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September 13, 2016

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

**RE: 431 SOUTH ROAD - RESIDENTIAL SUBDIVISION  
HARBOR STREET LIMITED PARTNERSHIP**

Dear Chairman Epperson & Members of the Planning Board:

Since Harbor Street Limited Partnership is in the process of finalizing documents for the Friday, September 16<sup>th</sup> Planning Board submission date, I think it might be helpful for me to spell out the background of Harbor Street's proposal to subdivide land on South Road and to indicate where this application is at this point and expectations for going forward.

## **Background**

Harbor Street Limited Partnership has under agreement the 91.72 acres of land on the northeast side of South Road which is the subject of a subdivision plan submitted to this Board. It retained Christian Smith of Beals Associates, PLLC, Gove Environmental, Doucet Survey and StoneHill Environmental to provide the information necessary to begin the subdivision process. By June of 2016, the surveying, wetlands identification and engineering layout for the subdivision was sufficiently complete to allow an Application for Conceptual Consultation for the subdivision to be filed with the Town. Meanwhile, Mr. Falzone, on behalf of Harbor Street, began the process of contacting direct abutters to solicit their concerns regarding the proposed subdivision.

## **Conceptual Subdivision Discussion**

The Rye Planning Board held a hearing for a Conceptual Subdivision discussion at its July 12th, 2016 meeting. Harbor Street gave notice to the parties entitled to notice under RSA 676:4(d)(1). At the July 12th meeting, Christian Smith of Beals Associates gave an overview of the proposed subdivision. Members of the public addressed the Board and Board members asked a number of questions about the proposal.

At the close of the discussion concerning the subdivision, the Chair gave me an opportunity to speak. At that time, I requested that the Planning Board approve an arrangement so that discussion could start on the hydrological study. I pointed out that Harbor Street knew that such a study was going to take a while and so that nobody would be rushed, Harbor Street was prepared to put up whatever escrow funds the Town thought appropriate so that the Town's experts could be hired and the process could get started sooner rather than later. The Chair responded that as far as getting outside consultants and setting up an escrow, the Board could not take that step before the Planning Board had something concrete to go with here.

## **Major Subdivision Application**

On August 19th, 2016, Beals Associates, on behalf of Harbor Street Limited Partnership, submitted an application for final subdivision review to Kimberly Reed, CFM, the designated representative of the Planning Board, on a form provided by the Town. Checked off on the application form was the line indicating that the application was for a "Major Subdivision" and a "Lot Line Adjustment." The "Applicant's Checklist for Final Applications" was submitted with all of the required sections checked off for compliance. Attached to the Application were approximately 110 pages of supporting documentation [See Attached List of Materials Submitted on October 18<sup>th</sup>, 2016].

## **The TRC Hearing**

A meeting of the Rye Technical Review Committee was held on August 30, 2016, with three members in attendance: Acting TRC Chairman J.M. Lord, Planning Board Chair Bill Epperson, and Planning Board Member Jeffrey Quinn. At that meeting, Scott Cole of Beals Associates, Cynthia Fair of StoneHill Environmental and Jim Gove discussed the application with the Board members and answered questions.

The subsequent Notice of Decision, issued on September 1, 2016 by Kimberly Reed, CFM, contained the following:

The Committee voted to not move your application forward to the full Planning Board for the September 13, 2016 meeting for deficiencies in the following areas:

1. A Conditional Use Permit (C.U.P.) Application is required for properties within the Wellhead per Rye Zoning Ordinance, Section 306;
2. A hydrological study is required as part of the C.U.P., per Rye Zoning Ordinance, Section 306.6;
3. A Lot Line Application is required to show the changes in the lots being subdivided, per Land Development Regulations, Section 404.3;
4. More detailed cross sections should be provided, per Land Development Regulations, Section 602.2B; and
5. The street on the application cannot be used since there currently exists a street name therefore a new street name per Land Development Regulations, 404.2D.

### **Response to the TRC Letter**

While I helped to set up the first Technical Advisory Committee in the State of New Hampshire in the early 1970s (along with Portsmouth City Planner Robert Thoresen) and although Technical Review Committees (TRCs) or Technical Advisory Committees (TACs) are very helpful in facilitating the work of Planning Boards, **they do not have authority under the statute to determine whether a subdivision application is "complete."** As set forth in RSA 676:4 and intimated in *DHB, Inc. v. Town of Pembroke*, 152 N.H. 314, 324 (2005), that duty is reserved for the Planning Board itself. The statute states that the Planning Board "...shall, at the next regular meeting within 30 days following the delivery of the application ... determine if a submitted application is complete according to the Board's Regulation and shall vote upon its acceptance."

Furthermore, the Town's Land Use Regulations do not, as required by the statute, "specify by Regulation what constitutes a completed application sufficient to invoke jurisdiction to obtain approval." RSA 676:4, I(b). Having complied with the application requirements and submitted all the items on the Subdivision Application Checklist, Harbor Street has submitted a complete application such that the Planning Board is required to give notice

of a public hearing within 30 days of the filing at which time the Board shall determine if the application is complete, and, if so, begin consideration of the application.

I appreciate that members of the TRC brought to Harbor Street's attention several typographical and numerical errors contained in the initial submission. Those errors will be corrected in the next submission and are not a basis for this Board not accepting jurisdiction of the Subdivision Application. To address the remainder of the items set forth in the September 1, 2016 letter in turn:

- (1) *Conditional Use Permit:* A Conditional Use Permit Application ("CUP Application") is not required to be filed simultaneously with the Subdivision Application and, therefore, the failure to file a CUP Application with the Subdivision Application does not make the Subdivision Application incomplete. Harbor Street recognizes the need to file a CUP Application and recognizes the benefit of having the Subdivision Application and CUP Application on a more or less parallel track and timetable. Harbor Street will be filing a CUP Application on or before September 16th.
- (3) *Lot Line Adjustment Application:* While the box indicating a request for a Lot Line Adjustment was checked, Harbor Street is now aware that the Board prefers a separate Application for Lot Line Adjustment. Nowhere in the application does it indicate that 2 boxes cannot be checked - but nevertheless, a separate Lot Line Adjustment Application will be filed by September 16<sup>th</sup>. In many instances, the need (or desirability) for a Lot Line Application would not become apparent until well into the Planning Board review process when an abutter asks the Board to require a minor lot line change to benefit his or her abutting property. Because Mr. Falzone contacted almost all of his abutters to discuss their concerns and desires (as suggested by the Rye Land Development Regulations), prior to the filing of the Conceptual Consultation Application, the desirability of the Lot Line Adjustment Application surfaced early. Again, the failure to file a separate Lot Line Adjustment Application should not have impacted the acceptance of the subdivision plan.
- (4) *Detailed Cross-Section:* This again is the type of item that frequently surfaces during the subdivision review process but is not required

in the subdivision application and is a normal revision made during the Planning Board hearing process.

- (5) *Street Name:* Since members of the TRC are more familiar with the names of streets (and available names for streets in Rye) than the applicant, Harbor Street appreciates that it was brought to its attention that a change will need to be made to the street name; once made, all subsequent plans will utilize the corrected name.

### **Hydrological Study**

Harbor Street is well aware that the Planning Board will condition its final subdivision approval upon the issuance of a CUP. I expect that the Planning Board will want to be satisfied with the scope and thoroughness of a hydrological study which must be completed at the expense of the developer under the supervision of the Town's hydrological consultant. However, the Subdivision Application Checklist does not list the hydrological study as one that is required as part of the subdivision application. Moreover, it is presumed that the Town would not desire (and would likely not accept) a hydrological study of the scale required for this subdivision without the very close supervision by the Town's hydrological experts.

Consistent with the Town's interest in protecting the water supply and mindful of not testing in this area without the Board agreeing to the scope, Harbor Street submitted a proposal with its Subdivision Application designed to determine whether the development of the residential lots with on-site waste water disposal systems will potentially impact ground water quality in the aquifer beneath and surrounding the proposed development site. The proposal prepared by StoneHill Environmental, Inc. is designed to assess the potential impact of nitrates on the underlying, overburdened and bedrock groundwater quality.

The StoneHill proposal calls for StoneHill to meet with the consultant designated by the Planning Board in order to finalize the scope of work details, particularly with regard to locations and designs of proposed monitoring wells, subject to approval of the Town's consultant. StoneHill proposes to install 7 water table monitoring wells in the overburden at selected locations across the site to assess soil stratigraphy, groundwater levels and baseline general chemistry groundwater quality. StoneHill anticipates the overburdened soil bearings will be advanced to depths of approximately 15' below the grade and that 4 shallow bedrock

monitoring wells will be installed to estimated depths of 40' to 50' below grade.

Harbor Street had hoped to be able to initiate the hydrological study in July, which hope was the basis for the request at the July 12<sup>th</sup> meeting. However, Harbor Street respects the Board's desire to await receipt of the Subdivision Application before approving escrow funds for expert review.

While a hydrological study is required as part of the Conditional Use Permit process, the completion of a hydrological study is not required for the Planning Board to find that a landowner has submitted a "complete" Subdivision Application. At both meetings where this subdivision proposal has been discussed, Planning Board members have made it clear that the Board will require careful review when considering an application of this property located in the Wellhead Protection Area. Consistent with this intent, Harbor Street submitted a detailed scope of the hydrological issues with its CUP Application with the expectation that it would be reviewed during the hearing process after input from the Board and the public before significant testing in the wellhead area is undertaken.

### **Conclusion**

Harbor Street appreciates that the Planning Board is concerned given the size and location of the proposed subdivision, and will give its Subdivision Application a thorough and thoughtful review. Harbor Street believes that it has submitted a completed application for subdivision sufficient for this Board to have accepted jurisdiction at its meeting of September 13<sup>th</sup>.

Since the Board has not noticed the meeting, Harbor Street, without waiving any rights it may have, respectfully requests that the Board notice the Subdivision Application, the CUP Application and the Lot Line Adjustment Application to be filed Friday, for its next meeting. Although the TRC does not have jurisdiction to rule on the "completeness" of a Subdivision Application, Harbor Street recognizes that the TRC can be a helpful venue to allow Board members and Department Heads to ask questions of an applicant and its representatives to make the subsequent Planning Board discussion more productive.

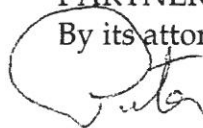


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Harbor Street believes that its team of engineers, surveyors, wetlands scientists, traffic experts and hydrologists will be able to address all of the concerns of Board members and the expert consultants retained by the Board. It recognizes that the subdivision review process will play out over a period of several months and looks forward to working with the Board during that time, but believes that the Planning Board must fulfil its statutory requirement to open a duly-noticed public hearing and begin that process.

Respectfully submitted,  
HARBOR STREET LIMITED  
PARTNERSHIP

By its attorney,



Peter J. Loughlin

PJL/dea

Enclosures

Cc Kimberly Reed, CFM, Zoning & Planning Administrator  
Michael Donovan, Esquire  
Harbor Street Limited Partnership

Falzone\South Road\2016-09-13 Final Ltr to Epperson

**LIST OF MATERIALS SUBMITTED TO THE  
 RYE PLANNING BOARD ON OR ABOUT  
 AUGUST 18, 2016**

Page #	Explanation
1	Town of Rye Planning Board Application for Final Review of a Major Subdivision and Lot Line Adjustment
3	Applicants Checklist for Final Applications including Application Fee, Notice Fee, Abutters Lists and Final Subdivision Plat; as well as Final Street & Utility Plan (404.5A); Final Surface Water Discharge Management Plan (404.5B, 403.1G); Erosion Control Plan (404.5C); Site Impact Analysis (404.5D); Engineer's Estimates (404.5E); Easements, Deeds, Covenants (if applicable) (404.5F)
5	Abutter's Checklist - August 17, 2016
9	Memo from Joseph Falzone to the Rye Planning Board listing Joe's efforts to reach out to all abutters recommended in Step 7 of the Town's Regulations
32	Letter of Authorization from Joseph Falzone to Beals Associates
33	Memorandum Re: Traffic Study from Giles Ham, PE and Vanesse & Associates, Inc. of 35 New England Business Center Drive, Suite 140, Andover, MA dated June 16, 2016
49	Site Impact Analysis dealing with (1) soils and natural contours; (2) vegetation; (3) wetlands; (4) surface water quality; (5) groundwater quality; (6) spatial relationship with abutting development or potential development; (7) rural character; (8) traffic volume; and (9) community values
53	Authorization by Joseph Falzone to Planning Board to inspect the site as necessary
54	Additional mailing letters for abutters
58	Site - Specific Soil Survey Report for South Road, Rye, NH prepared by Gove Environmental Services
61	StoneHill Environmental proposal for hydrologic study dated August 12, 2016
65	Log of Test Pits
98	Construction Cost Estimate
99	Letter from Christian O. Smith to William Epperson, Chairman of the Rye Planning Board with a list of required permits including Alteration of Terrain; Subsurface Systems Subdivision Approval; Subsurface Septic System Construction Approval; EPA NHDES Phase 2 Notice of Intent (NOI); Local Driveway Permit for Road Entrance; RWD Water Main Extension Approval
100	Declaration of Open Space Deed Restriction Model for Cedar Run Subdivision
104	Deed - Salvatore Allocco to Wayne J. Hauser & Aisha K. Hauser [RCRD 5066/312]
107	Deed - Wayne J. Hauser & Aisha K. Hauser to WNRV, LLC [RCRD 5740/829]



110	Deed - William J. Jenness & Priscilla V. Jenness to Priscilla V. Jenness, Trustee of the Priscilla V. Jenness Revocable Trust of 1998 [RCRD 3284/1227]
111	Deed - Lindsey Brigham to James Ritzo, Trustee of the Brigham Family Trust [RCRD 2552/0554]
112	Deed - Anne W. Chisholm, Attorney in Fact on behalf of William H. Chisholm and Virginia P. Chisholm to N.W. Chisholm, Trustee of the Virginia P. Chisholm Revocable Trust [RCRD 4895/2338]

