECISION

The tract proposed for development presents more difficult environmental challenges than any other tract approved for major subdivision in Rye. Among the characteristics of the tract which constrain its development potential are:

- Substantial amounts of exposed bedrock. Some outcroppings are massive.
- Shallow to bedrock soils over much of the tract.
- The presence of shallow to seasonal high-water table soils.
- The difficulties presented by the soils on the tract are evidenced by the fact that almost 200 test pits and ledge probes were required in order to locate soils suitable for leachfields for the 17 lots of the final proposal.
- High water table subject to rapid fluctuations in elevation after major storm events.
- Wetlands inter-dispersed throughout the site.
- Four (4) vernal pools.
- A rare Atlantic White Cedar Forest located 170 feet to the north of the area proposed for development, part of which is on the applicant's tract. The Atlantic White Cedar Forest is partly owned by The Nature Conservancy. It is considered exemplary by the NH Natural Heritage Bureau and is home to "Old Knobby", the State Champion Atlantic White Cedar.
- The presence of lineaments. Lineaments are photo linear features that are likely the result of underlying zones of fractured bedrock.

Unlike most of the land which has been developed as major subdivisions in Rye, this tract from the onset of early settlement was not farmable and was mainly used for woodlots or grazing of sheep, cows and goats.

The tract is within the Rye Water District (RWD) Wellhead Protection District Established by NH DES and protected by the Aquifer and Wellhead Protection District of the Rye Zoning Ordinance (RZO). This district is intended to protect the RWD's Cedar Run and Bailey Brook wells. Two lineaments cross the tract in a SE to NW direction towards the RWD wells. The lineaments could represent zones of preferential ground water flow.

I. Denial of the Conditional Use Permit (CUP).

In order to grant the CUP required by the RZO Aquifer and Wellhead Protection District the planning board must determine that each of the requirements of RZO § 306.5, C. (1-5) are met.

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

The board voted 6-0 that this requirement is not met.

The high quality of Rye's drinking water is one of the town's most valuable assets, if not the most valuable. The board reviewed dozens of pages of reports from hydrogeologists and others relative to water quality issues and listened to substantial amounts of public testimony on water quality. The bottom line is that, despite the applicant's willingness to prohibit blasting, no one can guarantee that the development of this subdivision as proposed will not pose a threat to the quality of the groundwater or that it will not threaten the quality of water in the Rye Water District Wells.

The planning board's hydrogeologic peer review consultant suggested that further geophysical investigation of subsurface bedrock characteristics could identify probable zones of weakness and shallow ground water flow. The applicant did not conduct the further investigations suggested.

The town's experience with innovative septic system technology indicates that such

systems cannot be relied upon to function as represented. See discussion of septi-tech systems in Part II of this Notice of Decision.

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

The board voted 5-1 that this requirement is met.

3. *The proposed use will discharge no waste water on site other than that typically discharged by domestic waste water disposal systems and will not involve on-site storage or disposal of toxic or hazardous wastes as herein defined.*

The board voted 6-0 that this requirement is not met.

The record indicates that at least 8 lots which back up to wetlands lots will have steep driveways requiring salting in the winter. The runoff from salted driveways, parking areas and walkways will harm ground water and surface water quality.

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

The board voted 5-0-0 that this requirement is met.

The Rye Water District indicated there is a summer problem with reduction in water volume due to lawn irrigation. The proposed 17 lot subdivision will worsen this problem.

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

The board voted 6-0 that this requirement is not met because the proposed use does not comply with RZO Sections 306.2, A-D or with Section 306.6, D.

*306.2 Purpose: The purpose of the Aquifer and Wellhead Protection District is to protect, preserve and maintain the groundwater resources and groundwater recharge areas in the Town of Rye. The objectives are:*

- A. *To protect the public health and general welfare of the citizens of Rye.*
- B. *To prevent development and land use practices that would contaminate or reduce the recharge to the identified aquifers.*

- C. *To assure the availability of public and private water supplies for future growth of the Town in accordance with the Master Plan.*
- D. *To encourage land uses that can appropriately and safely be located in the aquifer recharge areas.*

§ 306.6, D. **Salt, De-icing.** *Streets, roads, driveways and parking areas shall be constructed so that the need for direct application of road salt and de-icing substances is eliminated or minimized to the greatest extent possible. Runoff from such surfaces shall be channelized to avoid, or minimize to the greatest extent possible, groundwater contamination, consistent with Best Management Practices for Urban Stormwater Runoff, NHDES, January 1996, or revisions thereto. (Rev 2/10/15).*

After voting on each of the above five requirements the board voted 6-0 to deny the Conditional Use Permit because four of the requirements of RZO § 306.5, C. were not met, specifically C.1, C.3, C.4 and C.5.

## II. Denial of Major Subdivision Application.

The board voted 6-0 to deny the major subdivision application, as revised to a 17-lot proposal. The applicant did not establish that the application complied with the following sections of the *Rye Planning Board Land Development Regulations* (LDR's).

### *SECTION 606 STANDARDS FOR THE PRESERVATION OF NATURAL FEATURES AND THE ENVIRONMENT*

#### *606.1 General.*

*The land developer shall identify and take suitable steps as required by the Planning Board to preserve and protect significant existing features such as trees, scenic points, brooks, streams, rock outcroppings, water bodies, wetlands, other natural features and historic landmarks.*

#### *606.2 Character of Land for Development.*

*Land judged by the Planning Board to be unsafe for building development because of exceptional danger to health or peril from fire, flood, tidal water, poor drainage, impermeable soil, excessive slope or other hazardous conditions shall not be approved for development until appropriate measures have been taken to eliminate the hazards.*

#### *606.4 Woodlands and Trees.*

*Within a proposed street ROW, existing woodlands shall not be disturbed behind line three feet from the back edge of the ditch line paralleling the street. Trees within existing Town rights-of-way shall not be disturbed without the specific approval of the Planning Board, which may require a suitable replacement.*

*606.7 Groundwater Protection.*

*Land Developments shall not adversely affect the groundwater resources of the Rye Water District; of the water districts of surrounding towns; or of individually owned wells.*

*611.2 Natural Features.*

*The design of site developments shall fit the existing natural and man-made environments with the least possible disturbance.*

*A. Site Preparation: Site preparation is to be conducted with minimal disturbance to existing vegetation. Stripped topsoil is to be piled and reused on the site where needed. A minimum of 4 inches of topsoil is to be placed on the disturbed area. The site shall be adequately seeded and/or landscaped.*

*B. Grading and Filling: Grading and filling shall be minimized.*

*C. Landscaping: Landscaping must be provided with proper regard to adjacent properties, public streets and highways and the aesthetics of the site itself and its intended use. Landscape treatment shall consist of natural, undisturbed vegetation or features, and/or ground cover, shrubs or trees as appropriate.*

With respect to the foregoing italicized requirements, the board determined that.

1. Due to the topography of the site and the presence of bedrock outcroppings and shallow bedrock, the proposed subdivision unreasonably destroys too much of the natural terrain, including woodlands. The cross-section drawings indicate that more than 70% of Stoneleigh Way and more than 96% of Francis Path will require alteration (i.e. destruction) of the natural terrain, including destruction of woodlands, through filling or excavation that extends beyond the typical 50 ft. wide ROW specified in Figure 1 of the LDR's. More than 30% of Francis Path and 20% of Stoneleigh Way will extend alteration of the natural terrain to a width beyond 70 ft. Four (4) cross-sections of Stoneleigh Way extend > 50 ft. to the left side of the centerline.

The clearance of woodlands and re-grading for development of homes, driveways and lawns and for the gravel wetland and bio-retention pond and their access ways unreasonably increases the alteration of the natural terrain.

Adequate woodland buffers of abutting properties are not preserved on Francis Path and adjacent to the gravel wetland.



2. The proposed subdivision poses an unreasonable risk to the Atlantic White Cedar Forest (AWCF) because of:

- The nitrate plumes entering the wetlands which flow into the AWCF.
- Sheet runoff from lots adjacent to the wetlands which flow into the AWCF.
- Drainage from the level spreader on the boundary of Lots 5 & 6.
- Phosphorous.

The buffers proposed by the applicant are not sufficient to guarantee that there will be no harm to the Atlantic White Cedar Forest. The applicant's representation that the buffer will be approximately 700 ft. is misleading. First, the 700 ft. is measured from the forest, not from the wetlands which feed the forest. Second, on Lots 7 & 8 only one protrusion of the buffer is 700 ft. from the forest. Most of the buffer on Lot 5 is 500 ft. from the forest. As measured from wetlands which feed the forest about half of the buffer on Lot 7 is 250 ft. or less, and some of the buffer on Lots 5 and 6 is less than 100 feet.

Experience with the septi-tech systems installed in the Marjorie Way Subdivision indicates that the lower nitrate levels which the systems are supposed to produce may not be achieved. The effectiveness of these systems relies, in part, on stewardship by homeowners and homeowners' associations to enforce required inspections, maintenance and repair in perpetuity. The town cannot be assured that this will be done.

Similarly, relying on deed restrictions and restrictions in condominium declarations to enforce buffer restrictions in perpetuity does not assure that encroachments and destruction of buffers will not occur. Experience shows that homeowners and home owners associations do not pay much attention to these restrictions, and the town does not have the personnel resources to continually monitor and enforce such restrictions.

3. The proposed subdivision poses an unreasonable risk to the vernal pools and other wetlands on the tract. As board member Lord has pointed out several times, the culvert at Stoneleigh Way Sta. 11+00 will drain the 16,428-sf wetland on Lot 15, thereby destroying it.

± 550 ft. of Stoneleigh Way will outlet into the level spreader which is at the edge of the large vernal pool on Lot 2. The risk of road runoff contaminants harming the vernal pool is unreasonable, particularly given that a different drainage layout could avoid this.

The natural constraints of the tract have caused the applicant to use five (5) different drainage features to treat road drainage: a gravel wetland (a first for Rye); a bio-retention facility; and three (3) level spreaders which outlet directly into wetlands, including the vernal pool on Lot 2. There is no guarantee that any of these features will be adequately maintained and repaired to function as intended. The use of the level spreaders poses an unreasonable risk of contamination of the

wetlands. The effectiveness of level spreaders in removing contaminants flushed during periods of very heavy rainfall is questionable.

A noted in Part I of this Notice of Decision, 8 lots which back up onto wetlands will have steep driveways requiring salting in winter.

4. At the April 26, 2017 work session when retention of woodlands was discussed, the applicant stated that based on his experience with his Brackett Road subdivision, the houses will need a fall zone to protect them from blow downs. Blow downs are more common where shallow ledge and soils which get saturated with water exist. Also, it's common knowledge that when some trees on the edge of a stand of trees are removed, the remaining trees are more susceptible to being blown down. If homeowners try to establish a 60-ft. fall zone around new homes there will be impacts on 17,700 sf of wetlands buffer and 6250 sf of wetlands.

Apparently because of his desire to allow future lot owners to remove trees, the applicant has not proposed any restrictions on tree cutting on lots, other than for the buffer of the Atlantic White Cedar Forest and the wetlands buffer of the RZO. The board notes that the RZO wetlands buffer does not have woodland preservation as an objective, per se. It allows 50% of the basal area within the buffer to be cut.

5. As the  $\pm$  200 test pits and ledge probes indicate, shallow ledge and/or high-water tables exist on many of the proposed lots. That limits the infiltration of groundwater so that the surfaces get easily saturated. This requires that houses on 10 of the lots will require sump pumps, 13 of the lots will require mounded up septic fields and 6 of the sites will require mounded up home sites. This represents an unreasonably excessive filling and grading which does not maintain the character of the land, which does not fit into the natural environment and which is an unreasonable disturbance of the environment. *E.g.* Lot 1
6. The construction of Francis Path as it passes the Seiner property (Sta. 3+00 to 4+00) has a shallow 1 ft. deep ditch with an embankment on the east side of the ditch which slopes down towards the Seiner lot. The elevations are such that the ditch may overflow onto the Seiner property during heavy storms.
7. The gravel wetland occupies  $\pm$  14,000 sf (1/3 of an acre) of Lot 4, not including the 300-ft. access road also located on Lot 4. This large drainage feature is incompatible with residential living. Additionally,
  - It is too close to the abutting residential property with an insufficient wooded buffer.
  - It may be a structure which would require a variance from the RZO 30 ft. rear setback requirement.
8. LDR § 601.1 requires that all land developments comply with the provisions of the Rye Zoning Ordinance. RZO § 507.2 re: storm water management states:

*§ 507.2 Drainage onto Adjacent Properties: No use of land; no construction, reconstruction, alterations, replacement, or expansion of buildings, structures and impervious surfaces; no grading of the land; and no destruction or alteration of natural vegetation or ground cover shall increase the surface water drainage flowing onto an adjacent property unless a drainage easement allowing such flowage in perpetuity is recorded.*

There are two (2) locations where drainage from the proposed subdivision flows into wetland systems which extend onto abutting lots: (1) the level spreader on Lot 9; and (2) the outlet to the gravel wetland on Lot 4. The applicant has not established that increased drainage into these wetlands will not violate § 507.2. Also, the road cross-section adjacent to the Seiner property may drain onto the Seiner lot. (See No. 6 above).

9. The applicant has suggested that the proposed homeowner's association can provide the monitoring and stewardship necessary to enforce the many requirements on which protection of the town's water supply and other important natural features depends. The subdivision, if built, will extend long after the developer has gone. Lots will change ownership. The town's experience is that the stewardship does not happen. The town does not have the resources to monitor and enforce all of the requirements necessary to protect the natural resources impacted by this proposed subdivision.

In addition to all of the reasons previously set forth in this Notice, the board denies the major subdivision application because:

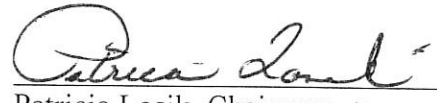
1. The conditional use permit has been denied, thus the major subdivision application cannot be approved. The impact on ground water also violates LDR § 606.7 for the reasons stated in Part I of this Notice of Decision.
2. It includes proposed Lot 2 which requires a special exception or a variance from the ZBA for the driveway crossing of wetlands buffer. The ZBA denied the applicants requests for special exception and variance relief.
3. It includes Lot 12, which requires a waiver of LDR requirements for the Designated Leachfield Area. The planning board denied the requested waivers.
4. Driveway sight distance easements required to assure safe egress from driveways on some lots have not been depicted on the Easement Plan.
5. The amount of bedrock to be jack hammered for infrastructure, house and septic system construction will be a noise nuisance to the neighborhood. LDR § 201.2 requires that land developments comply with the Rye Zoning Ordinance. RZO § 202.9 prohibits any use of thing which is injurious, noxious, or offensive to the neighborhood.

6. Lot 16 does not comply with the anti-gerrymandering provision of LDR § 602.1, A. (3).

III. Denial of Lot Line Adjustment Application.

The motion to deny the major subdivision application included denial of the Lot Line Adjustment Application.

Notice of Decision Approved: August 8, 2017

  
Patricia Losik, Chairman, *vice chair*  
Rye Planning Board

# RYE PLANNING BOARD

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

## Notice of Decision

**Applicant/Owner:** WBTSCC Limited Partnership

**Property:** 60 Wentworth Road, Rye, Tax Map 24, Lot 51-26  
Property is in the Single Residence District

**Case:** Case #06-2017

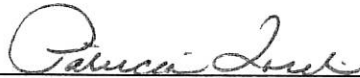
**Application:** Major Site Development Plan by WBTSCC Limited Partnership for property owned and located at 60 Wentworth Road, Tax Map 24, Lot 61-26 to replace an existing 50' golf net and nine (9) 50' wood poles with a ninety 90' golf net and nine (9) 90' steel poles. Property is in the Single Residence District. Case #06-2017.

**Date of Decision:** Tuesday, August 8, 2017

**Decision:**                      x                      Continued

*The application continued to the September 12, 2017 meeting.*

8/8/17  
Date

  
\_\_\_\_\_  
Patricia Losik, Vice-Chairman  
Rye Planning Board

# 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 (Lots 15-4 and 16) 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 single-family and multi-family dwellings with a portion being dedicated as Workforce Housing. Property is in the Commercial Zoning District. Case #07-2017.


**Date of Decision:** Tuesday, August 8, 2017

**Decision:**

<u>      </u>	Approved
<u>      </u>	Conditionally Approved
<u>      </u>	Denied
<u>  <b>X</b>  </u>	Continued

*The application was moved to the September 12, 2017 meeting.*

8/8/17  
Date

  
\_\_\_\_\_  
Patricia Losik, Vice-Chairman  
Rye Planning Board

# RYE PLANNING BOARD

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

## Notice of Decision

**Applicant/Owner:** James Freiburger of 24 String Bridge Street, S-8, Exeter NH

**Property:** 784 Ocean Blvd, Tax Map 23.1, Lot 29-11  
Property is in the Business, Coastal Overlay District  
SFHZ, AO Elv. 1"

**Application case:** Case # 23-2017

**Date of decision:** August 8, 2017

**Decision:** Amendment to the Breakers Condominiums approved by the Planning Board in January 1980, recorded at the RCRD D-9440 on April 18, 1980 for James J. Freiburger of 784 Ocean Blvd, #1 Tax Map 23.1, Lot 29-11 to replace a deck with an addition of a 16" x 10' bench. Property is in the Business, Coastal Overlay District, Case # 09-2017.

**Decision:**

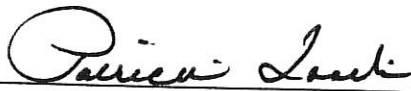
<u>  x  </u>	Approved
<u>      </u>	Approved with Conditions
<u>      </u>	Denied
<u>      </u>	Continued

*Motion by Jerry Gittlein to declare the application complete. Seconded by JM Lord. The application was unanimously accepted vote 5-0-0 as complete and moved for a public hearing on its merits.*

*Motion by JM Lord to accept jurisdiction over Case #09-2017. Seconded by Jerry Gittlein. All in favor vote 5-0-0.*

*Motion by Jerry Gittlein to approved the application as presented, seconded by Mel Low. Unanimously approved vote 5-0-0.*

8/8/17  
Date

  
Patricia Losik, Vice-Chairman  
Rye Planning Board