

Attachments
for P.B. 2-9-16

Kim Reed

From: Kim Reed
Sent: Friday, February 05, 2016 11:16 AM
To: Tom McCormick; J. M. Lord; Jeffrey A. Quinn; jeanandmelvin@aol.com; Anne Crotty; Keri Roman; Jerry Gittlein; Priscilla Jenness; Bill Epperson; Phil Winslow
Subject: Fwd: PB Subdivision Requirements

Dear board members please see Peter Rowell's memo below and come to the meeting Tuesday prepared to discuss his January memo that you had your packets and attorneys responses Peter is anxious and does not want to wait for further delays so please come prepared all information or in your board packets

530 beach ✓
SEA GLASS ✓
MORPHEUS ✓
WHITE HORSE ✓
MORNING WAY

From: Peter Rowell <PRowell@town.rye.nh.us>
Date: February 5, 2016 at 8:44:38 AM EST
To: Kim Reed <kreed@town.rye.nh.us>
Cc: Michael Magnant <MMagnant@town.rye.nh.us>, Michael Donovan <MDonovan@town.rye.nh.us>
Subject: PB Subdivision Requirements

Kim

I am expecting you and the PB to finalize the PBs ongoing requirements for the subdivisions.

You have released my draft letters to a Whitehorse and Marjorie Way HOA. If I had of been contacted I would have wanted to waited for a final letter so the HOA new exactly what was required. This is why I wanted the PB to review before they were sent. They are now working with requirements that may change.

As far as the requirements for Sea Glass, I had one more on my list that didn't get included.

Peter

Peter E. Rowell CFM
Town of Rye
Building Inspector
10 Central Road
603-964-9800
prowell@town.rye.nh.us

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Town of Rye BUILDING DEPARTMENT

Peter E. Rowell CFM
Building Inspector

10 Central Road
Rye NH 03870

603 964-9800
www.townofrye.nh.us

Memo

Date: December 30, 2015
To: Planning Board
CC: Town Administrator
From: Peter E. Rowell, Building Inspector
Re: Sea Glass Condos

We have issued 16 of the 20 COs with the last 4 to follow before the end of January. I believe that the Homeowners Association should have been formed. It is now time to start the close out portion of the project and set up what needs to be done into perpetuity.

I think the final site inspection can wait until next spring as long as we hold an escrow.

I have reviewed the submittals and find the following are required to be done by the Homeowners Association;

1. The Association shall file with the Rye Planning Board each year (Before December 31) the Age Verification Summary required by Article X: A of the Bylaws (Page 11) [see also page 59]
2. Certification that the storm water management plan and BMP for the maintenance is being followed (#16 of the Conditions of Approval)

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I also think that the Homeowners Association (HOA) should supply the following to the PB on a yearly basis.

1. Supply a statement each year that they have not allowed any changes to the units per Article 6
2. Supply names and address of all members of the HOA Board of Directors along with the names of the officers.
3. Supply the name of the manager of the HOA or who we should use as a HOA contact.

It is important that the PB keep careful records of what requirements have been place on approvals. Not so much on how it needs to be built, because the Town Engineer will monitor that, but what will need to be monitored into the future. These requirements need to be clearly spelled out in order to do an effective job of monitoring and not hidden in the minutes.

It seems that most of the PB approvals carry some type of requirements into the future such as NO SALT or No Chemical fertilizer. The PB feels that these are important then we must do what needs to be done to insure enforcement. Some type of an enforcement document needs to be developed as part of the approval and not after all the homes are built which may be years after approval.

I am trying to play catch up on a number of subdivision and it's very hard to do years after they were approved. Especially where I was not part of the approval process.

Attached you will find what I have put together along with a letter to the homeowners in Whitehorse on what I feel will get us caught up

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on requirements and will work as a starting point for future compliance.

If I have missed anything now is the time to tell Kim so she can see that it is added.

Thank You

Peter E. Rowell
Building Inspector

CC; Planning and Zoning Administrator
Town Administrator

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MEMORANDUM

TO: Kim Reed
Rye Planning & Zoning Administrator

RE: Monitoring Sea Glass HOA Responsibilities

DATE: January 21, 2016

Dear Kim:

As you and the planning board requested, I have reviewed Building Inspector Peter Rowell's December 30, 2015 Memorandum; the conditions of approval of the Sea Glass RCD; and the Declaration and By-Laws. There are three responsibilities of the Home Owners' Association (HOA) which Peter's memorandum addresses.¹

Age Verification.

The HOA has the responsibility of monitoring age records on all occupants of units. This includes adopting rules and regulations to monitor compliance with § 2-7-10 of the Declaration; periodically distributing the rules and regulations to owners; and providing the planning board with copies of the rules and regulations. See Declaration § 2-7-10 (g) (vi).

At least once every 12 months owners/occupants must submit to the HOA an affidavit listing the ages of all occupants of each unit and document the ages. Both the conditions of approval and the Declaration require that annually beginning with the January following the occupancy of the fifth unit, the Declarant or the HOA certify to the planning board that as of December 31 of the prior year: (1) all occupants of the units are age 62 or older; (2) copies of the birth certificates or drivers licenses of all occupants are on file with the Association; and (3) the affidavits required by the Declaration are on file with the association.

At least five units have been occupied. Thus, the first certification is due in January 2016. It is my understanding that the HOA has not yet been organized. Until it is, it is the Declarant's responsibility to fulfill the obligation, as the plain language of Declaration § 2-7-10 (d) indicates. See also By-Laws § I., F.

¹ The memorandum also discusses "No Salt" type regulations, but there were no restrictions placed on Sea Glass development relative to salting and fertilizers.

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In my opinion, it should be the responsibility of the planning board (and you) to assure that the Declarant or HOA complies with the annual certification requirement.

Maintenance of Drainage Facilities.

§ 5-2-1 of the Declaration and the conditions of approval require the HOA to be responsible for the maintenance, repair and placement of the storm water management facilities in accordance with the Stormwater Management/BMP Operations & Maintenance Plan, which is a four page Exhibit C attached to the Declaration. Peter's memorandum states that the HOA should be asked to annually certify that the plan is being followed. I note that neither the conditions of approval or the Declaration require the HOA to certify compliance.

Nevertheless, a simple certification process would probably facilitate matters for both the town and the HOA. It would avoid the necessity of inspections by town officials and minimize administrative communications back and forth between the town and the HOA. Assuming good faith on the part of the HOA regarding compliance, an annual certification is the most efficient process for all concerned.

The requirement for maintenance of Drainage Facilities was imposed by the planning board, and it does not involve facilities typically permitted by the building inspector. Thus, in my opinion, the administrative responsibility for assuring compliance with this requirement lies in the first instance with the planning board. I suggest that, once the infrastructure improvements have been certified as complete by the board and its engineer, that a letter be sent to the HOA enclosing the maintenance plan and pointing out the obligation of the HOA. A certification form could be enclosed, and the letter could tactfully suggest that annual submittal of the form by the HOA would be the most efficient way to proceed for both the town and the planning board.

As we have briefly discussed, Sea Glass is one of several developments over the years for which the planning board has made maintenance and repair of drainage facilities a condition of approval. Many of these conditions (although not the Sea Glass conditions) allow the town to go in and maintain the facilities if the owner of the facility does not do so and to recover the town's expense in doing so. To my knowledge, the town has not followed up in trying to determine the adequacy of the maintenance of these several drainage facilities.

If the Sea Glass HOA does not voluntarily provide the certifications, then the town's other option is to periodically inspect the facilities. However, Sea Glass should not be singled out. Town officials would have to make a policy decision as to the importance of assuring that these privately owned drainage maintenance requirements are being complied with. If that goal is deemed important, a program should be developed that identifies all developments where such a requirement exists and periodically inspects all of them. Obviously, that program would have to determine which officials (most likely the Public Works Director) would have this responsibility.

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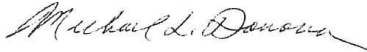
Enlargement of Living Space.

As Peter's memorandum indicates, § 6.2 of the Declaration and the conditions of approval prohibit enlargement of the approved living space of the dwelling units, including conversions of basements and unfinished second floors of garages. Peter recommends that the board require an annual statement from the HOA that it has not allowed any such changes to the units. There is no requirement in the Declaration or the conditions of approval for any such annual statement or certification.

The issue of "enlargement" was extensively discussed by the planning board during its review of the Sea Glass applications. The planning board was aware that it could require certifications of compliance. It did not do so. Article 6 of the Declaration is titled "Prohibition Against Structural Changes By Owner." Article 6 clearly identifies what is and is not allowed. Under the Declaration and the Condominium Act, improvements to units must be approved by the HOA. Also, each deed to a unit must reference the Declaration and require compliance with it. We should not assume bad faith on the part of the HOA. In my opinion, further measures to assure compliance are not required.

I hope this memorandum will assist you and the board in addressing the matters raised by the building inspector in so far as Sea Glass is concerned. Please do not hesitate to contact me if you have any questions.

Very truly yours,



Michael L. Donovan

Cc: (By Email)
Peter Rowell, Building Inspector
Michael Magnant, Town Administrator

Annual Certificate of Compliance
Sea Glass Lane Retirement Community Development (RCD)

For Year Ending: December 31, 2015

Pursuant to conditions of Major Site Development and Special Use Permit approval by the Planning Board and the Condominium Declaration, I hereby certify that during the year ended as noted above:

1. All occupants of the units are age 62 or older; copies of the birth certificates or drivers licenses of all occupants are on file with the Association and the affidavits required by the Declaration are on file with the association.
2. During the past year the stormwater management facilities have been maintained in accordance with the Stormwater Management/BMP Operations & Maintenance Plan, which is a four page Exhibit C attached to the Declaration.

I declare the statements above to be complete and true, to the best of my knowledge.

Sincerely,

Wallis Road Properties, LLC (Declarant)

By: 
John O'Neill, Member

Date: 1-28-16

Name: Wallis Road Properties, LLC

Address: 42J Dover Point Road, Dover, NH 03820

Email: changingplacesllc@gmail.com

For Internal Use:

Date Received by PB: _____

R E C E I V E D

JAN 28 2016

BUILDING DEPT
TOWN OF RYE, NH

February 9, 2016

RYE PLANNING BOARD

Policy Re: Enforcement of Conditions of Approval

1. Generally there are five (5) categories of conditions which require monitoring.
 - a. Conditions applicable to issuance of building permits and certificates of occupancy. It is the building inspector's responsibility to assure that these types of conditions are complied with.
 - b. Septic System maintenance requirements.
 - c. Drainage facilities maintenance requirements.
 - d. Other conditions intended to protect the environment.
 - e. Age monitoring requirements for RCD's and, possibly in the future, income monitoring requirements for workforce housing.
2. Soon after a plan is signed by the Planning Board Chair, the planning and zoning administrator should provide a copy of the conditions of approval to the building inspector along with a memo listing those conditions of which the building inspector should be aware.
3. It should be the planning board's responsibility, acting through the planning and zoning administrator, to monitor compliance with age requirements in RCD's and income requirements in projects involving work force housing.
4. A certification process should be implemented for Home Owners Associations (HOA's) or owners (as applicable) to annually certify that all conditions related to 1a, 1b, 1c above are being complied with. Conditions of Approval should expressly state that annual certifications are required.
5. Since these are planning board conditions, the planning board and planning and zoning administrator should be responsible for implementing the annual certification process.
6. Soon after completion of the development improvements the planning and zoning administrator should notify the HOA (or owner if applicable) of the annual certification requirements and provide a form for the certification.
7. Reports required to be filed relative to septic system maintenance requirements should be provided to the building inspector and to the planning board. It should be the building inspector's responsibility to review these reports and determine if follow-up enforcement is required.

February 9, 2016

8. For other reports that may be required, it should be the planning and zoning administrator's responsibility to review these reports and determine if follow-up enforcement is required.
9. If the certifications or absence thereof indicate that drainage facilities might not be maintained as required, the building inspector and PW Director should inspect the facilities to determine appropriate follow-up action.
10. There should be a planning board committee (Enforcement Monitoring Committee) established to assist the planning and zoning administrator and building inspector in monitoring enforcement of conditions of approval. The committee should meet at least semi-annually to review the monitoring program, and more frequently when necessary. The committee's responsibilities should include advising if follow-up enforcement actions are required; hearing concerns of administrative staff relative to the enforcement program; and reviewing and revising as necessary this policy.
11. Going forward, this policy should be put into effect for the following developments: Moorings; Sea Glass, Sea Mist; Rye Farm; Binnie Subdivision.
12. The building inspector, working with the town attorney, will be responsible for monitoring the conditions of approval of the Whitehorse Subdivision.

Andrew Scott 2007 Irrevocable Trust

40 Adams Rd.

Cape Neddick, ME. 03902

Rye Planning Board
10 Central Rd.
Rye NH 03870

Dear Board members:

I am writing this letter to ask for your help in determining the status of the rock wall at my property located at 2 Marjorie Way. When we purchased the property there was a row of random boulders placed along the front. The boulders were spaced apart and in one section were simply piled. We have a photograph provided by the Building Inspector showing the boulders as well as a photograph provided by our excavating contractor prior to start of work depicting the conditions I have outlined.

The random placement of these large boulders was not something I would have in front of a very beautiful new home being constructed for my Son and his wife. I asked my excavator to remove the boulders.

Shortly thereafter I was informed by the Building inspector that I removed a "stone wall" that was part of the sub-division approvals required by the Planning Board. I met him at his office and he was nice enough to provide a copy of that section of the approved plan indicating "The Existing Stone Walls are to be removed and relocated". It was very clear to me and depicted in the photographs that the random placement of these boulders and the pile of boulders were in no way a relocation of the existing stone walls. I believe the original stone walls were buried when the neighborhood was developed.

Further discussions with the Building Inspector and the secretary of the Planning board indicated that these boulders, random as they were at the time of my purchase of the lot were in fact what was approved by the Planning Board. I was informed that unless I put this "wall" back we would not receive an occupancy permit.

My problem, and what I am reaching out to the Board to ascertain is, how was the developer allowed to vary from the terms of the approved plan. "Relocate existing". Based upon the information provided to me by the Board Secretary, in order to ask for a plan variation one must petition the Board, notify abutters and request that the board place the request on their agenda for a public meeting. I asked the Building inspector for the Planning Board decision allowing the developer to circumvent the approved plan and was informed he did not know of any such documentation.

So we are left with a question as to what exactly we have to put back if anything at all. I am opposed to the random placement of boulders and pile of boulders that was there as well as opposed to having to be responsible for a wall that should have been provided by the developer.

If the relocated wall was in place as the plan indicated, we would be fine and have no issue. However at this time it is impossible that this relocation of existing can take place. We certainly are amenable to

marking the set- back in some way, perhaps placing cement or granite markers at either end of the front boundary to define the set- back.

I look forward to discussing this soon as we really need to come to a conclusion that satisfies all so that the Inspector can issue occupancy when the time arrives.

Thank You


Janet Scott 1/12/16