

TOWN OF RYE – PLANNING BOARD

Tuesday, July 18, 2017

7:00 p.m. – Rye Town Hall

Members Present: Chairman Bill Epperson, Pat Losik, Mel Low, J.M. Lord, Jerry Gittlien, Jeffrey Quinn, Alternates Anne Richter-Arnold and Stephen Carter.

Others Present: Attorney Michael Donovan, Planning Administrator Kimberly Reed and Selectman Priscilla Jenness (Selectmen’s Representative to the Planning Board who is recused from this case and is sitting as a member of the public.)

I. Call to Order and Pledge of Allegiance

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

II. Designation and appointment of alternates

Chairman Epperson noted that Selectman Priscilla Jenness is recused from this case. The Board cannot seat an alternate in her place, as it needs to be assigned by the Selectmen. Selectman Phil Winslow was not available to attend the meeting.

III. Minutes of April 25, 2017

The following amendment was noted:

- Page 10, last 4 paragraphs were added to capture the comments of Mr. Falzone regarding the issues with the trees at the Brackett Road Subdivision, with comments from Attorney Donovan.

Motion by Mel Low to accept the minutes of April 25, 2017 as amended. Seconded by Pat Losik. All in favor.

IV. Public Hearings on Applications:

Sitting for following application: Bill Epperson, Pat Losik, Mel Low, J.M. Lord, Jerry Gittlein and Jeffrey Quinn.

- 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.

Approved with correction 9-12-2017

Attorney Donovan stated that the Planning Board asked him to prepare the Notice of Decision from the July 11th meeting. The waivers were denied for two reasons; absence of unnecessary hardship and not being compatible with the spirit and intent of the regulations. He noted that a copy of the draft has been submitted to the Board for review and the applicant has been provided with a copy. He continued that “no unnecessary hardship” is a term that is specifically defined in the statutes and court decisions.

Attorney Donovan reviewed the Notice of Decision regarding the waivers to Section 603.3 A, which requires 4000 square feet of DLA, and to Section 603.3 A 1.c, which prohibits any area of the DLA from being within 75 feet of bedrock or impervious substratum within 24 inches of the surface.

**Please see attached Notice of Decision, for decision made on July 11, 2017
Case #13-2016*

Motion by Jeffrey Quinn to accept the Notice of Decision as drafted by Attorney Donovan for the Board’s decision made on July 11, 2017, Case #13-2016. Seconded by Pat Losik. All in favor.

Chairman Epperson opened to the applicant in regards to the requested wavier for the topo.

Attorney John Kuzinevich, representing the applicant, stated that the applicant is seeking a waiver to Land Development Regulations (LDR) Section 403.1 E, which requires detailed topographical contours and soil delineation for the entire parcel when it is brought before the Board. However, this parcel is unique because the amount of conservation area being dedicated in terms of the swamp and wetlands, which is not at all related to the developable area.

Chairman Epperson asked if he is referring to the wetlands, not conservation land.

Attorney Kuzinevich replied its wetlands but he understands they are being dedicated for conservation. He continued there is no point in getting information for wetlands that have zero development. He feels that a waiver is completely appropriate in this case. The applicant has been going through this process for year and has not been hindered on not having that information.

Chairman Epperson stated that the Board regularly accepts those waivers. He continued that it is correct that it is 58 acres of land that is not developable. He does not see a point in making them do a topographical study on that.

Member Lord agreed.

Motion by Pat Losik to grant the waiver to Section 403.1 E of the Land Development Regulations for 421 South Road. Seconded by J.M. Lord. All in favor.

Regarding public input, Chairman Epperson stated that he would like people to keep their comments to about three minutes. He would like everyone to have a chance to speak on items that have not already been addressed.

Attorney Kuzinevich commented that he is going to start with the Conditional Use Permit. He continued that because of the amount of terrain being altered and it being greater than five lots, a Conditional Use Permit is required to build in the Wellhead Protection District. In order to get the Conditional Use Permit, an applicant must submit a Stormwater Pollution Prevention Plan and demonstrate that the plan will meet the minimal stormwater discharge setbacks. The plan has been submitted to the Board. Sebago Technics has signed off on the appropriateness of the plan. He stated that they will stipulate that any expansion and redevelopment activities shall require an amended plan. He noted there is no hazardous waste on the site so they do not need any more assessments as required by the ordinance. He stated that the town's consultant has reviewed all technical plans and found all requirements are met. He noted that the Board may grant the Conditional Use Permit if it is found that the proposed use does not detrimentally affect the quality of ground water contained in the Aquifer by directly contributing pollution by increasing long term susceptibility to potential pollutants. He stated that so far there has been no evidence over the entire year that the proposed development will have any impact on the Aquifer. Tim Stone has demonstrated that it is unlikely.

Chairman Epperson commented that the ordinance does not say "unlikely". It says "will not". "Likely" is not the language that is used. "The proposed use will not detrimentally affect".

Attorney Kuzinevich agreed. He continued that because the development is downgradient, of both surface water and groundwater, there is no chance of pollution going uphill. In fact, the town's consultant, Danna Truslow, in her April 10, 2017 letter stated; "Since blasting is no longer planned there should be little impact to the Water District wells from site activities". He knows that the ordinance says "no impact" and she says "little impact" but to give it any rationale interpretation there is no meaningful impact. He thinks this has easily been established. He stated that in regards to adequate safeguards in place for accidental spillages of substances which may be harmful to groundwater....

Chairman Epperson stated that they have already talked about Septi-Tech technology failing in one of the town's brand-new subdivision to the tune of 60%. He understands that the subdivision is not the applicant's project; however, this is the technology that is being proposed for this project. He asked how the Board can come to the conclusion that long term susceptibility is something that can be depended on based on the fact that it has been seen that three of five systems are over the limit for nitrates.

Attorney Kuzinevich explained the reason the systems were over is because they were mis-programmed from the start. It is not a failure from the system failing. It was a failure from the system not being set up. It is a user issue. There is no failure with the leachfield. He noted that one of the conditions he is going to ask the Board to impose with any approval, is that Mr. Falzone be required to do an initial three month inspection after the systems are installed to

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totally avoid the systems running for a year without homeowner's support, to establish a mechanism that Mr. Falzone notifies Septi-Tech of every closing and to establish a very strong self-funding homeowners association to make sure an independent consultant will help to coordinate with the town on getting the data. This will address the operational issues as much as possible. In terms of assuming the systems have even minimal performance, and forgetting this is 1000's of feet away from the well.

Chairman Epperson noted this is also adjacent to the White Cedar Forest. The White Cedar Forest is very susceptible to any environmental changes, including nitrates and phosphates.

Attorney Kuzinevich stated that Mr. Stone has done all the calculations. Because of the volume of water and the dilution factor, there is not going to be a problem. In regards to the well, it produces such a volume of water that even if every Septic-Tech System on site failed, it would still be undetectable levels.

Speaking to the Board, Chairman Epperson asked if there are any questions about the requirements for C1.

No questions were heard.

Referring to C2, adequate safeguards in place to prevent accidental spillage, Attorney Kuzinevich stated it is a residential subdivision and it is hard to tell people what to do. However, it is very unlikely situation that there is going to be accidental spills. If there are, it is not going to be in large quantities.

Chairman Epperson agreed.

No other comments or questions were heard from the Board.

Referring to C3, proposed useful discharge, no waste water on site, other than typically discharged by domestic waste water disposal systems, Attorney Kuzinevich stated this is met with the advanced systems. He noted there is no onsite storage, disposal of toxins or hazardous waste.

No comments or questions were heard from the Board.

Referring to C4, the proposed use will not cause a significant reduction in in the long term volume of water contained in the Aquifer storage capability, Attorney Kuzinevich stated that the Rye Water District has confirmed there is sufficient capacity in the Aquifer to supply the proposed development. There is no concern about reducing the volume of water. Because of restrictions being in place on the various homes prohibiting irrigation, this subdivision will draw less water than many properties.

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Chairman Epperson commented this is one issue the Rye Water District was concerned about. He continued that it says; "The proposed use will not cause significant reduction". At the December 12th Meeting, the Board had placed a USGS Survey done by Thomas Mack, who is a well-known hydrologist, on record. *(He read from Thomas Mack's report.)* He stated that not only are there 17 houses, that may or may not be using a lot of water, there is also climate change that is probably going to lower the groundwater by 2025. That is significant.

No other comments were heard from the Board.

Attorney Kuzinevich continued the proposed use applies with all other applicable sections. It regards to a requirement of a geological report, extensive data has gone back and forth.

Chairman Epperson opened to the public for new comments regarding the application.

Susan Cole Ross, 333 West Road, read from a prepared statement.

**Please see attached, Susan Cole Ross, 333 West Road*

Beverly Levesque, 381 South Road, spoke to Board regarding the Rye Wellhead Protection Area.

**Please see attached, Beverly Levesque, 381 South Road w/recent articles from the Portsmouth Herald.*

Carol Menard, 495 South Road, submitted a packet to the Board. She explained that the map submitted is a new map. It was submitted before; however, it had to be broken up for the Zoning Board. She noted that what is missing from the map is vernal pool #5 and proposed Lot 9. Also, the wetlands are smaller on Lots 2 through 5. Her point in submitting this is to ask why? She continued that the second sheet of the packet is from Danna Truslow. This is just a reminder of the lineaments that go northwest/southeast. Mrs. Truslow referenced the private wells in the area. Referring to Lot 19 on the sheet, she reminded the Board that the bedrock well is 460ft deep. The depth to bedrock is 35ft. It produces 75 gallons per minute and is approximately 200ft from the proposed two septic systems on Lot 2. The Svihovec and Ritzo wells are even closer. How far does water move to our wells? She noted that Exhibit 3 is a guide to potentially favorable areas to protect future municipal wells in stratified drift aquifers. *(She reviewed the information for the Board.)* She continued that this information is very alarming. Those numbers are really low. This got her thinking about the bedrock aquifer and what is being done to take care of the town's bedrock aquifer. All of the aquifer that is protected in the Wellhead Protection Area is important to the abutters. She stated the next exhibit is from Mr. Mack which was discussed earlier. That sheet shows the well depths. *(She reviewed the information for the Board.)* What are the drawdown distances, in the Bailey Brook and Cedar Run wells, on a summer day? Where does the water flow? She stated that the abutters and concerned residents in Rye respectfully request the Planning Board deny the proposed major subdivision at 421 South Road, which is entirely within the Wellhead Protection Area because all new water flows from lot to lot over this large and naturally functioning water system, including septic effluent plumes which violates Section 301.4 (e) (c) and (b), because new surface and stormwater

drainage from roads and house lots reduces existing vernal pools and wetlands, violating 301.8, A(2), and because with complex drainage elements that funnel new water across great distances to lots owned by a future resident of the development with high likelihood for failure, violating Section 301.4 (c), and present potential for flooding on abutting property.

Doran Morford, 460 South Road, stated that he and his wife are part of the group that is selling the property. He stated that his wife's grandparents bought the land where they live and adjacent land in the 1940's. They are the third generation on the land. He continued that they are invested in the community of Rye, both its water quality and the community as a whole; however, he still supports the opportunity to sell this property. When his wife's grandfather bought the property, it was for an investment in the future. As his family has enlarged and dispersed to many sections of the country, there may not be anybody to maintain that land in the future. The hope is that the sale of the land would be an opportunity to create legacy for other members of the family. He commented that they are not selling the property so they can ravage the water system in Rye, New Hampshire. The goal was simply looking to the future from the perspective of where they live. He knows there has been a great deal of discussion about the water shed, the water system, the aquifers and wellheads. He would propose two possible considerations. First, any septic system that is in place in the town has to be maintained so they are not effecting water systems. To say that a development cannot happen because of what might happen in the future, would be saying that there can never be any development in Rye because potentially there could be an effect on the water quality in the town. The second point is regarding the number of houses that are in the subdivision. If the system is correct and is properly maintained, is overseen and managed in a proper fashion, it does not have to be dangerous simply because of the presence. He is hearing that the future should be assured before it gets here and that is difficult to do. The future cannot be predicted and cannot be controlled. He continued that his hope is that they can reach a consideration that is reasonable and will allow a development to take place that will be good for the community; both with population, the school system and all the elements that might be productive and helpful to the community.

Ann Chisholm, Trustee for 421 South Road, stated that her family has owned the land since the 1940's when her grandfather and grandmother moved to Rye from Exeter. She continued that her parents owned the land from the 1970's. They were good stewards of the land. They were residents of the Town of Rye and she grew up in town. She cares about the town. She noted that her parents were taxpayers and cared deeply about the town. She takes the responsibility of being Trustee very, very seriously. She noted that they have had other offers but chose a developer that was careful and understood what needed to be done to protect the water system in the Town of Rye. This person hired professionals who have developed endless charts, plans and used science with deep consideration before presenting this proposal. She asks that the Board be fair and reasonable in their considerations.

Priscilla Jenness, Central Road, speaking as one of the owners of the property, read from a prepared statement.

**Please see attached, Planning Board Statement, Priscilla V. Jenness & Frances I. Hyde*

Anne Hodsdon, 427 South Road, reviewed her thoughts from a prepared statement.

**Please see attached, Anne Hodsdon, 427 South Road*

Steve Cash, 434 South Road, reviewed his concerns as presented in his statement submitted to the Planning Board.

**Please see attached memo, Steven Cash, 434 South Road, w/printed Planning and Zoning Regulations Section 647:23.*

Stephanie Patrick-Chalfont, 410 South Road, submitted an exhibit on behalf of abutters and concerned residents of Rye.

**Please see attached, Stephanie Patrick, 410 South Road, w/Assessment of Ground-Water Resources in the Seacoast Region of New Hampshire Table.*

Frank Hwang, 18 Old Parish Road, stated that he is present to represent the parents who could not be present who want to protect their children. In talking about the future, water is a consideration as well as development.

Kevin Bosma, 416 South Road, stated that the two things the abutters want to be sure is on the record is in regards to the vandalism accusation that was made by Mr. Falzone. He submits abutters' signatures to the Board denying vandalism or removing of any test pit flags, survey hubs and roadway stations or any wrongdoing to Mr. Falzone's project.

**Please see attached statement to Rye Planning Board, dated July 10, 2017, submitted by abutters to 421 South Road*

Chairman Epperson commented that he and Mr. Falzone discussed this during the site walk. Mr. Falzone acknowledge the fact that he did not know if it was abutters; however, the flags were moved by someone.

Mr. Falzone confirmed.

Shelly Patrick, 410 South Road, highlighted her statement in regards to the temporary logging road at 421 South Road.

**Please see attached statement, Shelly Patrick, 388 & 410 South Road, w/attached email*

Tim Stone, Stonehill Environmental, stated that one of his concerns is that a lot of things have been forgotten over time. The science has been cherry picked and it is very disturbing to him. He has been in the business for over 35 years and there is a lot of good science out there. To hear the abutters, throw that aside and cherry pick comments, he finds very troublesome. In regards to the CUP, he stated they are talking about installing Septi-Tech Systems that are going to meet 15 milligrams per liter, far better than the 250 systems that are estimated to contribute nitrate to the Bailey Brook and Cedar Run wells. He did a calculation as to the wells at a combined flow of 600 gallons per minute. Ken Aspen of the Rye Water District actually confirmed that it was 700 but he estimated low so there will be a little less solution. If every gallon that discharged to the septic systems at 15 milligrams per liter was drawn into the supply

wells, which is an impossibility, there would still be nitrate below detection levels in the supply wells. He noted that the wells are upgradient. There is not a single well that is downgradient of this site that could potentially be impacted by this site that would be anything worse than what is going on with traditional septic systems on South Road. There is groundwater data downgradient of the South Road properties that see little, if no impact, from the monitoring wells. Why would someone think that the advanced treatment systems are going to be the thing that destroys this area? The Grove Road Landfill is a whole other scenario. That landfill is directly upgradient in the defined Wellhead Protection Area, not the arbitrary 4,000sf radius. The word "arbitrary" is a term that EPA and DES uses when they create these radiuses to start with. It was discussed early on that the radius was modified to hard data collected by the Rye Water District's scientists, who showed the vast majority of the water entering that well is from the northeast and the southwest, not the southeast. The studies to locate the supply wells put them in that position.

Mr. Stone summarized:

- There is a strong groundwater flow direction to the north, away from any property abutting this site and not towards the Rye Water District wells.
- The site is downgradient of the Rye Water District wells.
- There have been pump tests done that show where the vast majority water is coming from and the site will have no impact on the supply wells.
- Blasting has been eliminated as a potential temporary contamination at the site.
- Irrigation on the site will be prohibited which will reduce the draw on the water supply wells.
- Restrictions on road salt application will be allowed in this development.
- The site is within the 4,000 arbitrary radius but the location of the site has the least likely possibility of contributing anything to those wells.
- The closest supply well that is upgradient of this site is 250ft away. The side gradient wells are 300 and 400ft away.

Referring to Marjorie Way, Mr. Stone stated that he admits this was a failure of all the administrative controls. It is a learning experience for the town and for the developer. Mr. Falzone has said that he will put all the safeguards in place to make sure there is a third party providing oversight to make sure that what happened at Marjorie Way does not happen here. He continued this is a complicated site with shallow bedrock. It is fortunate in this case because there is an extraordinary wide riparian buffer to Bailey Brook to the White Cedar Swamp. There are no direct discharges to the northern wetland boundary or to the White Cedar Swamp. Nature does a great job of taking care of low level contaminants that discharge from septic systems or discharge from overland flow of the treatment swales. He noted that they have committed to leaving undisturbed buffers. The 75ft buffers around the vernal pools and in the backyards of the homes; however, that is just the beginning. The rest of the distance is 400, 750, 1000 to 1200ft buffer between the developed area, Bailey Brook and White Cedar Swamp. Studies show that these wide buffers are effective with mitigating the impacts of development.

No questions were heard from the Board.

Chairman Epperson closed to the public and closed the record on the CUP at 8:19 p.m. He opened to the applicant to address the subdivision at large.

Attorney Kuzinevich stated that he wants to remind the Board that people do have rights to develop their property, especially, when they comply with the regulations. Except for the waiver on Lot 12, this is an instance where the applicant has not asked for any waivers. Full compliance throughout. It does not feel like there are any loose ends between the peer review and Mr. Falzone's design team. The Board's peer review ultimately agreed with the design proposed. It is very important for the Board to realize that they have to be guided by the science because there is no other way of interpreting the regulations. He continued that there was a lot of extraneous testimony about threat to Rye's wells. RSA 674:23, that raises the spectra of emergency, does not apply here. The Planning Board first has to make an independent study that an emergency exists. Then the report has to be referred to the Board of Selectmen who determine if there actually is an emergency. The Board does not have any emergency grounds which were quoted by statute. He continued that a lot of what seems to be a concern is what happens if the property is needed for a replacement well.

Chairman Epperson commented not from the Board.

Attorney Kuzinevich stated that he would suggest this would not be a proper ground denial.

Chairman Epperson agreed.

In terms of proposed conditions, Attorney Kuzinevich stated that the first would be that Lot 2 remain on the plan but be noted as a non-buildable lot, unless Mr. Falzone gets relief from the Board of Adjustment via a rehearing or from the court. He pointed out that with all respect to the Planning Board, likewise they are going to challenge the Lot 12 waiver. He would like a corresponding note on the plan that Lot 12 is not a buildable lot unless the applicant gets judicial relief. He noted that the reason they are asking it to be done this way is to simplify the process, hopefully get subdivision approval, not have little disputes about those lots and not have to redraw plans to change the lots. The third condition would be to set up the homeowners' association and agreement to pay for the early inspections on the Septi-Tech Systems.

Attorney Loughlin stated that there has been a lot of discussion about people not paying attention to what the rules are. He thinks about this when he comes to a four way stop and it depends on people obeying the rules. In his experience, they always do. If the assumption is made that people will not pay attention to the septic requirements, it is an unfair way to characterize it. He does not think this is what normally happens. He stated that the Rye Planning Board has always been vigilant in making sure every application complies with the zoning and land use regulations of the town. This has been the case with the South Road application. There has been a great deal of neighborhood involvement and every member of the Board has been extremely engaged. Based on his experience, it is fair to say that no application has been subject to more hours of scrutiny by board members and a host of highly qualified expert. During this year long process, the Board and Harbor Street have worked together to coordinate experts, schedule site visits and

work sessions, and to identify dozen of issues and potential issues. As indicated in a recent letter to the Board, Harbor Street made every attempted to cooperate with every request made by the Planning Board, regardless of whether those requests were spelled out in the town's regulations. For example;

- When the Board indicated that it thought ledge outcroppings were a "special feature" worthy of protection, the roadway was redesigned to lessen the impacts of the ledge outcroppings.
- When board members expressed concerns about the possible impacts that blasting could have on town wells, Harbor Street agreed to eliminate all blasting, even though Harbor Street's hydrologist Tim Stone did not think that was necessary.
- When board members expressed concern about the proximity of original Lot 7 to the White Cedar Swamp, the lot was eliminated.
- When there were continued concerns about the White Cedar Swamp, a buffer of a minimum of 700ft was created and is shown on the plans submitted. In that buffer, there is proposed language that would eliminate the cutting of the underbrush and all the things that science says will reduce the impact to absorb nitrates.
- When the abutters demanded a second site walk with the argument that the spring rain had changed the wetlands boundaries, Harbor Street agreed to a second walk and provided its consultants for that walk and paid the town's hydrologist to go on that walk. The net result confirmed that there was no change in the wetland boundaries, which are established over many, many years and are not affected by heavy spring rain or a drought.
- When the town's hydrologist speculated that the area seen on the site walk was omitted from the wetland mapping, the developer paid to have the town's wetlands expert go out and confirm it was not omitted. It was not a wetland.
- Even though Harbor Street Development did not believe that the preparation of Lot Development Plans were required under the ordinance and land use regulations, several of the board members thought those were important. Those plans were produced and submitted to the Board.

Attorney Loughlin reiterated that Harbor Street has tried to cooperate and answer any request that has been made by the Board. He continued that they realize there is not a ground swell of enthusiasm from the neighbors for this development. However, the Chisholm and Jenness Families have owned and paid taxes on the land for decades. They have a right to develop their land with new homes, just as all the neighbors in the area have had their land developed for homes over the years. The test is not whether the neighbors support this proposal but whether the proposal satisfies the town's requirements. He would suggest that based on the detailed reports received from the town's hydrologist, wetlands experts, soils experts, traffic experts, planning consultants and engineers that those requirements spelled out in the ordinance and land use regulations have been satisfied. As a result, he would request that the subdivision be approved.

Chairman Epperson closed the public hearing and the record on the subdivision at 8:30 p.m.

Chairman Epperson commented that the Board will discuss the application in detail starting with the Conditional Use Permit. He stated that his comments on this application from the very first day, and before as an alternate on the Marjorie Way case, was on the quality and quantity of the town's water. Water is the most important asset to the town, even more important than the beach because people can live without a beach but not without water. His consideration has always been about the water, the wells and what should be done about it. He went back and looked at the documentation on the Land Development Regulations and the Master Plan. He read from the Master Plan, "the purpose of zoning is to safeguard the health, safety and general welfare of our citizens". It talks about the fragile habitat of the area. It talks about the wetlands, the shoreland and excessive water. It has just an amazing amount of information with regard to water. In the very beginning of this application, the applicant had submitted a number of documents one of which was a Site Impact Analysis. Number 5 on that analysis is groundwater quality. It states, "There should not be a major impact on water". He pointed out that an addendum was submitted sometime after that in which the verbiage was changed to "will not". In the beginning, it was "should not" and about a month later it was "will not". For that reason, he is struggling with this application, as far as well water is concerned.

Member Losik stated that she has spent a lot of time looking at all the data and reading the reports. She noted that she is not an engineer so she has to look at the data and the detail that is given. She continued that it can be agreed that the site itself has some challenges in terms of its characteristics. It has endured almost 200 test pits and ledge probes. She has analyzed the data and looked at the surface to bedrock or surface to impervious characteristics. It can be seen on the topo map where this is all occurring. It is really over a few lots. It is a ridge that goes down the middle between the east and the west. That is where the shallow activity can be seen. Some of the lots have been changed, in part due to those conditions. She stated that she is struggling with the characteristics on the site. She keeps asking herself if the developer has done everything possible. Has everything been looked at and every corner been looked into to bring to the town something that might work?

Member Losik stated the test pits and ledge probes have been significant in number at approximately 200. They have been conducted over a long period of time because there needed to be a search to find the right mechanism to work as this design came together. This was done over the time from May of 2016 to April of 2017. Most, not all, are reflected on the Topographic Plan and/or on the separate Lot Development Plans. At many of the test pits/ledge probes, refusal and/or ledge/bedrock/impervious matter was reached less than 5 feet below land surface as the field work encountered material too difficult to excavate. She noted that she had built a spread sheet to see what was going on per lot. Interestingly in looking at all the data of all the test pits and all the ledge probes, about 80% of them are 60 inches or less to surface. The other thing that is interesting is that most of the data is coming from the center of the site for the ledge probes and the test pits. She noted that there are 5 lots, Lot 7, 10, 12, 13 and 14, that make up over half the test pits and ledge probes. She pointed out that 90% of them are shallow to bedrock, or shallow to something impervious. This creates concerns.

She stated that Truslow Resource Consulting has opined that the subsurface characteristics of the site include shallow bedrock. Noting on 12/1/16: "The shallow bedrock at the site is an important consideration in evaluating the impact of this project as well." Also noting, "Clearly bedrock is an important flow path for local and regional groundwater flow so additional evaluation of this activity should be made as part of the hydrogeologic evaluation of the site." She stated that Mrs. Truslow submitted an attachment from the USGS Report, which show lineaments running through the site. These are orthogonal and adjacent lineaments to the preferred lineaments that Tim Stone referred to about the preferred flow of water to bedrock.

During the February 8, 2017 work session, Truslow shared via Truslow Resource Consulting Technical Memorandum the following:

(Member Losik read from Danna Truslow's memorandum submitted to the Board at its work session on February 8, 2017.)

Re flow paths of septic systems and influence on groundwater: "Bedrock groundwater flow is less predictable and flows preferentially with fracture zones. We don't have information on site-specific preferential fracture zones but there are fracture orientations on the outcropping rocks and the lineaments/fracture traces developed by the USGSIDES. Nearby homeowner well yields (NHDES one stop) suggest highly fractured bedrock very nearby including the Menard (abutter) well to the west.

Flow in the vertical direction in to bedrock from the southern areas of the site may enter a deeper flow system and return to the shallow flow system at a greater distance than if the groundwater remained in the shallow overburden flow regime (see rough DBT cross sections) potentially impacting groundwater at a greater distance from the development.

With respect to testing: "Geophysical surveys can be completed that characterize bedrock depths and can also identify the probable zones of weakness and shallow groundwater flow. Seismic refraction, electromagnetic surveys and Ground penetrating radar have all been used independently and jointly to assess subsurface bedrock characteristics. They are not invasive (no drilling or test pits required) and can be used to characterize large areas. This technique is commonly used along with lineament/fracture trace mapping to identify favorable bedrock water supply areas. "

A USGS Study: Assessment of Ground-Water Resources in the Seacoast Region of New Hampshire (See Planning Board Meeting 12/13/17) incorporates a discussion about Rye high-yield bedrock aquifers. In part, the study notes that: "Borehole geophysical analysis (Johnson and others, 1999) identified northeast and orthogonal northwest-trending fracture sets indicated in the lineament analyses of others." Data re Rye's two bedrock wells which exist within the Aquifer & Well Head Protection District are reflected in Appendix 4- Description of Selected Unconsolidated and Bedrock Aquifers. See Table 4-1, Page 78: Bailey Brook at 551 feet deep and Cedar Run at 437 feet deep. These wells produce over 300 gallons per minute.

The Developer's Hydrologist, Mr. Tim Stone, from StoneHill Environmental, Inc. has consistently worked to provide information relative to the Site and suggested a number of proactive steps. Noting the preference for this Site, Mr. Stone suggested if there is anywhere in the Wellhead Protection Area that a site could be located, this vicinity is least likely of an area that could potentially contribute to contamination (see ZBA 7/21/17 minutes) . Throughout the process Mr. Stone has clarified there are not any guarantees about hydrology issue(s). The Town and Planning Board has been guided to accept some risk around the matters of water quality and quantity. Rye RZO Section 306, requires the Planning Board to require the highest standard(s) relative to the quality of groundwater in the aquifer.

To date, no geophysical surveys have been under taken. Although Rye wells are topographically distant from this Site, there exists the possibility of relationship to bedrock as noted in the aforementioned. Without testing, the Town cannot establish a relationship certain. Without knowing if indeed a relationship exists between water entering the bedrock on the site and Town of Rye wells, we cannot meet the standards of RZO Section 306: Aquifer and Wellhead Protection District. Specifically:

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 by located in the aquifer recharge areas.

In the absence of proof regarding the hydraulic characteristics of the fractured bedrock, the protection of the public health and general welfare of the citizens of Rye cannot be assured. The development and land use proposed cannot be accepted as there exists an unknown regarding contamination or reduction of recharge to the aquifers. To balance the availability of public and water supplies for future Town growth and appropriate and safe land uses in the aquifer recharge area, additional study is required.

**Please see attachments submitted by Member Losik
Truslow Resource Consulting – Attachment 2
Table 4-1, Assessment of Ground-Water Resources in the Seacoast Region of N.H.
Working Document – Lots TP and LP's (8 pages)*

**End*

Member Lord stated that at the ZBA meeting on June 21, 2017, the developer was reviewing alternative access to Lot 2. On page 4 of the ZBA minutes, Jim Gove, on behalf of the developer, talked about option 3, which was access to Lot 2 through Lots 3 and 4. Mr. Gove said, "Access would be going up a slope. Creating a slope will cause people to use more sand and salt on the driveway during the winter". When Mr. Gove was asked about the steepness of the slope he stated, "It is clearly straight downhill and is fairly significant". On page 5 of the minutes, the consultant explained this is 160ft in length and has an 8ft drop. That testimony also parallels the information he submitted to the ZBA dated June 21st. In that letter Mr. Gove stated, "A sloping driveway will require the homeowner to utilize excessive salt and sand to allow safe passage in icy conditions. The long term impacts of such usage will have a detrimental impact on the natural resources". Member Lord noted this is the applicant's own consultant saying this is going to be a problem with this driveway that is 160ft with an 8ft drop, which equals a 5% slope. There are 8 lots proposed for this subdivision, Lots 3 through 10, that back up to the wetlands with driveway slopes at 5% or greater. The Planning Board has made it very clear that if this is passed it would be made a no salt zone. He reiterated that the consultant said the homeowners would be required to use excessive salt for safe passage. This would have a detrimental impact on the natural resources. Even if protective covenants were put on these lots, they are basically saying the homeowners would ignore them for their own safety. There are 8 lots that the applicant's own consultant is saying that this is going to be a problem.

Member Quinn stated that he appreciates the quality of the presentation and being provided with updated plans. It made a lot of sense to him. He also appreciates the letter that was written by Attorney Loughlin regarding the attempt of Mr. Falzone to provide to the Board as much expert testimony, valuation and assessment throughout this whole process. He has nothing but the highest regard for the people who have testified before the Board. He continued that he tends to take a more global view when looking at the site. He sees the obvious compromises that are there on the site. Those being ample amount of bedrock and wetland area, which says to him that they may be able to get appropriate building lots located in particular areas but those lots that are buildable now are not far from water and/or rock. As this has been discussed with the prohibition of blasting, it would seem to him that engineering is going to be required on the roads, building foundations and septic systems that are installed will have to be elevated to some extent because of the topography challenges. There has been some testimony over the last year as the Board has discussed various subdivisions and the imposition of forming homeowner associations. At best these homeowner associations have well intentions but don't behave in ways that the Board originally expected them to behave. He appreciates Attorney Loughlin's analogy on the four way stop but he does not think it's appropriate. A four way stop is something that people do over and over again. In talking about monitoring septic systems, with the transfer of property and time at which people live in these original homes, the conditions he can see the Board imposing on this site could take a lot of diligence on the part of somebody, an expert or the town, to make sure each of these conditions are being adhered to. He can imagine that the list of conditions on this would be ample. In weighing that all together, he feels this is not an appropriate subdivision to allow to go forward.

Member Low stated the he was in banking for a long time and did a lot of land development loans. He thanks god the Board did a site walk. He learned more about that area from that site walk. The Board was told that the ledge was “rubble” and could easily be taken out. On the site walk, the Board saw that it couldn’t. He continued he went down to Mr. Falzone’s other development on Brackett Road and tried to envision the same type of development in the Wellhead Protection Area. These are two entirely different areas. Part of this land is very difficult to develop because of the ledge, vernal pools and everything else. The Board did not put this land in a Wellhead Protection Area. This was done by someone other than the Board. With what is going on with the water situation in Rye, he does not think he is ready to approve this development. He listened to Tim Stone and his testimony. He was very impressed with Mr. Stone’s presentations.

Alternate Richter-Arnold stated that she agrees with everything that everyone else has said. It has been said that the Board is cherry picking science; however, science is not infallible. There is a human factor. The Board does not have a lot of information about what is happening under the ground and they are relying on septic systems and human error.

Member Gittlein stated that over a year ago the Board had a question about the size and scope of this development. He still has that feeling. There has been a lot of high level work and he respects them for that; however, he is concerned about the town’s water. There is no one that can say the water will not be affected by this. He is concerned about the future of the town and this particular development because it is being shoehorned into a very fragile area. For those reasons, he is against it.

Regarding the Conditional Use Permits, Chairman Epperson noted the Board will vote on them one by one. He noted that the requirements for a Conditional Use Permit are under Section 306.5 C, Land Use Regulations.

(Note: Members seated for the vote: Bill Epperson, Pat Losik, Mel Low, J.M. Lord, Jerry Gittlein and Jeffrey Quinn.)

C1. The proposed use will not detrimentally effect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long term susceptibility of the aquifer protection potential pollutants?

J.M. Lord – No
Mel Low – No
Pat Losik – No
Jeffrey Quinn – No
Jerry Gittlein – No
Bill Epperson – No

Vote: No: 6-0

C2. Adequate safeguards will be in place to prevent spillage of substances or materials which may be harmful to groundwater from reaching the aquifer?

J.M. Lord – Yes
Mel Low – Yes
Pat Losik – Yes
Jeffrey Quinn – No
Jerry Gittlein – Yes
Bill Epperson – Yes

Vote: Yes: 5-1

C3. The proposed use will discharge no waste water on site other than is typically discharged by domestic waste water disposal systems and will not involve the onsite storage of, or disposal of, toxic or hazardous waste, as herein defined?

J.M. Lord – No
Mel Low – No
Pat Losik – No
Jeffrey Quinn – No
Jerry Gittlein – No
Bill Epperson – No

Vote: No: 6-0

C4. The proposed use will not cause a significant reduction in the long term volume of water contained in the aquifer and the storage capacity of the aquifer?

J.M. Lord – Yes
Mel Low – Yes
Pat Losik – No
Jeffrey Quinn – No
Jerry Gittlein – No
Bill Epperson – No

Vote: No: 4 -2

C5. The proposed use complies with all applicable Sections of this Section?

J.M. Lord – No – *(based on 306.2B, 306.3D, 306.3H and 306.6D)*
Mel Low – No
Pat Losik – No – *(based on 306.2A, 306.2B, 306.2C and 306.2D)*
Jeffrey Quinn – No- *(based on 306.2B, 306.3D, 306.3H and 306.6D, 306.2A, 306.2B, 306.2C and 306.2D)*

Approved with correction 9-12-2017

Jerry Gittlein – No - *(based on 306.2B, 306.3D, 306.3H and 306.6D, 306.2A, 306.2B, 306.2C and 306.2D)*

Bill Epperson – No – *(based on 306.2B, 306.3D, 306.3H and 306.6D, 306.2A, 306.2B, 306.2C and 306.2D)*

Vote: No: 6-0

Attorney Donovan recommended that the Board make sweep motion to deny the Conditional Use Permit (CUP).

Motion by Jeffrey Quinn to deny the Conditional Use Permit based on the votes just taken. Seconded by J.M. Lord. All in favor.

Chairman Epperson called for a recess at 9:15 p.m.

The meeting was reconvened at 9:25 p.m.

Chairman Epperson stated that the Board will discuss the merits and the deficits of the major subdivision.

Member Lord highlighted his thoughts regarding the subdivision as outlined in his prepared statement.

**Please See Below*

Member Lord:

This has been a long process and it taken some time to ferret out the details of the proposal. The plans have been ever changing based upon newly discovered information and site impacts, and it more than proves the challenging aspects of the site.

Over time this board has repeatedly asked for information be added to the plans and reluctantly some of it's been done, but has taken months to occur.

As late as the April 26th work session, Vice Chair Pat Lasik, Attorney Donovan, Steve Harding (Towns Consultant), and I, all requested additional information be added to the plans and the developers Engineer agreed to do so.

I am a Professional Engineer and Project Manager who has been working for developers for over 30 years and have permitted a lot of developments. I'm currently working for three different developers, I have about 12 projects currently in some stage of the permitting process and have five Engineering firms engaged for that work. I couldn't agree more with Mr. Harding's comments on the quality of the plans. At this stage of the process, we are missing basic information such as legends, quality control is certainly missing as these plans leave the Engineer's office. I don't think we require legends on the plans in our Land Development Ordinances, but some things are just plain common sense. These plans are poor at best and still difficult to go through.

I also can't tell you how many times I've been asked by various Boards to supply information that was not in their regulations but was pertinent for any Board to make informed decisions on an application. Yes, it costs extra money for those things, but in my experience, I always assume that as given going into a project. If development was cheap and easy, everyone would do it, but it's not. And the thousands of dollars the developer has spent on this project, again demonstrates the challenging aspects of the site.

This development was presented to us as a site that had "some wetlands and some boulders." Through this process the due diligence showed expanded wetland areas and identified wetlands areas that were not flagged. The boulders, as most everyone but the development team would admit, were not boulders but in fact ledge, and it's nice to see the development team finally acknowledge, as Attorney Loughlin's did in his July 13, 2017 letter to the Board, that the "boulders" are indeed ledge outcroppings.

Some of these ledge outcroppings are huge and clearly 'special features' of the property. As such, I thought it was prudent for the developer to redesign the road as that was not faring well with the Board and probably would not have led to a favorable outcome.

Clearly the underlying ledge and ledge out cropping could have easily been dispensed with by blasting. We heard testimony from both Environmental Consultants regarding underlying ground formations, how the fractures are generally aligned in a northeast/ southwest direction, but also how there are some that could be aligned in a northwest/southeast direction. We heard testimony of how people lost their wells less than a quarter mile away when a development 3000' to the southeast went under construction with extensive blasting.

In the Rye Zoning Regulations in the Aquifer and Wellhead Protection Zone where a Conditional Use Permit is required, one of the conditions states that any proposed use will not, and I emphasize will not, detrimentally affect the quality of the groundwater. Although the consultants felt that it probably would not affect the quality of the groundwater, nobody could definitely say that it will not affect the ground water or the Town well which is 2500' away. Without that guarantee, the developer had no alternative but to eliminate all blasting in the development.

The Atlantic White Cedar Swamp combined with the massive ledge outcroppings and underlying ledge were contributing factors to the developer downsizing the development from 21 lots to 17 lots. We have a June 7, 2017 letter from the developer's attorney stating they will provide a buffer along lots 4,5,6,7 & 8 as depicted on the development plan which would basically parallel the edge of the vernal buffer. This buffer would provide "additional protection to the Atlantic White Cedar Swamp" and identified detailed and specific restrictions. Those restrictions in part restricted uses that result in soil compaction, construction of impervious surfaces, and tree thinning. In addition, Attorney Loughlin's 7/13/2017 letter to the Board stated the developer agreed to a permanent buffer for the Atlantic White Cedar Swamp of approximately 700' with detailed and specific restrictions. I'm assuming those detailed and specific restrictions are the same as those identified in the June 7, 2017 letter to the Board which I just mentioned. Since the letter was dated just 4 days ago, I'm assuming the agreement for the 700' buffer is still a valid agreement by the developer.

Approved with correction 9-12-2017

When you look at page 5/23 on the Subdivision Site Plans, the approximate 700' buffer from the Cedar Swamp will eliminate lot #8, the construction of the cul-de-sac, but more importantly, the storm water detention and treatment system for the entire northeast part of the development. Based on the information and agreements put forth by the developer and his attorney, they have effectively made this development non-constructible in its present form.

Some of the site information requested at the 4/26/2017 work session was added to the 5/2/2017 plan so I find it hard to understand why all the requested information was not added. There has been a lack of thoroughness on the Engineers behalf to follow up on information through the process as I noted before which has been frustrating for both the Town's Consultants and Board members.

My concerns surrounding this development have not changed since it was introduced to the Board and they focus on the Standards For The Preservation Of Natural Features And The Environment, Section 606 in the Rye Land Development Regulations'.

Section 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 out cropping's, water bodies, wetlands and other natural features and historic landmarks.

Looking at the Lot #15 Development plan and the Plan and profile sheet P2, the 3/23/2017 development plans showed an invert of the 36" pipe at station 11+00 as 59.15. At the 4/26/2017 workshop meeting I asked for this to be reviewed because the invert was 3' below the level of the 16,428 SF wetland. The 5/2/2017 revised plans removed the invert elevation and added a 24" orifice at elevation 60.15. This is still 2' below the elevation of the wetland. We heard a lot about the transmissivity of soils from both the Town's and the developer's Environmental Consultants and how it played a large role in moving leach field effluent down into the ground and allowing water to flow through the soils on this site. Applying that same information to this 16,428 SF wetland, the drainage pipe 2' below the elevation of wetland would completely obliterate it.

The most obvious alternatives to eliminate the issue was to raise the roadway grade would that have raised the driveway grades making them more problematic than as presently shown.

Sections 606.1 General and 606.2 Character of The Land For Development.

At the 6/21/2017 ZBA meeting, the developer was reviewing alternative access to Lot #2.

On page 4 of the ZBA minutes, the developer's Wetland Consultant, Jim Gove, talked about Option 3, which would access Lot #2 between lots #3 & #4. He said that "Option 3 is going up a slope" and that "creating a slope will cause people to use a lot of sand and salt on the driveway during the winter." When asked about the steepness of the slope, he responded that "it is clearly downhill and is fairly significant." On page 5 of the minutes the consultant explained that "this is basically 160°. In this area, it is an 8' drop."

That testimony parallels the information that Jim Grove submitted to the ZBA in a letter dated 6/21/2017. In that letter Mr. Gove stated that "a sloping driveway will require the homeowner to

utilize excessive salt and sand to allow safe passage in icy conditions. The long-term impacts of such usage will have a detrimental impact on natural resources."

The 8' drop in 160' equates to a 5% slope for the driveway which Mr. Gove was referring to. There are 8 proposed lots (#3 thru #10) that back up to the wetlands that have driveway slopes of 5% or greater.

The PB in its prior discussions with the developer made it clear to the development team that within the Aquifer protection and wellhead overlay zone, this would be a no-salt zone and the Board would impose those restrictions on the individual lots.

I want to emphasize that the developer's consultant said the home owner will be required to use excessive salt to insure safe passage that will have a detrimental impact on the natural resources. In the development team's own words, even though they would agree to put the protective covenants on the lots, they are admitting the homeowners would ignore them for their own safety. This effectively eliminates those eight lots because of the detrimental impact it will have on the natural resources.

Attorney Laughlin in his 6/7/2017 letter referenced the protective buffer the developer would impose upon lots 4, 5, 6, 7 & 8. The restrictions, in part, prohibited such things as "leaf litter removal, alteration of the natural plant community and other activities that might reduce the function of the undisturbed buffer." However, in Mr. Gove's 6/20/2017 letter to the ZBA, in speaking to the no-build option on Lot #2 he said, "The wetlands ordinance allows forestry in wetland buffers and allows up to 50% of the basal area to be removed. It further allows for removal of all vegetation less 4 ½" in diameter. Long term, the areas of the buffer could become a virtual park with removal of the herbaceous and shrub layers, all allowed by ordinance. While this is not a certainty, homeowners typically find ways of expanding their outside living space. Removal of the herbaceous species and shrub layers below the tree canopy will virtually doom the species utilizing the vernal pool."

Again, this buffer that the developer would impose basically parallels the buffer for the large vernal pool to the north. Even though the buffer would be a deed restriction, we hear the development team saying, and I take it this is based on experience in their past residential developments, that homeowners will mostly ignore those restrictions. Ignoring the restrictions, as we learned from Mr. Gove, will virtually doom the species utilizing the vernal pool. This effectively eliminates those 5 lots because it would doom the species utilizing the vernal pool area.

Section 606.1 General

On the plan and profile sheet P1, sheet 11/ 22 and the subdivision site plan sheet 6/23, shows a 3657 SF drainage easement impact on Lot #2 in the vernal pool buffer for a drainage way terminating at the edge of the vernal pool. On the plan and profile sheet P3, 13/23, and the subdivision site plan sheet 8/23 it shows another drainage easement terminating at a wetland. The drain line leading to the drainage way terminating at the wetland has a 550' pipe drain running to daylight and approximately 250' of that runs through topography running uphill and requires ledge removal. However, the impact to the vernal pool on Lot

#2 could have easily been avoided with a 650' drain run down to the lot #5 drainage area which has the topography allowing it to run all downhill. Section 301.88, Wetland Buffer Restrictions, Sections 1 of the Zoning Ordinance states that "no surface alteration by the addition of fill excavation or dredging is prohibited".

The drainage way on sheet 8/23 was necessary because they did not control the adjacent property but on sheet 6/23 they did control the property. This wetland impact could have easily been avoided altogether by simply adding drainage pipe but the developer chose not to. In my opinion, this was clearly a choice of monetary impact over environment and shows a complete disregard for the vernal pool.

I should also note that on both sheets 6/23 and 8/23 where the drainage easements were to be constructed, the plans do not show any tree cutting or clearing which has not been accounted for.

Sections 606.1 General and 606.2 Character Of The Land For Development.

In the 4/26/2017 work session the developer spoke about a problem regarding the last development they constructed at Brackett Road where trees came down in a wind storm. He said they were having to remove about 15 trees that were at risk of collapsing on the homes and five homes were affected.

The topography at this site is much worse than what we saw at Brackett Road because it has very shallow ledge. That limits the infiltration of groundwater, so the surface of the site gets easily saturated and, as can be seen, there are a lot of wetlands on the site. This shallow depth to ledge and the saturated surface makes the root structures of trees very vulnerable to toppling as the developer witnessed at the Brackett Road subdivision. It becomes more so when whole sections of woods are cleared as the trees as a group can withstand winds better. On both our site walks there were numerous trees that had already toppled because of this and major lot clearing had yet to occur.

Obviously, the developer had a concern or he would not have raised the issue, and driving over to the Brackett Road subdivision to see first-hand what the developer was talking about, I could see the toppled trees and the damage. In reviewing what height mature trees go to in this area and with a recent application where tree heights were identified as 75' to 80' in height, I'd say the 75' to 80' height is very common in this area. Attorney Donovan at the 4/26/2017 work session said to the developer if he had a concern he needs to show it on the plans. That, like other things, never made it to the plans.

To see what impacts it would make on the development, I assumed just a 60' tree buffer around the present house footprints. I found there would be about 17,720 SF of wetland buffer (lots 1,3,4,5 & 8), about 6250 SF of wetlands impacts (lots 9 & 15) and would require clearing another 1 acre of woods (every lot but 7 & 10) not currently shown. The impacts clearly show why this never made it to plans both from an environmental and visual impact.

Approved with correction 9-12-2017

Section 301.6 of the Zoning Ordinance allows for tree cutting in a buffer, but it was not intended as a need to develop new house lots. This effectively eliminates 7 lots because their impacts to the environment.

Sections 404.5 07 Visual Impacts & 602.2 A4 curvilinear design

It was brought up a number of times to the developer that their curvilinear roadway didn't meet the intent of the Land Development Regulations and was told of nearby developments within a mile or so as the crow flies to view for comparison. (i.e.; Pond path/ Boulder s/ Mill Place/ Boutlier/ White Horse) In those developments, driving by the entrances you would not notice the subdivision and generally could not see the first home. Although the developer made some small tweaks to the layout, they have fallen very far from the mark and the current layout serves to maximize lot development without thought to the visual impact it would have.

On sheet 6/23 if you lay a straight edge along the Stoneleigh roadway and the wood land clearing needed for the roadway, you have a straight line visual distance of 950' to 1000'. On Francis Path roadway, sheet 7/ 23, that comes directly opposite Woodland Road, if you do the same thing you have a visual distance of about 1100'.

In the vicinity of this development, about a mile as the crow flies, if one looks at all the current through roads, most are curvilinear by nature and just a section on Love Lane, a section on Woodland, and a section on South Road have sight distances greater than these. Subdivisions should be designed to look like neighborhoods and not look like through roads and I understand that to be the intent of the ordinance. Again, it came to maximizing lots at the expense of the visual impact it would make in the area.

Sections 606.2 Character of land for Development & 611.2 Natural Features

Section 611.2 of the Land Development Regulations state that the design of site developments shall fit into the natural and man-made environments with the least possible disturbances and that grading and filling shall be minimized. As the 200 or so ledge probes and test pits show, ledge sits below the surface on many of the 17 proposed lots. That limits the infiltration of groundwater so the surfaces get easily saturated and, as can be seen, there are a lot of wetlands on the site. This requires that a majority of the septic field and homes will need to be elevated. In review of the plans I found that 10 of the proposed sites will require sump pumps (Lot's #1, 3, 7, 8, 10, 12, 13, 15, 16, 17}, 13 of the proposed sites will require mounded up septic fields (Lots# 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16} and 6 of the sites will require mounded up home sites. Excessive filling and grading will be required for the construction of the homes and septic fields. This effectively eliminates 13 lots because these actions will not maintain the character of the land, will not fit into natural environment and have dramatic disturbance on the environment.

Sections 606.2 Character of land for Development & 611.2 Natural Features

Because there will be no blasting on the site due to the potential impacts on the aquifer and public well supply, the developer had to raise the profile of the roadway to minimize their

ledge removal by rock hammering. The developer estimates that about 3000 cubic yards of ledge would need to be removed on the house lots alone, not including the roadway. The plans call for underdrains and although shown on the profile plans where they were required, the plans are still deficient as they show only half of those required by their own cross sections on sheet 22/23. Because of the roadway, the waterline and underdrain installation, the roadway will probably require another 3000- 4000 cubic yards of ledge removed.

I see two issues with this:

1. The excessive filling for the road will not maintain the character of the land, will not fit into natural environment and have dramatic disturbance on the environment. It also raises the ground elevation creating steeper driveways which the developer stated, will have a dramatic impact on the natural resources.
2. When the construction of the 561 subdivision took place just up the street, there was an 8 CY boulder at the subdivision entrance that needed to be removed. The developer spent a week and a half rock hammering the boulder to the point where it was small enough to move out of the way. This is a great example of how hard the boulders and ledge are in this area. The noise from this rock hammering was a huge noise disturbance to the neighborhood that everyone was subjected to from about 7:30 in the morning till 4:00 in the afternoon. I lived 1000' from where the rock hammering took place and it sounded like it was in my back yard. This subdivision will require 6000-7000 CY of rock hammering, and this could go on for 3-4 months at the least. This will easily be audible for a half mile away. This does not fit the 'least possible disturbance' per Section 611.2 of the Land Use Ordinance and speaks to the character of the land that is not well suited to development.

Sections 606 .2 Character of land for Development & 611.2 Natural Features

From my review of the plans most of the lots have issues that are not fully vetted. But for the sake of brevity I'll comment only on Lot #1.

The house on Lot #1 will be mounded up 6' above the elevation of South Road less than 100' away. The septic field will be mounded up 4' from present grade. The ground water flows to the north on this lot and the septic field is on the south side of the house. The elevation of the ground where the foundation drains is about 10' from the house and is about 3' higher than where the foundation drain would be located. This is a lot that would require a sump pump that could theoretically be operating half the year. We know from our Environmental Consultants that the transmissivity of the soil will direct the septic effluent down into the soil and head north. That being the case, the foundation drain will readily pick up the effluent and discharge it directly into the buffer of the vernal pool with limited treatment.

The house sits 5' from the no-disturb buffer for the vernal pool which we know is impracticable without ground or root disturbance. Adding a clear zone for trees as the developer said was needed of 60' would eliminate 8825 SF of the vernal pool buffer and 1800 SF of additional

woodland. And as the developer's Consultant stated, people find a way to enlarge their outdoor spaces so this would be lost forever. In reducing the buffer for the vernal pool and turning this into a better outdoor space, it increases the chances that improper chemical use of lawn materials will find their way into the vernal pool.

The grading of the elevated roadway does not allow for surface drainage from the lot to run into the drainage ditch. It will be required to run south to north across the site and the driveway. In the winter, this will be a constant battle with icing and, as we heard from the developer's consultant, homeowners will be using salt for their own safety, and this salt will be flowing directly into the vernal pool buffer.

The plans show there is 115 - 120 linear feet of exposed foundation 7'-9' in height around this home. What person paying \$450,000 - \$475,000 for a lot would ever have house lot like that? The grading does not even start to compare to what a home owner in that price range would accept so the plans are far from presenting what a final lot grading plan would look like. There would need to be a lot more grading and fill required to make this look presentable. If there was a single issue of little consequence, it might be able to be overlooked, but this lot has multiple issues that include impact to the vernal pool, poor drainage, significant loss of vernal pool buffer, increased risk of septic effluent and chemicals getting into the environment and a lot grading that does not work. These issues effectively eliminate this lot because these actions will not maintain the character of the land, will not fit into natural environment, and have dramatic disturbance on the environment.

These are typical examples that can be found on each lot so most of these lots have development issues.

Section 701. Required Site Development Improvements

Portions of the site design are not easily constructible and information is still missing such as the second underdrain not shown on the plans. There is also the question of the intersection of South and Woodland Roads, the drainage in that location, and the final location of utilities there. The present plan design would create an on-going liability for the Town of Rye such as an underdrain located 6' deeper in the ground than required, down to a depth of 10' with an underground cable laying on top of that Engineers can design anything but sometimes it makes no sense, is not easily constructible, and is not practical. If this project gets approved tonight, I'd recommend as one of the conditions of approval be that the plans need further review by the TRC, the Roadway Superintendent and the Town Engineering Consultant.

To summarize:

- Based on the need for no blasting on this site and the need to elevate the roadway, the current design creates visual issues and requires 8 driveways equal to or greater than a 5% slope. We know from the Developer's consultant that those driveways will require excessive salt and sand to make them safe and that it will have a detrimental impact on the environment and doom the species utilizing the vernal pool even if we added protections to each lot. This would require the elimination of 5 lots;

- We know the shallow distance to ledge on this site coupled with the high water tables requires the mounding of 13 septic systems, 8 house lots, and the need for 10 of these homes to have sump pumps. In a small instance a few of these situations might be tolerated but the majority of the septic fields, half the houses and nearly 2/3 of the homes needing sump pumps indicates to me that the land is unsuitable for development;
- We know from experience on the Developer's Brackett Road subdivision and by the Developer stating they needed to have a clear tree line around the homes, and the plans do not show that. Lot #1 shows a 3' set back from the vernal pool buffer as noted above. Overlaying just a 60' buffer around the houses, we'd be eliminating the no disturb buffer by 17,720 SF, eliminating 6,240 SF of wetlands and impacting close to an acre of woodlands that has not been shown. The buffer impact and wetland impact would require the elimination of seven lots.
- We know the elevation of the 36" drain at station 11+00 on Stoneleigh Way will eliminate 16,428 SF of wetlands and this alone should be reason to deny this permit;
- We know the 700' buffer from the Atlantic White Cedar Swamp agreed to will probably be recanted since it would eliminate Lot #8, the cul-de-sac and the storm water management pond for the northeast portion of this project;
- We know that the Atlantic White Cedar buffer that the developer would impose, even though it would be a deed restriction, would be basically useless when we hear the development team state based on experience in their past residential developments, that homeowners will mostly ignore those restrictions.
- With all the impacts to the buffers for drainage and home protection and with the draining of the 16,428 SF wetland we'll have a combined impact of close to ½ acre of buffer disturbance and close to ½ acre of wetland elimination. The loss of these will have a dramatic impact on the environment and the natural species that habitat and move between these valuable resources.

This site from the onset of early settlement was not farmable and mainly used for woodlots or grazing of long snouted ruminants that could eat between the rocks. I do not think it's viable for development and for all these reasons noted above, I don't think this is a reasonable development or use of the land, nor does it meet the requirements of the Land Use Development Code or the Rye Zoning Ordinance. I would vote against its approval.

**End*

Member Losik reviewed her statement regarding drainage and natural features.

**Please see below – Drainage and Natural Features*

Member Losik:

There is surface ledge shallow to bedrock, even on the east side of Lot 10 but you have that little area that creates some drainage issues. One of the concerns I have is on the side of... You cannot see all the drainage facilities, but here is a bio-retention pond, a gravel wetland and a collection of other drainage facilities. Collectively, there is about 1.5 acres, almost an entire lot that is devoted to drainage. That is fine. It has characteristics that require that; however, keep in mind that 6 and 7 really do not go into drainage facilities. They find their way right to the wetland. I do have an issue with Subcatchment P2. They are all going to end up in this developed area buffer, which is number 3 on Lot 9. You can see where it goes into the wetland area. The drainage is suggested to go to north. I look at this its flat. I know this wetland is already encroaching on the Levesque's property. I am just trying to understand because collectively this is about 4 acres in this subcatchment area and it's going over there. Why does the design for the bio-retention pond already constrained for that not handle the additional water? There is concern because of 507, drainage onto adjacent properties.

Subcatchment P2 - 4.05 A (collectively from the west side of lots 11, 12 and 13) - drains to Developed Area Buffer 3 and directly into wetlands on the east side of the development via Lot 9. This particular wetland (lots 8, 9, 10) flows along the eastern boundary towards the north and onto the adjacent property to the east towards the Levesque property (381 South). A Drainage Easement of 4,675 sq. feet (DAB#3 on Plan 4A of 23) supports the aforementioned sub catchment.

Concern regarding the flow directly into a wetland that goes offsite due to RZO 507.2.

RZO Section 507 Storm Water Management

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.

The developer has done the last update of the drainage analysis, May 8th. It has all kinds of great information. Unfortunately, in looking at the subcatchment areas it does not give us detail sense of what happens along the route. We see everything ending up in two spots, which is kind of a global perspective. The LDR requires us to look at that 10 and the 25. There is summary information for everything but the 10. Interestingly, there is information submitted for the 100 year in summary detail for the post but nothing for the pre. I would not mind seeing a little more detail here in terms of looking at what happens so I know the Levesques are going to be okay so we don't have to worry about their problems with that wetland growing or flow onto their land. I can't really see that because there are not measurements along the way.

Mr. Siener occupies the lot at eastern corner of South Road and Francis Path. His house is oriented to the northwest of his property. This area of his property, is approximately 160' east of the high point of the development at 84' and 20' - 40' from the road bed. I can tell you that when you are used to land, as people on South Road are, 20' to 40' isn't much. Especially, when you have a road that is sitting up at 84'. The roadway profile, from stations 3+00 to 4+00 will be at 84'. With his western boundary elevation at about 78'- 80', his home could be in direct path of flow.

An underdrain is shown per Plan 13 of 23 between stations 1+50 to 7+00; surface flow during extreme weather events remains a concern.

Further, there exists a robust natural buffer on and to the west of the Seiner property. This buffer is not only important to the Siener property but conveys the consistent rural character of South Road, especially traveling from east to west. Long views along South Road consist of fields and wooded areas with no vistas of large developments. Given the current plans for Francis Path, it is difficult to understand how the Development could meet the requirements of "proper regard to adjacent properties..." under LDR 611.2.C.

RZO Section 507 Storm Water Management

RZO 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.

Is there going to be an adjacent property drainage issue?

LDR 611.2 Natural Features

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

I don't look at that road design coming in off of South Road on the east side of this property as fitting the natural environment. I see it becoming very open, regardless of how you travel on South Road. I think there is going to be a disturbance to the lots in the middle (28 through 30) on South Road. They're going to be open in the back because it is a thin line of trees.

LDR 611.2 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. I think there could be a better plan for that side.

Menard/Chaput property and gravel wetland

There are significant and complex drainage facilities proposed for this site. On several depictions and varying scales (sheet 4A of 23, Lot 4 Development Plan) the Gravel Wetland on Lot 4, is on the site boundary of the Menard/Chaput parcel. In February 2017, Ms. Truslow indicated favor for the gravel wetland and noted there were no gravel wetlands that have been constructed in a residential setting in Rye. Due to its size of 20,618 square feet and proximity to the Abutter's property, concern regarding adjacent flow exists.

Further, natural features considered in LDR 611.2 must be maintained in order to assure continued enjoyment of the rural characteristics of the Menard/Chaput property.

RZO Section 507 Storm Water Management

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.

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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.

South Road Abutters (Lots 28-30)

South Road Abutters (Tax Maps 4, Lots 28, 29 and 30) must also be afforded consideration under LDR 611.2 Natural Features with respect to their back property lines. The plans reflect tree lines along the property boundaries; given the site characteristics with respect to former harvesting and soil/geologic conditions the plan should reflect the context of these tree buffers.

I look in one area and it is a pretty thin buffer, maybe 10ft. There are some sizable pines. I know what can happen in storm conditions. Are they going to last? Are we going to look into open homes from one to another like a suburban development?

Siener, Menard/Chaput, and Lots 28-30

Consistent with the aforementioned concerns regarding the existing characteristics of South Road and abutter properties, LDR 606.1 requires suitable steps to afford the protection and enhancement of natural features. Tree buffers are essential to preserving this rural environment.

LDR 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, other natural features and historic landmarks.

Tree buffers are essential to preserving this rural environment.. I'm concerned that in the front of the development, due to good soil above the bedrock, do we have enough to have ample buffers or are we creating a neighborhood that looks entirely different?

**End*

Member Losik stated that the other thing that she wanted to talk about is the buffers. In regards to the expansion of the riparian buffers on the back lots, she thinks it is a great concept. Danna Truslow raised it in the work session in April. *(She read the suggested buffer language.)* She commented that it looks to her that they are trying to get at putting aside the rights afforded to the property owners under 301.8 B.5(b). She was also trying to understand how this integrates with 301.8 B.5(a). She knows that there have been experiences where people will go into the buffers and do what they have to do. *(She read from 301.8 B.5(a)).* She thinks the buffer restrictions are great but there needs to be some clarity. The buffers are going to reside particularly on the back lots. The homeowners will not have a lot of space to do anything. It seems like they are going to be invited to go into those buffers just by way of utilization. She continued that she reviewed Danna Truslow's letter of July 17th. This is in regards to Tim Stone's report on the current information on the water levels in the monitoring wells. It also includes Mrs. Truslow's comments on the fractured bedrock well MW-6, and 5, 7, 8 and 9, she talks about variability will likely continue after land development. Regarding Septi-Tech, Mrs. Truslow agrees that oversight may change over time but should be in place throughout the occupancy of the homes. It is her understanding that the oversight would go to the HOA; however, it all boils down to stewardship and resources.

Attorney Donovan stated that he thought it would be helpful to go back over several memos, he has provided to the Board and the applicant, to see what issues were identified in the memos. One of the key sections of the LDR is Section 606, Preservation of natural features and the environment. One of the things his memo had expressed concerns about was the destruction of

the natural terrain and the loss of woodlands that would be required for this particular subdivision. He had a chance to look at the latest cross section drawings. Those show that more than 70% of Stoneleigh Way and more than 90% of Francis Path require alteration, i.e. destruction of the natural terrain, through excavation and filling, this includes the destruction of woodlands that is beyond the typical 50ft right-of-way called for in the LDRs. The LDRs were based on development standards for the typical land in Rye, not land of unusually difficult characteristics, such as this site. He continued that more than 30% of Francis Path and 20% of Stoneleigh Way will extend the alteration of natural terrain to a width beyond 70ft. There are four cross sections on Stoneleigh Way that extend 50ft to the left side of the center line. This clearance of woodland and regrading for the infrastructure, along with the homes, driveways and lawns, will be extensive. Additionally, there are concerns from the Board with respect to impact on water quality. There is really no guarantee in the reports that there will not be an impact on the Atlantic White Cedar Forest. The nitrate plume information shows nitrates entering the wetlands, which flows into the White Cedar Forest. The sheet runoff from Lots 5 and 6 go directly into the wetlands that feed the White Cedar Forest. The drainage on the level spreader on Lots 5 and 6 go right into the wetlands that feed the forest. There is also a concern about phosphate contaminants and the impact those may have on the forest. He stated that the use of three level spreaders to convey raw drainage directly into vernal pools and sensitive wetlands is an additional concern. The Board has seen level spreaders in the past; however, an application has not been seen where three of them are used in addition to gravel wetlands and bio-retention facilities funneling road drainage directly into wetlands. He noted there may also be a concern about Lot 16 violating the anti-gerrymandering provision of the Land Development Regulations.

Attorney Donovan pointed out that a number of board members have commented on the difficulty of monitoring homeowner associations and their responsibilities for making sure that inspection of advanced septic systems are done and proper maintenance is done. This is only one of the things that the town would ask homeowners' associations to do. The association would also be responsible for monitoring all the drainage facilities and making sure they are maintained. He noted there are five of those. He continued the town has experienced in other recently approved subdivisions that once the developer turns over the development, the association just does not get it done. People do not pay attention to those kinds of details. He commented that in the Sea Glass Development there were problems with the homeowners' association not monitoring and reporting to the town the drainage inspections and the drainage maintenance. The development had 8 certification requirements that were completely ignored by the developer and the homeowners' association, until the Planning Administrator went after them about it. It then took several communications to do get them to do it once. Whether this will continue to be done or not is not known. He continued that the Harbor Road Subdivision used Advanced Solutions Systems, which is another high-tech septic system. Those reports were not forthcoming either, until town officials harassed the homeowners. He explained the Town of Rye does not have the resources for an "environmental police" to monitor the types of conditions the applicant is suggesting are necessary for the site with all the troublesome environmental characteristics.

Approved with correction 9-12-2017

Chairman Epperson noted that the Board needs to make a decision on the viability of the subdivision. The Board can vote to conditionally approve the application, deny it or simply approve it.

Chairman Epperson called for a vote on the 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 17 Lot subdivision. Properties are in the Single Residence District and within the Aquifer and Wellhead Protection District.

Motion by Jeffrey Quinn to disapprove Case #13-2016. Seconded by J.M. Lord. All in favor.

Motion by Pat Losik to have Attorney Donovan prepare a draft Notice of Decision on the denial for the Conditional Use Permit and on the denial for the subdivision application for review by the Board at its meeting on August 8th. Seconded by J.M. Lord. All in favor.

Attorney Donovan noted that any appeal on the Board's decision does not begin until the Board actually approves the Notices of Decisions.

Chairman Epperson read his prepared statement regarding the Stoneleigh Reserve application for 421 South Road.

**Please see comments below*

Chairman Epperson:

Over the past year, the Planning Board has been in the process of hearing from authorities from both sides of the so called Stoneleigh Reserve application located at 421 South Road in Rye, New Hampshire. The development sits on roughly 100 acres of land of which at least is 50% is wetland. This application has dragged on for far too long in part from incomplete, inaccurate and at times demonstrably false information. The developer has spent thousands of dollars to correct errors and to attempt to satisfy all regulations associated with the land use regulations and zoning ordinances of Rye. In turn, the Planning Board has spent hundreds of hours trying to reconcile what the developer has submitted. Sadly, on nearly every occasion one redrafting of the development has led to still more questions. As this goes on the project gets more and more complicated as to be overengineered.

The record will show that this development resides in Rye's aquifer and Wellhead Protection District and adjacent to the most productive and rare white cedar forest on the east coast as well as the Cedar Run Swamp. Contained in the aquifer protection zone lay two of the town's three producing drinking water wells; Cedar Run and Baileys Brook. The initial plan was for a 22-lot subdivision which seemingly had no regard for the natural environment as every possible location was allocated for development. Over the past several months the board in an effort to verify information submitted, has found and verified by both the board and the applicant's experts that conditions in area were not developable due to bed rock and or the lack suitable septic locations as well as wetland setbacks. This has resulted in the loss of several lots. Additionally, the ZBA recently denied relief that would have allowed the crossing of endangered wetlands and an existing vernal pool resulting in a further reduction

of one lot.

To be clear, this Board has never declined an application for housing including for this developer who has recently completed a development here in Rye. So, we are not anti-development nor is there a hostility or arrogance to growth. The opposition is not to the development nor the developer or his experts, some of which are familiar to the town and respected. Rather it is the location. How can we as a board reconcile a decision to go forward with this application knowing that it is in direct opposition to a number of our own ordinances? Rye water was once a local issue. We enjoy safe pure and abundant drinking water however what was once a local issue has become of regional importance. We know now that there is growing pressure on this endangered resource. It's now obvious that at least one of our surrounding neighbors, Greenland (Portsmouth Herald 12/22/16) will require sufficient water to service 72 new homes off Breakfast Hill road. At the regularly scheduled Planning Board meeting (12/13/16) the Rye Water District Commissioner stated publicly that Rye had sufficient water to supply the development mentioned above. However, he also stated that with the addition of irrigation systems the wells would be stressed. The question now becomes if the Rye wells can supply these new Greenland homes and the 22 homes proposed for Rye? In total, there could be as many as 130 new hookups in Rye and Greenland in the coming months.

Ground water in the Sea Coast region is under attack. We have lost great volumes of water as a result of neglected waste which has been deposited in the ground and subsequently in the water from past landfill and the former Pease Air Force Base.

We are aware of the cancer cluster the former Governor Hassan and her commission has been studying around the Coakley Landfill in adjacent North Hampton. The toxic plume from this closed landfill is widening. While not yet threatened, our Garland well from which we acquire 60% of our water is a mere 1.2 miles away. And what is more alarming is that it is a short ½ mile from our own recycling center which is suspected of having various pollutants deposited therein.

The planning board is charged with the responsibility to "protect the public health and general welfare of the citizens of Rye" (306.2: A RZO) and to "To prevent development and land use practices that would contaminate or reduce the recharge to the identified aquifers" (306.2B ZO}. "To assure the availability of public and private water supplies for future growth of the town in accordance with the master plan (306.2C RZO). Further, in our requirements for a conditional use permit the developer has the burden of the proposed "will not" detrimentally affect the quality of the ground water contained in the aquifer directly contributing to pollution by increasing the long term susceptibility of the aquifer to potential pollutants. To that end a few short weeks ago, the Rye Water District stated that they were now ready to explore new areas for additional fresh water wells. A report supplied to the Rye Water district by Wright Pierce Engineering firm has laid out what some of the possibilities are.

If this land is allowed to be fully developed is gone and once gone, gone forever. Sadly, based on this plan we cannot give such assurances. Coupled with the news that the entire

Approved with correction 9-12-2017

area surrounding the land fill will be required to have town water and the closing of the Haven wells on Pease Trade Port, the availability of clean drinking water is crucial and now threatened in Rye and the surrounding area.

Additionally, Thomas J. Mack, US Geological Survey Groundwater Specialist from the New England Water Science Center and worldwide authority on ground water has completed an assessment of the seacoast and the threats to our water. His study is part of the record submitted in December of 2016. From the summary.

We are reminded from a 2005 Rye report the importance of the Cedar Swamp Run.

I for one will not apologize for trying to protect and preserve the assets of our Town and the surrounding area. In the end Stoneleigh Preserve essentially preserves nothing. At some point the rights, expectations and well-being of the citizens trump the profits of builders. For these reasons, I respectfully vote no to the 421 south Road project AKA Stoneleigh Preserve.

I fully understand and expect that this could and probably will end up in court in a timely manner. If the applicant and his legal team are successful in overturning or modifying our decision we will have done our job and duty to the Town.

**End*

Adjournment

Motion by Jerry Gittlein to adjourn at 10:30 p.m. Seconded by J.M. Lord. All in favor.

**All corresponding files and documents may be viewed at the Building Department, Rye Town Hall.*

Respectfully Submitted,
Dyana F. Ledger

RYE PLANNING BOARD

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

Notice of Decision on Waivers

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.

Waiver Request(s): *Waiver to the Land Development Regulations Section 401.E which requires topographic contours and soils delineation for the entire parcel to be shown on the plans. The waiver requested to relieve the requirement for detailed topography, soils and wetland delineation over the portion of the parcel that is contemplated for conservation easement protection.*

Date of Decision: Tuesday, July 18, 2017

Decision: Approved
 Conditionally Approved
 Denied

7/31/17
Date



William Epperson, Chairman
Rye Planning Board

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RYE PLANNING BOARD

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

Notice of Decision

Applicant/Owner: WBTS CC Limited Partnership

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

Case: Case #06-2017

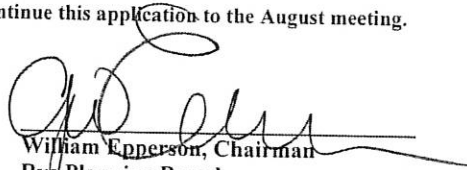
Application: Major Site Development Plan by WBTS CC Limited Partnership for property owned and located at 60 Wentworth Road, Tax Map 24, Lot 61-26 to replace an existing 50' golf net and nine (9) 50' wood poles with a ninety 90' golf net and nine (9) 90' steel poles. Property is in the Single Residence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

Date of Decision: Tuesday, July 11, 2017

Decision: x Continued

The Planning Board voted to continue this application to the August meeting.

7/31/17
Date


William Epperson, Chairman
Rye Planning Board

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11/1/17

attachments

7-18-17
minutes

RYE PLANNING BOARD

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

Notice of Decision on Waivers

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.

Waiver Request(s):

1. Section 603.3 A which requires 4000 square feet of DLA
2. Section 603.3 A 1.c which prohibits any area of the DLA from being within 75 feet of bedrock or impervious substratum within 24 inches of the surface

Date of Decision: Tuesday, July 11, 2017

Decision:

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

The Planning Board denied the waiver by a 6 to 1, for the following reasons:

Unnecessary Hardship.

There is no unnecessary hardship to the applicant in complying with the applicable LDR's.

1. The hardship does not arise from special conditions of Lot 12 that distinguish it from other land in the area proposed to be subdivided. Surface bedrock and shallow bedrock exist throughout the entire proposed subdivision as evidenced by the fact that almost 200 test pits and ledge probes were required to review compliance with the DLA requirements.

Originally 22 lots were proposed. Some lots were eliminated because they could not comply with the DLA requirements.

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2. Economic advantage alone is the reason for the requested waiver because the same infrastructure construction will be required for a 17 lot subdivision as for a 16 lot subdivision. Thus, the reason for the waiver is to gain \$300,000 to \$400,000 from sale of the additional lot.
3. The hardship is self-created by the applicant who designed the street configuration and lot layout resulting in the configuration of Lot 12.
4. When questioned about unnecessary hardship at the July 11, 2017 hearing, the applicant's attorney responded that compliance with the regulations "takes away a lot" and "changes the economics of the subdivision."

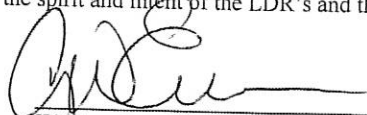
Spirit and Intent.

Granting the waivers would be contrary to the spirit and intent of town regulations.

1. Municipalities may regulate septic systems more stringently than the state. The requirement that 4000 sf of a lot have soils suitable for leachfield disposal means that only 6% of the 66,000 sf minimum lot area must have suitable soils. This is not unreasonable. Under the applicant's reasoning only 500 sf (<1%) of a lot would have to have suitable soils for leachfield disposal in order to provide for a replacement system.
2. As indicated by review of the septi-tech systems in the Marjorie Way subdivision, there is no guarantee that the septi-tech systems will function as designed or that homeowners will provide the required inspections and maintenance. A homeowner with a failed septi-tech system may not be able to afford the expensive replacement and may want to pursue a traditional system.
3. Enforcement against failed or non-compliant septic systems is difficult, particularly where owners cannot afford expensive replacements, as evidenced by the town's ongoing efforts at 204 Locke Road and 1677 Ocean Boulevard. Except in rare circumstances DES does not pursue enforcement and defers to municipalities. In most circumstances the town cannot order a property with a nonconforming system to be vacated because the sanitation statues prohibit that unless there is a clear and imminent danger to the life or health of occupants or other persons.
4. It appears that the usable DLA may be less than the 3400 sf represented due to the narrow tapers at each end.
5. Proposed Lot 12 is within the Wellhead Protection Area. A waiver to DLA requirements would set a precedent contrary to the spirit and intent of the LDR's and the Rye Zoning Ordinance.

7/18/17

Date



William Epperson, Chairman
Rye Planning Board

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Peter J. Loughlin

ATTORNEY AT LAW

LEONARD COTTON HOUSE • STRAWBERRY BANKE
144 WASHINGTON STREET
P.O. BOX 1111
PORTSMOUTH, NH 03802-1111

RECEIVED
7-13-17

TELEPHONE 603-431-6466
FAX 603-436-1079

E-MAIL
peter.loughlin@nllaw.com

July 13, 2017

William Epperson, Chairman
Rye Planning Board
Rye Town Hall
Central Road
Rye, NH 03870

RE: STONELEIGH SUBDIVISION - 421 SOUTH ROAD

Dear Chairman Epperson & Members of the Board:

At the July 11th Planning Board meeting, Board Member J. M. Lord expressed his concern that certain test pit information was not listed on each individual lot development plan. He said he could not tell whether the home or the DLA on Lot #12 could have been shifted without having all test pit information listed on the face of the lot development plan. This was surprising to the Harbor Street development team for several reasons:

(1) Extent of Soil and Ledge Information Developed

As the Town's Engineering Consultants (and I presume the Board) are well aware, Mr. Falzone has spent many tens of thousands of dollars on 200 +/- test pits to find the ideal location for a home and DLA on each of the 17 proposed lots. If the home or DLA could have been moved a few feet to avoid the need for a request for waiver, I think it is fair to assume that this would have been accomplished many months and many thousands of dollars ago.

William Epperson, Chair
July 13, 2017
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(2) Additional Information Provided

Mr. Lord had, indeed, made a request for additional information on the plans at an earlier meeting. As a result, Beals Associates added certain symbols which had been requested. Beals also added detail concerning the contours of each developed building site and the location of each drain outlet. While information of such detail may be more than what is requested on many plan submittals, that information was added without objection and it was assumed that that information was what the Board wanted.

(3) Test Pit Information Provided

Harbor Street and Beals Associates were aware that test pit logs for all 200+/- test pits needed to be submitted to the Town and, in fact, they were. It is rather unusual, and there is nothing in the Town's land development regulations, that would lead Beals to assume that all detailed test pit information was to be shown on the Lot Development Plan for each of the 17 lots.

(4) Sebago Review

After many weeks of detailed and costly review, every engineering issue raised by the Town's Consultant, Sebago, was addressed by Harbor Street to the satisfaction of Sebago. It seemed reasonable to assume that since the Town's Engineering Consultant was satisfied, additional plans were not required.

Cooperation by Harbor Street

Having said all of the above, as a preface, to the best of my knowledge, Harbor Street has acceded to every request made by the Planning Board, regardless of whether those requests were thought to be required by the Town's Regulations. When the Board or its consultants indicated that ledge outcroppings on the site were a "special feature," the roadway was redesigned to lessen the impacts on the ledge outcroppings. When Board members expressed concerns about the possible impact that blasting could have on Town wells some 2,500' away, Harbor Street agreed to eliminate all blasting, even though Harbor Street's hydrological consultant felt that was unnecessary. When Board members expressed concerns about the proximity of the original Lot 7 to the Atlantic White Cedar Swamp, that lot was eliminated. When concerns were expressed about impacts on the Atlantic White Cedar Swamp, a buffer of approximately 700' was agreed to be permanently established with detailed and specific restrictions on what could occur in that buffer, even though there are no State requirements for such a buffer, and even though the Town's Regulations would cover no more than 100'.

William Epperson, Chair
July 13, 2017
Page 3

When abutters demanded a second site walk with the argument that spring rains had changed wetland boundaries, Harbor Street agreed to the second walk and provided its consultants for that walk and paid for the Town's hydrologist to go on that walk - the net result of which confirmed that there was no change in the wetland boundaries which are established over many, many years, and not affected by a rainy spring or a dry summer. When the Town's hydrologist speculated that an area seen on the side walk during a heavy rain was a wetland that was not included on the wetland plans, Harbor Street paid to have the Town's wetlands consultant revisit the property to confirm that, in fact, it was not a wetland.

Even though Harbor Street does not believe that the preparation of Lot Development Plans with detailed charts showing the results of each and every test pit is required under the Regulations, now that the desire for that information has been clearly articulated to Harbor Street, that information is being provided herewith, in its continuing spirit of cooperation.

Respectfully submitted,



Peter J. Loughlin

PJL/dea
Enclosure
Cc: Kimberly Reed
Michael Donovan, Esq.
Harbor Street Limited Partnership
Falzone, 2017-07-13 Ltr to Epperson 07/11 Mtg

TRUSLOW RESOURCE CONSULTING TECHNICAL MEMORANDUM

To: Kim Reed, Town of Rye Planning and Zoning Administrator and Members of the Planning Board, Town of Rye, NH

From: Danna Truslow, Truslow Resource Consulting LLC

CC: Michael Donovan, Counsel, Town of Rye; Christian Smith, Beals Associates PLLC

Subject: **Clarification of Attorney Peter J. Loughlin letter and statement
421 South Road Proposed Development**

Date: August 3, 2017

Peter J. Loughlin, attorney for Mr. Joseph Falzone, prepared a letter to the planning board dated July 13, 2017 and also read that letter at the July 18, 2017 planning board meeting on the subject development.

There was a statement regarding my attendance on the walk and a statement that I reportedly made on the second site walk. The statement on page 3, first paragraph of the letter was inaccurate. It reads, "When the town's hydrologist speculated that an area seen on the side (sic) walk during a heavy rain was a wetland that was not included on the wetland plans,".

I want to clarify that I did not speculate that an area was a wetland on this walk. Someone asked me on the walk about a drainage feature, which I said I had not seen before. I also stated to several participants during that walk when asked wetland-related questions, that I am not a Certified Wetland Scientist, but that the presence of water alone does not constitute a wetland, and that hydrology, soils and vegetation must all be used to determine the presence or absence of a wetland.

This clarification should be added for the record on this project.