

TOWN OF RYE – PLANNING BOARD

**Tuesday, October 9, 2018
7:00 p.m. – Rye Town Hall**

***Members Present:* Acting Chair Patricia Losik, J.M. Lord, Jeffrey Quinn, Jerry Gittlein, Steve Carter, Selectmen's Rep Priscilla Jenness, Alternates Katy Sherman and Nicole Paul.**

***Others Present:* Attorney Michael Donovan and Planning Administrator Kimberly Reed**

I. Call to Order and Pledge of Allegiance

Acting Chair Losik called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

II. Designation and appointment of alternates

Acting Chair Losik seated Nicole Paul for Bill Epperson.

Motion by Jerry Gittlein to take the following two agenda items out of posted agenda order. Seconded by Priscilla Jenness. All in favor.

III. Approval of the September 11, 2018 meeting minutes (Tabled to end of meeting)

IV. Public Hearing on Proposed Zoning Amendments – Action Required:

- **Amendment No: 2019-01: Correction of Erroneous References/Indexing
(Tabled to end of meeting)**

V. Submittal of Applications for Determination of Completeness – Action Required: (Not a public hearing, if deemed complete the application will move to a public hearing below)

- a. Conditional Use Permit Application for Karl & Andrea Swanson for property located at 320 Brackett Road, Tax Map 19, Lot 137, for an existing detached cottage to be an Accessory Dwelling Unit per Section 506 of the Rye Zoning Ordinance. **Property is in the Single Residence District. Case #22-2018.**

***Applicant requested to be continued to the November meeting.**

Motion by Steve Carter to continued the application of Karl & Andrea Swanson to the November Meeting. Seconded by J.M. Lord. All in favor.

- b. Lot Line Adjustment Plan by Joe Tucker and by Mildred E. Pike for property owned and located at 0 Garland Road (155 Garland Rd) Tax Map 7, Lot 10 and 80 West Road, Tax Map 6, Lot 44-1, for an adjustment between the properties. **Properties are in the Single Residence District. (In the Aquifer and Wellhead Protection District also.) Case #23-2018.**

Alternate Sherman noted that she is an abutter. She recused herself from any discussion.

Acting Chair Losik noted that this property is also in the Aquifer and Wellhead Protection District. She explained this is for a lot line adjustment between two adjacent properties; on West Road and Garland Road. (She pointed out on the plan the two locations for the lot line adjustment being requested.)

Motion by Jeffrey Quinn to accept the application as complete. Seconded by J.M. Lord. All in favor.

- c. Minor Three Lot Subdivision by Brian Roper, Trustee of the Lee H. Roper Family Trust of 71 Irish Setter Lane, Guilford, NH, for property owned and located at 85 Brackett Road, Tax Map 22, Lot 67. **Property is in the Single Residence District. Case #24-2018.**

The Board reviewed the packet for 85 Brackett Road.

Acting Chair Losik noted that this plot of land is approximately 26 to 27 acres. The request involves subdividing the property into three lots; one with the existing home plus two vacant lots. She continued that she believes there is an issue with non-compliance with the DLA and its proximity to ledge on lots 2 and 3.

Member Lord concurred.

Paul Dobberstein, Ambit Engineering, stated that he received Attorney Donovan's comments. He has a waiver request for that item if the Board will allow him to submit it.

The members discussed whether or not to accept the waiver request and continue to hear the application at this meeting. The majority of the Board agreed that the applicant should be invited back for next month, as the submittal is last minute and they have not had a chance to review the waiver request.

Attorney Donovan suggested to Mr. Dobberstein that more information and clarification be provided on the test pits for lot 1 and lot 3.

***To be heard at the November meeting.**

VI. Public Hearings on Applications:

Acting Chair Losik requested to move the Lot Line Adjustment Plan by Joe Tucker out of posted agenda order and address it next.

**Motion by Jeffrey Quinn to move the application for Joe Tucker to the forefront.
Seconded by Nicole Paul. All in favor.**

Alternate Member Sherman recused herself from the application.

- a. Lot Line Adjustment Plan by Joe Tucker and by Mildred E. Pike for properties owned and located at 0 Garland Road (155 Garland) Tax Map 7, Lot 10 and 80 West Road, Tax Map 6, Lot 44-1, for an adjustment between the properties. **Properties are in the Single Residence District. (In the Aquifer and Wellhead Protection District also.) Case #23-2018.**

Joseph Tucker, applicant, (also representing Mildred Pike), spoke to the Board. Pointing out Lot 7-10 on the plan, he stated that he currently owns that 5-acre parcel. Mrs. Pike owns the land behind that parcel. (He pointed the location out on the plan.) He continued that he will be buying an 8-acre parcel, known as the hill field. There is a total of 15.6 acres currently. When the project is complete, he will own 8 acres and Mrs. Pike will own 7 acres. The existing lot line will be abandoned so Lot 7-10 and part of Lot 44-1 will be one parcel consisting of 13 acres.

Acting Chair Losik commented that Mr. Tucker's property for his residence (Washington Road) does not abut this property at all.

Mr. Tucker confirmed.

Member Carter stated that he had a question as to whether this was going to be combined with that property to create a continuous piece of property.

Acting Chair Losik asked what the plans are for the property.

Mr. Tucker stated that he and his wife bought the 5-acre parcel about 15 years ago. He continued that the main reason he is buying this parcel is so it cannot be developed. He would like to have the land maintained in conservation. The land has been abused over the years so the first project will be to clean up the property.

Acting Chair Losik asked if "clean-up" means cleaning out the overgrowth.

Mr. Tucker replied that there is old lumber piled on the property, old lawnmowers and shingles. All of that will be cleaned out. The property has also been stripped of the loam and that will be regenerated.

Acting Chair Losik opened to the public for comments. Hearing no comments, she closed the public hearing at 7:17 p.m.

No comments were heard from the Board.

Motion by Nicole Paul to take jurisdiction. Seconded by J.M. Lord. All in favor.

Motion by Jeffrey Quinn to approve the lot line adjustment referenced in Case #23-2018. Seconded by Jerry Gittlein. All in favor.

Katy Sherman returned to the table.

- b. Major Subdivision by Tuck Realty Corporation for property owned by Joseph Goss and located at 0 Ocean Blvd, Tax Map 8, Lots 58 & 59, for a 5-lot subdivision. **Property is in the Single Residences District. Case #11-2018.**

Attorney Tim Phoenix, representing the applicant, spoke to the Board. He noted that Attorney Donovan provided a memo to the Board, dated October 3rd, with his comments and questions about compliance. He submitted a response to that memo earlier in the day. (He submitted copies to the Board.) He continued that the last time the application was before the Board, there were questions about waivers and Land Development Regulations (LDR) compliance. There are two memos that have been submitted, one dated September 28th and the other just submitted. The one dated September 28th was in response to the waiver request in regards to hardship and spirit and intent of the regulations.

Mike Garrepy, Tuck Realty Trust, stated that Jeff Highland has prepared some visualizations for the Board and can address the landscaping plan.

Jeff Highland, Landscape Architect, presented the existing conditions plan to the Board. He explained the existing field is approximately 3.75 acres. The proposed area of disturbance is about 1.75 acres. That will leave a field, which will be maintained, of about 2 acres. There are also deed restricted areas. Those areas include all the marsh, woodland and every area that is not being impacted by the development, which is a total of almost 12 acres. There are notes included in the Board's packets that include a list of appropriate maintenance practices to maintain the field as it is today.

Member Quinn asked who would be responsible for the maintenance.

Mr. Highland replied that it would be the responsibility of the homeowners' association.

Member Quinn asked if the home proposed for Locke Road will be part of the homeowners' association.

Mr. Garrepy replied yes.

Attorney Phoenix explained that there will be homeowner association documents. Anyone who owns will be required to be a member of the homeowners' association. The documents will be recorded and will outline the responsibilities, enforcement by the association against the individual owners and by the Town against the association.

Acting Chair Losik asked if there were other considerations besides the homeowners' association, such as a conservation organization.

Mr. Garrepy explained that he met a couple of times with the Conservation Commission. He may need to get creative, post-approval, with some kind of zoning relief to carve off the tidal marsh. He noted there is land owned by the Town adjacent to the property. It might make sense for the Town to own that tidal marsh in its entirety. He continued that they are really contemplating deed restrictions but would also consider some kind of conservation easement on the property.

Mr. Highland noted that the light green area (shown on the plan) is designated field.

Acting Chair Losik asked if this is part of the parcel deeds to the future homeowners.

Mr. Highland confirmed.

Acting Chair Losik asked about the area highlighted in grey (shown on the plan).

Mr. Highland stated that this is wooded area or the open marsh.

Mr. Garrepy explained this will be owned by individual lot owners but it will be governed by a deed restriction that will be enforced by the homeowners' association and the Town.

Mr. Highland noted that the individual owners really only have control of the dark green areas (on plan) where they can do their own landscaping.

Acting Chair Losik asked if homeowners have a responsibility to the balance of the land.

Mr. Highland confirmed.

Mr. Garrepy commented it is a collected responsibility because it was felt that this would be the best way to protect the open space.

Acting Chair Losik stated that she is thinking about who would take care of that area after a bad storm or very bad winter, which could be problematic.

Mr. Garrepy explained there will be different maintenance plans in those documents for the deed restricted areas.

Member Quinn stated that the water retention areas will need to be maintained. He sees little logic in requiring a person, who is purchasing the property off of Locke Road, to bear any of the financial burden. He is not sure what other responsibilities the association would have that would result in money paid in and benefit received.

Mr. Garrepy explained that the Locke Road property would be excluded from certain requirements in the homeowner association documents. They would be part of the homeowners' association in a limited capacity. He noted that part of the lot is encumbered by the proposed deed restricted area.

Acting Chair Losik asked if the Locke Road property would be responsible for what currently exists with Lot 58.

Member Carter commented that Lot 58 includes a huge chunk of the marsh.

Mr. Garrepy explained that the homeowner would be responsible for whatever is encumbered by the deed restriction on their lot. Their responsibility would be to make sure the deed restrictions are adhered to. He is guessing that most of the area and the tidal marsh would be fairly low maintenance. For the most part, it is untouched area.

Referring to the plan, Attorney Donovan asked the difference between the light green areas, which are part of the crosshatch, and the light green areas that are not part of the crosshatch. The notes seem to indicate there are restrictions on both. He asked why the crosshatch does not cover the entire light green area.

Mr. Highland explained that those areas would have different maintenance requirements.

Mr. Garrepy stated that the crosshatch could be extended into the field. A better line could be defined.

Attorney Donovan stated there are either two different sets of restrictions in mind, because there are clearly two different areas, or the crosshatch should cover all the light green area.

Mr. Highland noted the light green area is field and is going to be preserved as such.

Mr. Garrepy commented that they tried to follow the natural features with the deed restriction line and the 75ft wetland buffer line.

Mr. Highland pointed out that the field will be mowed once per year, which is usually enough to keep the woody vegetation at bay.

Acting Chair Losik asked if the mowing restriction will be part of the deed.

Mr. Garrepy confirmed. It will be in the homeowner association documents that it will be required to be mowed once per year. He pointed out that they are suggesting that it be mowed once per year, probably late summer.

Acting Chair Losik stated that she suspects the homeowners will be pushing back on that because they will not want that kind of growth. The back of three of the properties are right at the DLA, which is not far from the houses.

Mr. Garrepy stated that they anticipate that there will be buyers that will want to be in this exact type of environment. They devised a plan that over 50% of the field is supposed to be preserved in perpetuity. Also, over 80% of the property is proposed for permanent protection as well.

Regarding the landscape plan, Mr. Highland stated there have not been significant changes in the recent submission. The plan stayed relatively consistent with just a few tweaks. The vegetative buffer has been enhanced. (He reviewed the landscape plan for the Board.) At the entrance to the neighborhood, there is a proposal for a new stonewall that will mimic the existing wall to create more consistency in the stonewall edge along Harbor Road. The plantings will be behind the wall. It is not going to be something that is highly landscaped along Harbor Road. It is going to stay much like it is today. There is a Red Oak Tree at the entrance, which is approximately 54 inches in diameter around the trunk. That area has been designated as a Tree Preservation Zone. Fencing will be put around the area and any disturbance around the root zone of that tree will be limited. In addition, there will be some maintenance practices that will be taken to limit any kind of construction stress on the tree. There has also been discussion of doing some pruning of the tree before construction. There are dead branches on the lower part of the tree that will be removed to help make it a healthier tree.

Member Quinn asked about the ongoing maintenance of the tree.

Mr. Highland explained it is in the area that is identified as homeowners' area. The homeowners' association will have responsibility to take care of all the landscaping, whether it is existing or proposed. Since this is such a special specimen, it may be warranted to call it out in the documents. He continued there will be a small raingarden to the left upon entering the development that will be compromised mainly of native wetland meadow seed.

Member Gittlein asked if this is near the oak tree.

Mr. Highland stated it is just outside the canopy edge. There is a small bit of the raingarden that catches the edge but the root zone should be relatively thin at that point. The impacts are reduced in the area that is defined as the outer edge of the canopy.

Acting Chair Losik stated that it looks like the plantings are into the edge of the wetland buffer.

Mr. Highland replied it is in the 75ft wetland buffer.

Acting Chair Losik stated there are two interesting characteristics about this property. There is a little bit of separation between the tidal marsh and freshwater wetlands but they are fairly close. There are areas where they are together.

Mr. Highland pointed out the area on the plan. He stated that the plants jog up and are not in that area.

Acting Chair Losik clarified that it is not near the saltwater marsh.

Mr. Highland confirmed. He continued that it is relatively close because the field and marsh come very close together. The intent is to preserve the field edge while enhancing the buffer. The plants that are being proposed, along the edge, are all plants that will take brackish water and a highwater table. Flooding is not a concern. (He pointed out the location of the plantings on the plan, which is right along the edge of the field.) He noted that there is a significant number of plantings on the other side. They are going to "beef" that up a bit to preserve the abutter's privacy and assure that headlights do not shine onto their property. He continued there are some mature trees. They are proposing to plant underneath those existing trees. There is a large raingarden in the center of the cul-de-sac. The plantings will be very low maintenance and will only require seasonal maintenance.

Acting Chair Losik asked if pictures could be provided for the Board. The property has lovely meadows and marshland. She feels that raingardens are not the same aesthetic.

Mr. Highland stated they did consider this. They were trying to mimic the field look and carry it through the raingarden. He agreed to provide pictures.

Referring to the river stone in the middle of the cul-de-sac, Acting Chair Losik asked how this would function.

Mr. Highland explained that it is like a dry streambed that promotes the movement of water through the raingarden. It won't be walkable. It will only be a visual aesthetic. The idea is to break up the plantings in the raingarden with the river stone.

Selectman Jenness asked what a river stone surface looks like.

Mr. Highland explained it is basically a variety of rounded stone that would be found in a dry streambed. The sizes range from 3 to 6 inches. It is a nice look when it is mixed with field grasses and native plants. The rounded river stone promotes movement of water through the raingarden. If the Board felt that they did not like that look, it could certainly be eliminated. It is not a necessity. It is more of a visual enhancement for the raingarden. He noted that they have done a couple of raingardens with cobblestone.

Mr. Highland stated that the Board requested photo simulations from several advantage points. They worked very closely with Mr. Garrepy on the types of houses he envisioned being

constructed, which are small Cape Cod style houses. The homes would be relatively small in square footage with a maximum height of 28ft to the ridge line. (He reviewed the photo simulations with the Board.)

Member Carter commented it looks much further back than what he expected it to be.

Mr. Highland explained they did two different iterations trying to fine tune the simulation to get it just right. They are pretty confident that this is correct. What they don't have control over is the architectural style. They are making their best effort on finding a model house but the houses have not been designed yet.

Alternate Member Paul asked if the goal is to sell the lots or also build the houses.

Mr. Garrepy stated the goal is to get the subdivision approved. He is not sure what will happen from there.

Acting Chair Losik asked if the homes will be shingle style.

Mr. Garrepy replied that they are pretty confident that this is the style that will be desired in the market.

Alternate Member Sherman asked the size of the homes.

Mr. Garrepy pointed out that footprints are proposed on the lot development plans. It shows what can be built on those lots. The homes could range from 2200sf to 5000sf on two floors, which is not atypical from anything else seen in Rye.

The Board reviewed and discussed the photo simulations.

Mr. Garrepy stated that one of the other discussions the Board wanted to have was about the quantity of fill that might be required for both the road and house construction. He noted they provided quantities for the materials for the road construction because they weren't entirely clear on what the Board wanted. Attorney Donovan submitted his memo on October 3rd stating that information was wanted on the cuts and lots themselves. Those calculations have been done and submitted to the Board tonight.

Joe Coronati, Jones and Beach Engineers, explained that when the roadway is started the loam will be removed for the road and ponds. The loam gets stockpiled on site and is reused around the site; on the shoulders, road and house lots. Some of the existing grade has to be cut out in the first section of the roadway. That material will fill in a section of the road. A little bit of material may need to be brought in so it will balance out but then select gravels will be brought in. With any subdivision, that material has to be brought in on site. The roadbed is what keeps the road from failing. It is good gravel and there are DOT specs that have to be met. After that, the road will be paved. There is very little cut and fill. Fill has to be brought in for the select gravels. He continued that the excess loam from the house lot itself is used on the house lots. The septic for each lot have specialized material that has to be brought on site. There is special

sand that is needed for a stone and pipe system. The sand for under the system will also be brought in on site. Typically, the loam is used around the lot as much as possible. Contractors do not want to truck that in from off site if they do not have to because it is more cost to them. The loam is spread around the lot to be used for the lawn and landscaping. He reiterated that there is not a lot of material to be brought in, except for the select gravels and some additional material for a small section of the road and the raingardens.

Attorney Donovan stated that he thinks it was misunderstood what the Board wanted. The amount of fill hauled into the site was analyzed. That isn't what the Board was interested in. It was stated that the first 300ft is excavated and used to fill the last 300ft and that was net out at 0. What the Board is interested in is how much fill is being used to create the roadway and all the lots, not taking into account that the lot might be filled with material excavated for the cellar hole. How much fill is going in to create the road and the lots?

Mr. Garrepy stated they were confused by what the Board wanted.

Acting Chair Losik stated that a question was raised by an interested party about what was going to be brought in from off site. There was a question about what was going to not be organic to the site and where it was going to come from. The other thing that came from many of the board members, is the concern about the hills and valleys that was going to be created. There was discussion about the fill and raising houses. The concern of the Board is what this will look like.

Mr. Garrepy replied that the lot elevation and visual plans tell that story. The only thing really being imported to the site are select materials that meet state and DOT specs. There will be an excess amount of loam on the site between the lots and the road so that will not be imported. It will be existing loam from the site. The rest of the cut material will be used to balance the site and grade out the lots. It is going to blend in, as best it can, with the existing field.

Attorney Donovan stated that when the Board analyzes the impact on the alteration of the natural features of the site, the quantity of total fill being placed on that field is something the Board wanted to have in that assessment.

Mr. Coronati stated that they are estimating around 350 to 450 yards of material will be brought in, other than the material for the selects. He continued that they have provided numerical numbers and proposed grading plans for each house lot to show the final grades. The house lots are fairly well balanced.

Member Lord stated that they are looking for the amount of fill that is going to be brought in on this site. It is a quick and simple calculation.

Mr. Coronati replied there are different types of fill.

Member Lord commented it is the total amount that they are looking for.

Acting Chair Losik stated that in Attorney Phoenix's letter it states that the construction process provides a quantity for the road of 450 cubic yards of cut and 350 cubic yards of fill. The development plans will have an estimated cut of 1650 cubic yards in fill of 1350 cubic yards. Those number say that nothing is really going to be brought in, except for the gravel and sand. She also heard that there is an additional 350 or 450 cubic yards of something. What else is being brought in, other than gravel and sand?

Mr. Coronati stated they are bringing in 800 yards of gravel, 300 yards of crushed gravel, which are materials that can't be created from the site, and asphalt; 70 tons of top course and 40 tons of binder. Because the cuts are greater than fill, there is an excess so that will be used around the houses or trucked off site.

Acting Chair Losik asked how much sand is being brought in.

Mr. Coronati stated that the only sand will be for the septic fields. The amount depends on which septic they go with. Roughly, 1100 yards of select gravels have to be brought on site.

Acting Chair Losik asked if there is riprap for the raingarden because of the slope.

Mr. Coronati explained there is some riprap along the roadway for the raingardens. There will be some piping, a catch basin, water lines and stone for the bedding. Those materials are not considered fill.

Member Lord stated that he wants to see the difference between what is there today and what it is going to look like on site with the proposed elevations.

Mr. Garrepy pointed out that the lot development plans show the existing and proposed contours. The cuts have to be counted too because some of the land is being cut down and other parts are being filled.

Member Lord stated that they are looking for the difference between the existing plan elevations and the final plan elevations.

Mr. Garrepy stated they can provide a spreadsheet that shows that information. They will provide the amount of fill that is going to be brought in and the final number.

Member Lord asked if they could provide the difference in fill that is going to be on the site from what is there today, whether it is minused out on site or not. The Board is looking for the fill quantity from the existing conditions to the final conditions being proposed.

Mr. Coronati stated that it is basically just the select materials that will be brought on site.

Member Lord asked for this to be provided in written form.

Referring to the plan, Acting Chair Losik stated there are changes with modified elevations. There are also places that look like there is not a change. She asked if there is a plan that shows any changes in elevation. For example, it says that water comes out of the center of the raingarden and goes into a swale. This is behind, just to the north, of 59-2. It looks like it is at elevation 12. She asked if it is really 12 or something else.

Mr. Coronati replied there is no excavation proposed for this area.

Acting Chair Losik clarified that if the plans show that there is an area that is not changed it is going to stay that way.

Mr. Coronati confirmed.

Alternate Member Paul commented until the house goes in.

Mr. Garrepy stated that Attorney Donovan suggested some conditions of approval that should the lot development plans markedly change, a new grading and drainage plan would need to be provided for each of those lots.

The applicant agreed to provide the information for fill requested by the Board.

Member Lord asked if the roadway is going to be public or private.

Attorney Donovan replied that it is proposed to be public.

Member Lord asked if the raingardens are proposed to be maintained by the Town or the homeowners' association.

Attorney Donovan stated that normally they are maintained by the homeowners' association.

Mr. Garrepy stated they are fine with the maintenance of the raingardens being the homeowners' association's responsibility.

Attorney Donovan suggested that the Board deal with the disagreement between the applicant and himself on Lot 59-3 and whether it meets the DLA requirement. That is a clear decision to this five-lot subdivision. The Board has enough information to provide some preliminary guidance on that issue. The intent of the DLA is that the 4,000sf area has to be an area that is capable of being a site for a leachfield. It was pointed out that there is also a driveway going over the DLA. That makes that portion of the area not suitable for a leachfield.

Mr. Garrepy stated that Jones and Beach has licensed septic designers on staff in their office who worked on this plan. They are confident that the entirety of that 4,000sf area can be used for septic design. They are State of NH licensed septic designers. He has to rely on the licensed

experts. He continued that septic systems can be located under driveways. It is done all the time under parking lots.

Mr. Coronati stated it can certainly be under pavement. Extra test pits were dug based on the last letter received. The DLA area was retested and state subdivision approval has been received. The state also concluded it was adequate.

Attorney Donovan explained the state will not concern itself with Rye's regulations. The law clearly states that the town can be stricter than the state in regulating septic. If the Board accepts the driveway over the DLA, it would be the first time a lot was approved showing that. The "finger" that extends up beside the house is not wide enough to accommodate the size of the leachfields that are shown on the drawing.

Mr. Coronati stated that the leachfield is under 1,000sf. (He pointed out areas on the plan where the field would fit.) He commented that no one ever uses all 4,000sf of the DLA. The system is also allowed to be replaced in-kind. There are actually three locations on this lot where it could go and they go under parking lots all the time.

Attorney Phoenix stated that Rye's LDR does not say anything about it not being able to be irregularly shaped. (He read from the regulations.) Mr. Coronati just explained that the little "finger" could be used. There is an expert who opines that it does meet the requirement. Also, Sebago Technics has reviewed all this and they have not objected to it.

Attorney Donovan stated that Sebago wasn't asked to provide that. He continued that every paragraph (referring to Attorney Phoenix's letter) said "Sebago didn't comment on it so it must be alright"; however, that's not how it works.

Attorney Phoenix replied that when he wrote the letter he was under the understanding that Sebago had.

Alternate Member Paul read from LDR Section 603.3A.

Acting Chair Losik stated the Dr. Rossen said at one of the Planning Board meetings and in his email of October 2, 2018; *"septic systems are designed for scenarios because it is expected that septic systems will be replaced, at minimum, within 30 years with new onsite technology or municipal or regional connection"*. She continued that it is known that this is an ecologically sensitive land resource. She knows that there are great lengths and steps being taken to do everything that can be done within the laws to make this whole thing happen with five lots. However, it doesn't move away from the fact that there are concerns. One of the concerns is the sea-level rise. The pictures show the inundation that happens on this lot. She continued that it has been heard "a minimum of 30 years", which is not a long time. The houses are being built to stay forever. The lots are pretty constrained in terms of where the DLA's can go to begin with. On several lots they are pressed right up against the buffer. The Board looks at septic all the time in the Town. The Board continues to say "we want that LDR to stay as it is" and there is a

reason. Dr. Rosen said that at some point there could be new onsite technology. One of the concerns is sometimes those new solutions are very expensive. They are not necessarily affordable solutions for a homeowner, which can impact the choices a homeowner has. In terms of looking at right now and saying that there is going to be a municipal solution to the septic, it has to be considered how long it took Rye Beach to do this. Those solutions do not seem to be readily available.

Member Lord stated the DLA is used for a lot more than just septic. It is used to determine how a lot is laid out and how it can be shaped. There were a number of lots looked at for 421 South Road that had real problems with the DLA. The Board needs something that really passes the straight face test. To him, having the finger up beside the house does not pass the straight face test. He pointed out that the DLA is spread out over the entire portion of the lot. He does not believe that this is what they were looking for when the ordinance was put together. The reality of using all of that area is practically nil and that is what the zoning ordinance speaks to. There needs to be useable area in the DLA so when the lots are laid out it is going to be functional down the road, no matter what happens.

Mr. Garrepy stated they are volunteering to do pretreatment systems, where they are not required in Town. The leachfields are small because of the pretreatment systems. Even without the driveway there are probably five other places to relocate the system.

Attorney Donovan stated that the developer on the Stoneleigh Subdivision used the same argument about the high-tech systems. That argument was made in their waiver request and the Board denied the request.

Mr. Coronati stated that the leachfield size is roughly outlined in grey (on the plan). The septic tanks can be moved anywhere on the site. He commented that they can show five different shapes that fit the DLA. They do not have to be installed as rectangles. He continued that if this system was going to need to be replaced every 15 to 30 years and it went in a different location each time, there would be 200 years of locations in which the field could be moved around. However, the state allows it to be replaced in that exact location 10 times in a row. There is unlimited space to put a leachfield. He reiterated that they can show those locations on the plan if the Board would like. The 4k area is really a system the state developed to show that the lot can have a good size receiving area. The state will approve the subdivision with that 4,000sf area and then the leachfields are designed, which are always about a quarter of that size. When it is a pretreatment system, it will have a 75% reduction of the leachfield size.

Attorney Donovan stated that the bottom line is that the regulations say that a driveway can't be put over it so a waiver is needed.

Mr. Garrepy stated that driveways and parking surfaces are not incompatible with leachfield areas. He noted that if they need to ask for a waiver they can. He thinks it is a reasonable one to ask for.

Acting Chair Losik asked the Board for comments regarding the septic.

Member Quinn asked if it could be a condition that it is mandatory that the homeowner puts in a pretreatment system.

Mr. Garrepy replied that they volunteered to have this as a condition of approval. There will be a note on the plan and it will be in the homeowner association documents.

Member Quinn stated he is not opposed to considering that.

Member Paul stated she feels like this has just been jerry-rigged and stuffed into the lot. In looking at the wording of the statute, she does not think it complies.

Member Lord stated he would agree. It is a dangerous precedent to start. The Board put Joe Falzone through a lot of hoops to get to where he did. He certainly ended up with a pretty good development. He just thinks this is a dangerous road to go down.

Member Gittlein agreed.

Selectman Jenness stated she agrees as well.

Member Carter agreed. He stated the applicant should take another look at the lot to see if there is another 4,000sf that could be found. It is a pretty big lot and there is not that many wetlands. With a little creativity, the 4,000sf could be found somewhere else that would not require a waiver.

Attorney Phoenix stated that he apologizes for his letter stating that Sebago did a review. He thought they did. He continued that if the intention of the 4,000sf area is to make sure there is a proper location for a septic system for many years to come, and this will be a pretreatment system that will have a 75% reduction of the leachfield, then this proposal does that. He respectfully does not think it is fair to say it sets a bad precedent or it doesn't pass the straight face test given that circumstance. Mr. Coronati has shown there are four or five places that one of these pretreatment systems could go, which require a yearly maintenance contract so that it is checked on a constant basis throughout its life. He noted that he would be happy to have Gary Spaulding come to a meeting and explain exactly how the pretreatment system works.

Attorney Phoenix stated that the second item on Attorney Donovan's letter is that he feels the cross sections are unrealistic with respect to side slopes. He asked Mr. Coronati to address why this is not an issue.

Mr. Coronati explained that the cross sections show the roadway and the grade of the driveways.

Attorney Donovan stated that he does not understand what the cross sections are intended to do. In a standard engineering practice, they show the existing grade. The reduction of fill for the roadway is being used as one of the justifications for the waivers regarding the dimensions for the loop. The fill for the houses is going to be there one way or the other because they are up 6 or 7 feet. The fill is due to the houses themselves not necessarily the roadway. The justification for

the loop waiver might not be that strong because the side slope really isn't going to be there. That is where most of the fill on the roadway is.

Mr. Garrepy stated that the reason for the waiver request for the reduction in the pavement width and the one-way traffic around the cul-de-sac was specifically for two purposes. One of them was to get rid of the guardrail and the other reason was to reduce the fill. Now they will be able to do 3 to 1 side slopes around the cul-de-sac to blend it in more naturally. The waiver request was to drop the road and get rid of the guardrail, which is aesthetically non-pleasing.

Member Lord stated that sometimes there are unintended consequences in lowering the road. There is a raingarden near the cul-de-sac and one right by the entrance of the roadway. In looking at the cross sections and the elevations of the bio-retention ponds, what they end up with is a top of a standing water situation which is maybe 3 to 4 inches below the road surface. Since the gravel base extends out beyond the roadway surface and those are immediately adjacent to the surface, it seems a conduit is being created for the water to go right back under the pavement, which would create freeze/thaw situations. He noted that he is currently working on a project that has a road with the same situation, which was put in 14 years ago and has been repaved 4 times. Vegetation grows in to these areas and keeps the water there, which breaks up the pavement. If this is not maintained, the Town is going to end up paying for this pavement over and over again. In lowering this road so far down, there is really not a lot of area for this water to go anymore. It is going to lead to deterioration of pavement and sub-base. He does not think the retention basin at the entrance and the one at the cul-de-sac are functional. He does not believe that Sebago has addressed the impact of how low this is and how close the water is to the pavement surface.

Mr. Coronati stated that Sebago and the Public Works Director both looked at the road. They were looking at long-term maintenance of the roadway system. The raingardens are designed to infiltrate stormwater and they overflow if need be. The center cul-de-sac has a pipe in it. These are small watersheds. The areas only take in a small section of the roadway. There is also gravel under them. An underdrain could be added if that is what the Board wants.

Mr. Garrepy stated that Sebago looked at the road and drainage several times. They have seen the road and the changes four or five times. The Town's engineer did have some concerns and those were addressed. A second raingarden was added and there were a couple of other tweaks to the plan. The Town's engineer is very confident that the plan works and he supported all the waivers, as did the Public Works Director.

Member Lord stated that when he read Sebago Technics review, they didn't mention it. Sometimes when something is reviewed things are missed. On the face, the design did seem like a good way to get rid of water very quickly but the devil is in the details.

Attorney Donovan stated that the Board can always have the Public Works Director and Sebago come to a meeting.

Attorney Phoenix stated that it is fair to say that neither the Board, the applicant nor the Town, wants to see a system designed that takes out a road. Everyone wants to get to the same place.

He continued the waivers address the concerns about the amount of fill, roadway level, the guardrail and the amount of pavement. If it does create a problem, maybe it will have to be in-between the original plan and where it is now.

Acting Chair Losik stated that the Public Works Director, Sebago and the Planning Board should revisit this.

Mr. Garrepy stated that Sebago and the Public Works Director were tasked with reviewing the road to make sure that it works for all storm events. They looked at the plan many, many times. Steve Harding has been the town's engineer for many years and he knows what to look for. He thinks it is a little overkill to ask them to come to a meeting.

Referring to Sebago's letter, Acting Chair Losik stated that a lot of the closing of the paragraphs is referring to others, such as Public Works and the Planning Board for a decision. They are not saying that they feel 100% strongly that this is the way it should be. It is a collaborative effort and there are a lot of views. She noted that the more detail that is on the plan, the better, so 5 or 10 years from now it will not be "What were they thinking?"

Attorney Phoenix noted that they are expected to follow the rules. They have followed the rules and now it seems the rules are being advanced. He thinks Sebago is differing to the Board because the whole thing is eventually the Board's purview to decide. However, Sebago is still taking a position about how they feel about things. He continued that they should be able to rely upon the information given by the review people.

Attorney Donovan pointed out that Sebago is the Board's engineer, not the Town's engineer. Typically, the Board leaves the drainage to them. There are some unusual aspects to this subdivision. He asked why the Board should not ask Dennis McCarthy (Public Works Director) to come to a meeting to ask him if he has thought about this. It seems that there is an argument against the Board wanting to have their engineer here.

Mr. Garrepy stated that they are not arguing against that. They are looking to advance this project to a finale and approval. It is a timing issue. He asked how they can have some finality at the next meeting.

Acting Chair Losik stated that she appreciates the concerns but the Planning Board also has concerns. The Board has questions. There are certainly solutions. The Board is not saying that there are no solutions. The Board is not in a race to get this done.

Mr. Garrepy stated that he has never asked the Board to approve the plan in 65 days because it is a process. He noted that they have voluntarily submitted lot development plans that seem to have caused more problems. The plans are not required by the regulations. He commented that they continue to be asked for more and more information at every meeting.

Acting Chair Losik asked if he understands that the questions are genuine out of the information that is being provided.

Mr. Garrepy confirmed.

Selectman Jenness stated that bringing Dennis McCarthy and Sebago in at the same time will save a lot of time and discussion.

Attorney Phoenix stated that Attorney Donovan asked that the applicant explain the effect on the DLA and building envelope, for 59-2, if the waivers for the loop are not granted. He explained that the waivers were requested based on their understanding of the comments of the board members and Conservation Commission members from site walks and otherwise. The purpose of the waivers was to make it a more attractive and better subdivision with less fill, lower road, no guardrail and less pavement. If the waivers are denied, the subdivision can be built without the waivers.

Mr. Garrepy noted that the original plan was a "waiver-less plan" and they can go back to that same design. However, it will be with an elevated road, retaining wall and guardrail.

Referring to Lot 59-2, Attorney Donovan asked if there is a waiver of 10ft on the inside radius (50 to 40) and a 4ft decrease in the pavement width, does that mean that the road would be pushed 14ft further in to the lot if the waivers were not approved? It seemed that without the waivers, everything would be moved 14ft more into Lot 59-2.

Attorney Phoenix replied that the original plans, which did not have the waivers, worked.

Mr. Coronati explained there are a couple of waivers. One is for the pavement width (24 to 20) and the other is for inside radius (40 to 36). It would push the road out 4ft, not 14ft.

Attorney Donovan commented it is 8ft in total; 4ft for each waiver.

Mr. Coronati reiterated that if it is increased they will have to go back to the retaining wall and guardrail scenario. He noted that they met with the Public Works Director. Plans were sent to the Fire Department to show how the fire truck would turn around the cul-de-sac. He continued they are also trying to reduce the pavement widths and keep the road tight.

Referring to the original plan, Acting Chair Losik asked if they are right up against the wetland buffer.

Mr. Coronati replied not with the roadway. It was with the grading/retaining wall.

Mr. Garrepy stated that the fill, guardrail and retaining wall were things brought up by Dennis McCarthy as being concerns for long-term maintenance.

Attorney Phoenix continued that comment #4 (Attorney Donovan's letter) was about the fill, which they have spent some time talking about. Comment #5 is regarding the interior loop. Attorney Donovan makes the point that it is not part of one of the lots. It is part of the right-of-way. The proposal is that it be owned by the Town with a requirement that the HOA maintain it; however, if the Board does not like that then it can be put with one of the lots. Lot 59-2 has been

proposed. The final comment from Attorney Donovan was whether a lot could be lost and the road length reduced. Attorney Phoenix noted there are no variances needed for this subdivision. They believe that one way or the other, with or without waivers, they will get in full compliance with the Land Development Regulations, therefore, five lots are justified. Economically, it is worth the extra road length to get the extra lot. They intend to proceed with the five lots.

Attorney Donovan asked if his observation is correct that the last 450ft of the road is to create one lot.

Mr. Garrepy replied that all roads are created to get to a lot and provide frontage that is required. Each lot is required to have 250ft of frontage. The cul-de-sac has been specifically designed, not only for aesthetics, but as a drainage feature as well. The zoning ordinance allows it to create frontage for lot development.

Attorney Phoenix stated that on the 28th he submitted a memorandum identifying the three waivers and it looks like there might be a fourth. The memorandum also addressed Attorney Donovan's concerns that the hardship for the LDR and spirit and intent of the regulations wasn't addressed. He noted that his letter was an attempt to address those. He continued that he and Attorney Donovan disagree on what the hardship test is. Under the variance requirements, the hardship test is with respect to the land. The hardship, as stated in the regulations, is hardship to the applicant. The hardship is that it is more expensive and a less desirable subdivision if they comply in full without waivers. He also believes they meet the requirements for a hardship test under the variance test, even though he thinks it doesn't apply. Usually, a waiver request comes down to whether it makes sense to grant the waiver. The underlying issues are; "*Would the waiver alter the essential character of the neighborhood or would it threaten the public health, safety or welfare?*" He thinks all the waivers, if they are permitted, make for a better roadway for all the reasons stated. It does not alter the essential character and is in keeping with everything around it. It is certainly safer and easier to maintain.

Acting Chair Losik asked if it makes sense for the Board to meet with Dennis McCarthy and Sebago in regards to what works and then decide.

Attorney Phoenix commented that this is the Board's decision.

Mr. Garrepy stated that if that it would be preferable to do that at the next meeting.

Acting Chair Losik asked the Board for further comments.

Member Quinn stated that in considering the waivers, he has to look at the recommendations. He would defer to Sebago and the Public Works Director. He is now conflicted because of the points that Member Lord brought up. In terms of the other waivers, he would agree to grant those. He is not sure about the issue with elevation, water levels and deterioration of road.

Alternate Member Sherman stated that she is confused and still questioning the leachfield area on 59-3. It says in the LDR's that the leachfield area must be left as open space. She is confused as to how a driveway can be put over that. That is a big concern, along with the concern that

Member Lord brought up about the water and where it will go. She continued that aesthetically they don't want a guardrail. She thinks everyone in this room feels that way. She is conflicted.

Mr. Garrepy stated that the driveway in the DLA would be handled by a waiver. He noted that they intend to submit a waiver request if they can't make modifications to the DLA that is compliant without the driveway.

Acting Chair Losik asked if he understands why the Board may not want to take that position.

Mr. Garrepy replied that it is certainly the Board's prerogative to not grant the waiver.

Alternate Member Paul stated that she would like to see the big picture. She is not partial to doing some of the waivers tonight and doing some later. She would prefer to hear from Sebago and Dennis McCarthy and view the complete picture.

Acting Chair Losik stated that they did not have much discussion on Attorney Donovan's #6, which states; *"The first three lots on the proposed street have driveways within 250ft of Harbor Road. The loop in the last 450ft of the proposed street is mostly necessary to create Lot 59-2, which was agreed by the applicant. I wonder if the applicant has considered eliminating 59-3 and constructing a shorter street"*. She asked the Board their thoughts.

Member Quinn stated he is not concerned.

Alternate Member Sherman stated that they have to be really conservative on this plot of land. The LDR's have to be looked at. She feels they really need to stick to them.

Acting Chair Losik asked if she would be in favor of changing the cul-de-sac to a half hammerhead and having four lots.

Alternate Member Sherman commented that she is hearing from the team that they do not want to go down to four lots. She feels that four lots would fit better on this property than five.

Alternate Member Paul agreed that four would be better than five; however, the applicant is probably right that they are entitled to the five. Her biggest concern with this parcel is its particular location and how close it is to water. She thinks that they will be having more water issues there regularly than can even be anticipated. That is her biggest concern with this particular development.

Member Lord stated that he understands they want the five lots. Is this the best layout for the land? He does not really know. As the roadway issues are looked at and the drainage issues where it needs to be raised up, which will require more fill, at some point in time there is a trade-off of what they really want to see on that property.

Member Gittlein stated that he thinks back to the site walk that they had; walking around the beautiful meadow and imagining the height of the roadway. He has to give credit to the developer that they tried to address that by lowering the roadway. However, by doing so,

unintended consequences may come out of this. He thinks this is another feature that the Board, as a representative of Rye, has a responsibility for and these things have to be taken into account when considering a development that is in an area that is perhaps not the most appropriate place for a new development.

Selectman Jenness stated that she would like to see the waivers all done at once. The street grading shall not be less than 1% and a waiver is being requested for .5%. She assumes this is for draining the road. Things are often icing and freezing at the beach when it may be snowing just a mile from the coast. She would like to ask Dennis McCarthy what the point is of the 1%. In fact, the 1% seems slight to her. It is those kinds of questions that everyone needs to be together for at once to get the whole picture.

Speaking to Selectman Jenness, Acting Chair Losik asked if she had any thoughts on the hammerhead access.

Selectman Jenness stated she is not fond of hammerheads.

Member Carter stated that he basically supports what Member Paul said. He would like to do all the waivers at once because he would like to hear from Dennis McCarthy and Sebago. He continued that throughout this process he has believed the four houses fit better on this lot than five. This is a very sensitive piece of property. Even though there will be high-tech septic systems, four homes will fit better than five.

Acting Chair Losik stated that in regards to hammerheads, she hasn't really thought much of them but now she lives next to one. She thinks they work fine in a small development. It was done about three or four years ago in Cedar Run. It was going to be a cul-de-sac. It ended up being three lots. She remembers a comment from an abutter on West Road. He had real concerns because it was a beautiful meadow with a farmhouse back into the woods. His concern was the initial road, as proposed, would really change the character of South Road in Rye. It would be elevated and call attention to itself as it meandered into the homes. When the hammerhead was originally suggested, there were a lot of questions about what it would look like and if it would be functional. It is quite so. In fact, it kept the topo fairly level. It has added a sense of quietude to the property. She is not on a "bandwagon" to have a hammerhead but it is a realistic suggestion. She continued that there are concerns that she has about this development. She continues to go through Dr. Rossen's and Julie LaBranche's information. She knows it is futuristic and nobody knows what is going to happen with water level rises and storm surges, however, it happens with greater frequency. She pointed out that all septic system bottoms are above Scenario 2. (She read Julie LaBranche's comments regarding egress from Goss Farm.) She stated that they can talk a lot about development and rights of development but also, these matters exist.

Acting Chair Losik stated that they have not really talked about the drainage analysis. The drainage analysis was done by Jones and Beach. It shows the edges of the tidal marsh and the freshwater. There is a narrow band between the two areas. The Jones and Beach analysis talks about the study area. The subject property consists of two different types of land. One as being "a large area of undeveloped uplands which is mainly mowed grass". The second being "a large

tidal saltmarsh system". The site drains through a wet swale to the tidal marsh abutting Ocean Boulevard. It goes on to talk about the types of soils. Because of the impervious consequences of development, paved areas and buildings, it obviously increases the potential for runoff. She continued that the Board needs to have a meeting with Sebago and DPW. Some of the language will need to be reviewed for the conservation piece and the HOA documents. The Board would like pictures on raingarden work. The Board is also requesting the calculation of the fill and any topo changes reflected on the plot plans. The unresolved issue is the septic on Lot 59-3.

Member Lord asked if there are full basements for all the homes.

Mr. Garrepy replied that they are certainly capable of having them. They still do not know what is being proposed on any of the lots.

Member Lord stated that if there is going to be a basement that causes an underdrain and the houses are going to be up another 5ft, it will have to be known.

Mr. Garrepy stated that one of the conditions that was suggested was if the design/grading plans are markedly different, a whole new plan would have to be presented to the town engineer and to the building inspector. He noted that they are comfortable with this language.

Member Lord stated that it is not only going to affect the underdrain and where it daylights, it will also affect the drainage calculations.

Acting Chair Losik noted that the Board took extra steps with respect to 421 South Road. It was because it was an environmentally sensitive area. It is different than this but the Board would still have those concerns.

Mr. Garrepy reiterated that they are fine with the proposed condition that went with the 421 South Road application because it makes sense.

Member Lord stated this is visually a very sensitive area. He would rather not piecemeal five houses at five different times. If one house is going to be raised up, the drainage and how it will impact the other houses has to be looked at now. The infrastructure is being put in now for what they are assuming it is going to be but it might not be required in the long run.

After discussion, Acting Chair Losik opened to the public for comments.

Anne Decker, Harbor Road, stated that the questions have not really been answered. She thought they would know the tonnage of the fill coming in to the property. Also, at the last meeting, it was decided that there would be a 3-D replica of the homes. She would really like to see how the project might possibly be. With the three raingardens, five homes should not be on that lot. There is a moral obligation to the land.

Mimi White, Locke Road, stated she has many issues around water issues, drainage and what the homeowners' responsibilities are. From what she can see from the drawing, the houses are going to be in the middle of the field. When there are fixed properties in a field, there may not

be an area for animals to move back and forth freely on the property. She has seen the animals go across the Goss gardens and across the road. That is a problem with saying it is a field. It is not a field at this point.

Mary Ellen Fennessy, 294 Harbor Road, stated that she gives the team credit. There is no question they are trying; however, five houses on this land is really too much. It is a beautiful piece of property and they really need to watch what is happening to it.

Joseph Goss, property owner, stated there has been a lot of comment about the size of the house lots. Taking the property that is around this lot and on Locke Road, there are nine buildings on 11 acres of land. If the five houses are denied on this piece of property, why were some of the houses that were recently built not denied? These lots meet the requirements of the law and regulations.

Acting Chair Losik closed to the public at 9:53 p.m.

Motion by J.M. Lord to continue the application to the November meeting. Seconded by Priscilla Jenness. All in favor.

Acting Chair Losik called for a recess at 9:53 p.m.

The meeting was reconvened at 10:00 p.m.

Acting Chair Losik noted that the application for R.J. Joyce has withdrawn their request. Also, the conceptual consultation for 170 Brackett Road has also been continued to November.

- c. Minor Site Development Plan for Carey & Giampa Realty Trust owned and located at 655 Wallis Road, Tax Map 16, Lot 22, for expansion of commercial space per LDR Section 201.2 due to installation of a new septic system where trees will be cut and parking plans changed. **Property is in the Single Residence District. Case #19-2018. *Applicant requested to be continued to the November meeting.**

Motion by Steve Carter to continue the application of Carey and Giampa Realty Trust to the November meeting. Seconded by Jerry Gittlein. All in favor.

- d. Minor Two Lot Subdivision by Richard MacIntosh for property located at 29 Fern Ave, Tax Map 11, Lot 119, to divide into two (2) lots where lot 1 would be 5.99 acres and contain existing home and lot to be 2.51 acres to be built upon. **Property is in the Single Residence District. Case #21-2018.**

Henry Boyd, Millennium Engineering, presented the proposal to the Board. He stated that this was before the Board last month and his associate was present to represent him. The Board had some issues with the way the lots were laid out. He noted that the intent for the layout was to

keep the swimming pool on Mr. MacIntosh's property. NH Subdivision Approval was received but the lot configuration has now changed. The lot has nearly doubled in size from what it needs to be. (He reviewed the plans for the Board.) He stated that one of the concerns was that there is ledge on the site. There was also a question on what style house would be built. He commented that they do not know what style house it is going to be at this time. The property is for Kelly (Mr. MacIntosh's daughter) who will be building a house on this land. (He continued to review the plans.) He noted that the final plans will include the stamp of the soil scientist. He noted that they do have NH Approval for this. More area is being added so it will not be a problem from the state's standpoint. However, the first test pits were centered on the location of the 4,000sf DLA in the front. The water table is around 37 inches. A full basement is proposed for the home. The state allows 2ft to the seasonal high-water table; however, Rye's regulations require 4ft, which actually increases, by a tremendous amount, the amount of fill that has to come on to a lot. (He reviewed the information on the test pits that were done on the site.) He continued that one of the things that the Board was asking was where the water will be going. (He reviewed the size of the house that will be built, which was shown on the plans.) He noted that it was placed on the plan to meet the building setbacks. They have also shown the driveway and septic location. Also, the grading for the house and the septic is shown. He stated that there will be a lot of fill that will be coming in to the site. The site has grade to begin with. It will be a 3 to 1 slope, which is a mowable slope for a lawnmower. It is not advisable to go steeper than that. More fill could also be brought in to flatten the slope. The lowest part on the site is elevation 63. (He reviewed the location of the catch basins. He also reviewed the proposed location of the driveway, which goes through the 4k area but could be altered if needed. He explained the water flow, grading and existing elevations.) He explained that all the construction will be in front of the existing stonewall. They are confident that they have depth to water table and depth to ledge. He hopes the revisions have addressed the concerns of the Board and the neighbors.

Referring to the back of the proposed home, Acting Chair Losik asked if the water is going to be trapped in that area and go to the abutter's property.

Mr. Boyd explained there shouldn't be any water trapped from off the roof because there are stone trenches that are 2ft wide. Any water that is going to that area now will behave as it does currently.

There was discussion in regards to the grading and drainage in this area.

Acting Chair Losik stated that it is known that Fern Avenue has a problem with drainage. The neighbors and others have spoken about the drainage issues. There is no formal stormwater management plan and right now it is a guess as to if this is going to work. She feels this warrants a stormwater management plan.

Mr. Boyd asked if this would be needed for a single residential house lot.

Acting Chair Losik confirmed. She noted that the land is in the Aquifer and Wellhead Protection. She hopes that he is familiar with RZO 306. The Board wants to make sure that they

understand where the water is going to go. Right now, she sees flow possibly going to the south corner. There is also a fair slope on the north side of this property. On proposed Lot 1, there is flow that comes in from the northwest. There is a raingarden at 63 and topo at 64, 65, 66, 67 and 69. She sees a potential for some water, however, that is not known because there is no formal plan.

Mr. Boyd stated that this can be done but it is a huge expense, especially for a young family.

Acting Chair Losik replied that unfortunately this is part of development.

Richard MacIntosh, applicant, stated that he has lived on the property for over 47 years. He has never seen any water.

Acting Chair Losik pointed out that impervious surface is being added with a house being constructed and a driveway.

Mr. MacIntosh stated that the fill goes around the house to add some degree of absorbing the water.

Acting Chair Losik asked the Board their thoughts.

Member Quinn stated that he was not at the last meeting to hear the presentation. The plan looks reasonable to him. He understands there was considerable concern about the runoff onto Fern Avenue and to adjacent properties. He is wondering if the revised plan mitigates that somehow.

Acting Chair Losik commented that they don't know.

Alternate Member Sherman stated that her biggest concern was the "jig jag" of the property line and also the abutters worrying about drainage. Fern Avenue is a very wet area. She thinks further review is necessary in the Wellhead Protected Area.

Alternate Member Paul stated they have made an amazing effort. They have addressed many of the Board's concerns. It comes back to water issues. She looks at this and wonders if it would be redirecting water to the neighbors. She is not sure if they have addressed the concern of the neighbor across the street with the issue of water and whether the proposed raingarden would be sufficient. Otherwise, she thinks they have addressed everything.

Member Lord stated that getting rid of the gerrymandering of the lot helped a lot. He noted in looking at the existing contours, it seems to go down and into that area. With the building and the foundation and grading, it seems like the watershed is being cut in half. All the water is running down and around the edge of the building. He thinks they need more clarification of how this is going to work and where the water is going to go.

Mr. Boyd stated that he does not see that there is that much water coming through. The lots on Fern Ave are set well below the road so they have a whole set of problems on their own. Those lots have a very high-water table and there is also a lot of wetlands. There is not any wetland on this site. He has never seen water run over the top of Fern Ave to get to the other lots.

Member Lord stated that at the last meeting they heard that there were abutters that were having runoff issues. The Board is trying to avoid adding to the issue.

Mr. Boyd asked if the Board is requesting a pre and post drainage analysis.

Acting Chair Losik confirmed. She read from LDR Section 604.1.

Mr. Boyd asked if the Board likes what they have done with the lot layout, the raingardens and trenches.

Acting Chair Losik agreed. She stated that she is not sure how the Board feels in respect to having the driveway over the DLA. The two issues are the stormwater management plan and the driveway across the DLA.

Mr. Boyd stated that he would like some direction on the driveway.

Acting Chair Losik commented that the driveway could be moved further to the north.

Member Gittlein asked if there are any concerns with the Wellhead Protection.

Acting Chair Losik stated that the only concerns with the Aquifer and Wellhead Protection would be in terms of salt de-icers and fertilizers. Section 306 prohibits the use of fertilizers and there is a recertification every two years.

Member Gittlein stated that as a Planning Board Member, he is very concerned about the town's water. This is an issue that everyone is going to live with. It was triggered with the Coakley Landfill. This is something that he thinks about all the time. Rye has wonderful water and wonderful wells. That is the reason why they need to protect them and make sure they are not compromised at all.

Member Quinn asked if it is reasonable to have Sebago look at the plan as proposed and make comments.

Planning Administrator Reed explained that Sebago reviewed the plan and didn't have any issues.

Member Quinn commented that he would be inclined to approve the proposal.

Planning Administrator Reed stated that her thought was to make a stormwater management plan a condition of approval. When they go to get their building permit, they would work with the building inspector on stormwater management.

Mr. Boyd stated that they do not mind looking at this again and finetuning the numbers.

There was discussion about the drainage at the back of the house.

Member Carter stated that he had a problem with the configuration of the lot; however, that has been solved. His concern is basically the water coming down the right side of the property. He would want to be convinced that this is solved. He would also want to have assurance that the raingarden is the right size. He is not as concerned about the 4,000sf because the driveway could be moved if needed.

Mr. Boyd stated that they would be comfortable with getting an approval conditioned upon a satisfactory drainage analysis.

Acting Chair Losik opened to the public for comments.

Jim Cullen, 32 Fern Ave, stated that he lives directly across the street. He noted that there are two drainage easements on his property. (He pointed out the locations on the plan.) He explained that water runs from the MacIntosh property right across the street onto his property. After the last meeting, he filed two complaints with the building inspector. One was regarding the water being dumped and the other was that the town fails to maintain the culvert for the water. The question is how the water is going to be directed and controlled. It is not controlled now. Once the lot is approved, the water goes where ever it goes. It is known what is going to happen if the lot is elevated. The reason it is elevated is because of the ledge. He does not mind water coming down into the drainage easements; however, they do not need to create more uncontrolled drainage problems.

Acting Chair Losik commented that a stormwater management plan will require the lot owner to look at pre and post conditions to come up with a plan.

Mr. Cullen stated that at the last meeting, a stormwater management plan was requested so this is the second request.

Acting Chair Losik stated that stormwater management plans matter. If there is an issue it will be solved.

Mr. Boyd stated that they are willing to do the stormwater management plan. Generally, it is not required for a subdivision for one residential structure but he does understand.

Steven Genestreti, abutter, asked where the house is situated. He believes the proposal puts it significantly close to his house.

Mr. Boyd replied that the corner of the house is about 23ft from the property line.

There was some discussion on the location for the proposed home.

Mr. Genestreti stated that he is one of the property owners that got FEMA money because there was so much water in his yard after a storm that it caused structural damage to the house. He noted that was the Mother's Day storm of 2006. He has a concern with a house being built that close to his house. It does not seem to be in keeping with the look and feel of the neighborhood. It would certainly be very obtrusive and detrimental to his property value. More importantly, the water issues are just so intense there. He can't imagine that removing what ever needs to be removed for the basement would make the water situation any better and it can't get much worse.

Acting Chair Losik commented that the ledge for the test pit on 4-18 was 44 inches. She is assuming that ledge continues. She asked what level the basement is at.

Mr. Boyd stated it is at 65. He noticed the 67 contour runs through a third of the house. It could be up around 67.5.

Acting Chair Losik noted that if it is at 67, the first floor is going to be moving up. She noted that in the Aquifer and Wellhead Protection, the history of the Board is to not allow blasting. She asked if they are going to be manipulating bedrock.

Mr. Boyd replied no.

Acting Chair Losik asked if they would consider moving the home a little further away from the boundary line to better manage the water.

Mr. Boyd commented that he will talk with his client and see what can be done. He might be able to slide it over a bit.

Acting Chair Losik explained to Mr. Genestreti the information that will be provided in the stormwater management plan and the process that will be followed.

After discussion, she closed the public hearing at 10:56 p.m. She stated that the Board could conditionally approve the proposal (with the following conditions);

- No driveway over the DLA;
- Satisfactory stormwater management plan;
- No blasting of any bedrock;
- 306.6D – As it relates to salt and de-icing utilization;
- 306.6F – As it relates to fertilizers; and
- 306.12 – Aquifer and Wellhead Protection recertification (affidavit every 2 years).

Member Gittlein asked if they are going to limit the times of the day that any pounding of the ledge can be done.

Acting Chair Losik confirmed. She commented that this was done for the Workforce Housing project. The hours are limited to Monday through Friday, 8:00 a.m. to 5:00 p.m. She asked for a poll from the Board on whether it should not be conditionally approved and have it come back next month, or to conditionally approve the proposal with the conditions discussed.

Member Quinn stated that he is not in favor of conditionally approving this tonight. He would like to see the stormwater management plan.

Alternate Member Sherman stated she would conditionally approve it.

Alternate Member Paul agreed.

Member Lord agreed. He commented that the stormwater management plan is going to dictate everything on this site. He does not see a reason to bring the applicant back.

Member Gittlein stated he would approve with conditions.

Selectman Jenness stated she agrees with the conditions, as long as the conditions are detailed.

Member Carter agreed.

Motion by Nicole Paul to approve the Minor Two Lot Subdivision by Richard MacIntosh for property located at 29 Fern Ave, Tax Map 11, Lot 119 to divide into two (2) lots with the following conditions;

- (1) No driveway over the DLA;**
- (2) Stormwater Management Plan;**
- (3) Salt de-icing in accordance with Section 306.6 D, Salt and De-Icing, 306.6 F, Fertilizers;**
- (4) Compliance with 306.12 requiring recertification;**
- (5) No bedrock blasting. Jackhammering will only be allowed Monday through Friday from 8:00 a.m. to 5:00 p.m.**

Seconded by J.M. Lord.

Vote: 6-1-0 Opposed: Jeffrey Quinn

- e. Conditional Use Permit Application for Karl & Andrea Swanson for property located at 320 Brackett Road, Tax Map 19, Lot 137, for an existing detached cottage to be an Accessory Dwelling Unit per Section 506 of the Rye Zoning Ordinance. **Property is in the Single Residence District. Case #22-2018.**

***Continued to the November meeting by applicant request.**

- f. Minor Three Lot Subdivision by Brian Roper, Trustee of the Lee H. Roper Family Trust of 71 Irish Setter Lane, Guilford, NH, for property owned and located at 85 Brackett Road, Tax Map 22, Lot 67. **Property is in the Single Residence District. Case #24-2018.**

***To be heard at the November meeting.**

- g. ~~Minor Site Development Plan by RJ Joyce for property owned and located 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.~~

***Withdrawn by applicant.**

VII. Amendment No: 2019-01: Correction of Erroneous References/Indexing

***Please see attached amendment**

Acting Chair Losik read proposed Zoning Amendment No: 2019-01 and opened the public hearing at 11:05 p.m.

Peter Crawford, 171 Brackett Road, spoke to the Board in regards to RSA 675:3 and his concern that this amendment “side steps” state law that says **any** amendment or change to a zoning ordinance must be voted on by the voters. He noted that state law trumps a town ordinance.

Acting Chair Losik pointed out that Attorney Donovan drafted this proposed amendment. He would not have vetted this if it was a position that would be contrarian or not a position that is reflected in other towns.

After discussion, Acting Chair Losik suggested that this be tabled to the November meeting. In the meantime, Attorney Donovan can be consulted so the Board will have a clear answer. She closed the public hearing at 11:14 p.m.

Motion by J.M. Lord to move Proposed Zoning Amendment 2019-01 to Attorney Donovan for counsel and move it to the town warrant based on his advice. Seconded by Jerry Gittlein. All in favor.

VIII. New Business

Conceptual Consultation by Anna Scognamiglio for Christine Scognamiglio Trust for property owned and located at 170 Brackett Road, Tax Map 22, Lot 102, for a two-lot subdivision. Property is in the Single Residence District. Case #24-2018.

***Continued to the November meeting.**

IX. Approval of the September 11, 2018 meeting minutes

The following corrections were noted:

- It should be noted that the property owned by Richard MacIntosh at 29 Fern Ave, Tax Map 11, Lot 119, is located in the Single Residence District but also in the Aquifer and Wellhead Protection District.
- Page 3, 4th paragraph, 2nd sentence should read: **It will not be able to be reforested in its entirety because vegetation cannot be planted on or adjacent to the system.**
- Page 3, 5th paragraph, 1st sentence should read: **Chairman Epperson commented that most of the trees that are there now are deciduous.**
- It should be noted that Richard MacInstosh should be spelled MacIntosh throughout minutes.
- Page 9, 6th paragraph, the word stone drench should be **stone trench.**
- Page 13, paragraph 6, the word amendable should be **amenable.**

**Motion by Jeffrey Quinn to approve the minutes of September 11, 2018 as amended.
Seconded by Steve Carter. Vote: 6-0-1 Abstained: Priscilla Jenness**

X. Pay Escrows – (See separate accounting sheet of Escrows to be paid)

**Motion by Nicole Paul to approve payment of escrows as presented to the Planning Board.
Seconded by J.M. Lord. All in favor.**

XI. Other Business

1. Request for a reduction in line of credit by Joseph Falzone for project at 421 South Road.

Motion by J.M. Lord to approve the reduction in line of credit for the project at 421 South Road. Seconded by Steve Carter. Vote: 6-0-1 Abstained: Priscilla Jenness

2. Request for reduction and release of remaining line of credit by Ed Hayes for 511 Wallis Road.

The Board discussed the request for the release of the remaining line of credit for the project at 511 Wallis Road. It was agreed to take no action at this time.

3. Approval of Voluntary Lot Merger by Roland A. Routhier and Cindy Weeks, 437 South Rd.

**Motion by J.M. Lord to approve the voluntary lot merger for 437 South Road (Tax Map 4, Lot 11 and Tax Map 4, area A). Seconded by Steve Carter.
Vote: 5-1-1 Opposed: Jerry Gittlein Abstained: Priscilla Jenness**

XII. Communications

- **None**

Adjournment

Motion by Jeffrey Quinn to adjourn at 11:29 p.m. Seconded by J.M. Lord. All in favor.

RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2019-01

Re: Correction of Erroneous References/Indexing

Amend Section 1000 Amendment to add the following new paragraph:

Where a previously adopted amendment has resulted in an incorrect reference in another section of this ordinance or incorrect indexing of sections or when typographical errors are discovered, the planning board may make the corrections in the ordinance after a public hearing pursuant to RSA 675:3, without putting the corrections on the town warrant and ballot for approval.

Explanation

The Rye Zoning Ordinance is a 118 page ordinance with numerous cross references contained therein. When the planning board prepares amendments, it tries to identify and amend any references in other sections of the ordinance (or indexing) which may be affected by the amendment. Inevitably though, some are missed. The amendment provides a simple way of correcting the ordinance where a cross reference or indexing change has been overlooked or typographical errors discovered without taking up space on the town warrant and ballot for what is, in essence, a ministerial correction.

September 11, 2018
Revised September 14, 2018

RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2019-01

Re: Correction of Erroneous References/Indexing

Amend Section 1000 Amendment to add the following new paragraph:

Where a previously adopted amendment has resulted in an incorrect reference in another section of this ordinance or incorrect indexing of sections or when typographical errors are discovered, the planning board may make the corrections in the ordinance after a public hearing pursuant to RSA 675:3, without putting the corrections on the town warrant and ballot for approval.

Explanation

The Rye Zoning Ordinance is a 118 page ordinance with numerous cross references contained therein. When the planning board prepares amendments, it tries to identify and amend any references in other sections of the ordinance (or indexing) which may be affected by the amendment. Inevitably though, some are missed. The amendment provides a simple way of correcting the ordinance where a cross reference or indexing change has been overlooked or typographical errors discovered without taking up space on the town warrant and ballot for what is, in essence, a ministerial correction.

RYE PLANNING BOARD

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

Notice of Decision

Applicant/Owner: Richard MacIntosh

Property: 29 Fern Ave, Tax Map 11, Lot 119
Single Residence and Aquifer Overlay

Case: Case #21-2018

Application: Minor Two Lot Subdivision by Richard MacIntosh for property located at 29 Fern Ave, Tax Map 11, Lot 119 to divide into two (2) lots where lot 1 would be 5.99 acres and contain existing home and lot 2 to be 2.51 acres to be built upon. Property in in the Single Residence District and in the Aquifer and Wellhead Protection Overlay District. Case #21-2018

Date of Decision: Tuesday October 9, 2018

Decision:

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

The Two-Lot Subdivision by Richard MacIntosh was approved with the following conditions:

- 1. No driveway shall be placed over the DLA;*
- 2. Use of salt or de-icing shall not be used or minimized to the greatest extent possible per RZO 306.6D*
- 3. There shall be no use of fertilizer per RZO 306.6F;*
- 4. Every two years, there shall be an affidavit filed with the building inspector certifying that the property remains in compliance with RZO 306.6D and 306.6F;*
- 5. The applicant shall submit a stormwater management plan when applying for a building permit for lot 2;*
- 6. There shall be no blasting on the site; and*
- 7. The hammering, if any, for the ledge shall be limited to Monday through Friday from 8am – 5pm.*

10-16-2018

Date



Pat Losik, Vice-Chairman
Rye Planning Board

RYE PLANNING BOARD

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

Notice of Decision

Applicant/Owner: Joe Tucker and by Mildred E. Pike

Property: 0 Garland Road (155 Garland Rd) Tax Map 7, Lot 10
80 West Road, Tax Map 6, Lot 44-1
Single Residence

Case: Case #23-2018

Application: Lot Line Adjustment Plan by Joe Tucker and by Mildred E. Pike for properties owned and located at 0 Garland Road (155 Garland Rd) Tax Map 7, Lot 10 and 80 West Road, Tax Map 6, Lot 44-1 for an adjustment between the properties. Properties are in the Single Residence District. Case #23-2018

Date of Decision: Tuesday October 9, 2018

Decision: ☒ Approved
 ☐ Conditionally Approved
 ☐ Denied
 ☐ Continued

10-11-2018
Date


Pat Losik, Vice-Chairman
Rye Planning Board

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 October 9, 2018

Decision: x Withdrawn

10/10/18
Date



Pat Losik, Vice-Chairman
Rye Planning Board

RYE PLANNING BOARD

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

Notice of Decision

Applicant/Owner: Carey & Giampa Realty Trust

Property: 655 Wallis Road, Tax Map 16, lot 22
Business District and Aquifer Overlay

Case: Case #19-2018

Application: Minor Site Development Plan for Carey & Giampa Realty Trust owned and located at 655 Wallis Road, Tax Map 16, lot 22 for expansion of commercial space per LDR Section 201.2 due to installation of a new septic system where trees will be cut and parking plans changed.

Date of Decision: Tuesday October 9, 2018

Decision:

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

The Board voted to continue the application to the November 13, 2018 meeting.

10/10/18
Date


Pat Losik, Vice-Chairman
Rye Planning Board

RYE PLANNING BOARD

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

Notice of Decision

Applicant/Owner: Karl & Andrea Swanson

Property: 320 Brackett Road Tax Map 19, Lot 137
Single Residence

Case: Case #22-2018

Application: Conditional Use Permit Application for Karl & Andrea Swanson for property located at 320 Brackett Road Tax Map 19, Lot 137 for an existing detached cottage to be an Accessory Dwelling Unit per Section 506 of the Rye Zoning Ordinance. Property is in the Single Residence District. Case #22-2018.

Date of Decision: Tuesday October 9, 2018

Decision:

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

The Board voted to continue the application to the November 13, 2018 meeting.

10/10/18
Date



Pat Losik, Vice-Chairman
Rye Planning Board

RYE PLANNING BOARD

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

Notice of Decision

Applicant: Tuck Realty Corporation

Owner: Joseph Goss

Property: 0 Ocean Blvd, Tax Map 8 Lots 58 & 59
Single Residence District

Case: Case #11-2018


Application: **Major Subdivision** by Tuck Realty Corporation for property owned by Robert Goss and located at 0 Ocean Blvd, Tax Map 8 Lots 58 & 59 for a 5-lot subdivision. **Property is in the Single Residence District. Case #11-2018**

Date of Decision: Tuesday October 9, 2018

Decision: ☐ Approved
☐ Conditionally Approved
☒ Continued

The Board voted to continue the application to the November 13, 2018 meeting.

10/10/18
Date



Pat Losik, Vice-Chairman
Planning Board