

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

Docket No. 218-2017-CV-00871

Harbor Street, LLC, et al

v.

The Planning Board of the Town of Rye

Docket No. 218-2017-CV-00872

Harbor Street, LLC, et al

v.

The Planning Board of the Town of Rye

Docket No. 218-2017-CV-00982

Harbor Street, LLC, et al

v.

The Zoning Board of Appeal of the Town of Rye

SETTLEMENT STIPULATION

NOW COME the plaintiffs, through their attorney, and the Town of Rye, through its attorney, to stipulate to the following settlement of all claims in the three (3) above captioned cases, as follows:

1. An Agreement in Principle reached at a November 20, 2017 mediation is attached hereto as Exhibit 1. Plaintiffs are bound by the Agreement in Principle so long as the Town of Rye performs all of the conditions in the Agreement.

2. Harbor Street, LLC has submitted a revised Subdivision Application and revised Conditional Use Permit Application for the 13 lot subdivision conceptually depicted on Exhibit

1. The planning board has scheduled a hearing on the applications for January 9, 2018.

3.. The planning board shall conditionally approve said application in the normal course of business. Conditions of approval shall be typical of recent subdivision approvals including Marjorie Way, Starfish Circle and Cedar Run. See Exhibit 2.

4. Harbor Street, LLC shall donate former Lot 2, which is the subject of Case No. 218-2017-CV-00982 to the Rye Conservation Commission.

5 Harbor Street, LLC shall convey the ±58 acres of open space located north of the 13 lot subdivision as depicted on Exhibit 1 to the Rye Conservation Commission.

6. Surface water drainage from the two streets shall be handled as described by Items 4, 5 and 6 of Exhibit 1.

7. There shall be no blasting for infrastructure construction or for house construction and lot development.

8. A woodland buffer shall be preserved for abutters to the east and west of the tract being subdivided.

9. A buffer shall be provided to the Seiner property as described in Exhibit 1.

10. Revised Lot Development and Grading Plans have been submitted with the applications for planning board review.

11. At Harbor Street, LLC's option the streets may be private streets or may be dedicated to the town. Paving width shall be reduced from 24 ft. to 22 ft.

12. Harbor Street, LLC shall convey to the Rye Conservation Commission the ± 58 acres of open space and Lot 2. Deeds to be prepared by Harbor Street, LLC and reviewed and

approved by town counsel. The Rye Conservation Commission shall pay \$300,000 to Harbor Street, LLC for the acquisition to the ±58 acres of open space. Lot 2 is a donation from Harbor Street, LLC.

13. The date of closing on the ±58 acres of open space and the schedule of payment(s) shall be at times agreed upon by the parties based on several considerations, including:

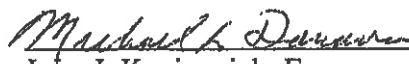
- a. The Rye Conservation Commission will be using funds from a \$300,000 NH Municipal Bond Bank issuance. The next round of bonds is to be issued by the bond bank in June 2018 with proceeds available mid-July 2018. Applications are due NLT April 13, 2017.
- b. In order for the town to participate in the June 2018 issuance there must be a Purchase and Sales Agreement in place at the time of application (i.e. NLT than April 13, 2018).
- c. It is not known at this time whether the permitting process will be complete enough for Harbor Street, LLC to have obtained title to the land to be conveyed to the RCC in time to meet the deadline for the June 2018 bond issuance.
- d. If Harbor Street, LLC has acquired title to the Chisholm and Jenness parcels, the parties shall execute a Purchase & Sales Agreement for the ±58 acres of open space on or before April 10, 2018. Said P & S Agreement to be prepared by town counsel in a form acceptable to the bond bank.
- e. If Harbor Street, LLC has not acquired title to the Chisholm and Jenness parcels on or before April 10, 2018, the parties shall execute a Purchase & Sales Agreement for the ±58 acres of open space at such time as is mutually agreed upon, considering the municipal bond bank's future timetables.

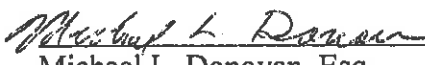
f. In no case shall the closing on the ±58 acres of open space occur later than 3 months after Harbor Street, LLC commences street construction. The donation of Lot 2 to the RCC shall occur no later than the issuance of the first building permit on Stoneleigh Way.

14. Not later than 45 days after planning board conditional approval, each of the five (5) plaintiffs shall provide the town with a complete and final release of all claims (to be prepared by town counsel) of any and all claims set forth by plaintiffs in the three captioned cases, including but not limited to damages, fees, costs and expenses, arising from each of the three (3) above captioned complaints. The Rye Board of Selectmen shall pay \$100,000 as consideration for said Releases.

15. Town counsel and plaintiffs' counsel shall work in good faith to prepare draft conditions of approval for the revised applications. See Item No. 12 of Exhibit 1 and Exhibit 2.

Respectfully submitted:

 12/22/2017
John J. Kuzinevich, Esq. Date
Attorney for Plaintiffs # 264914

 12/22/2017
Michael L. Donovan, Esq. Date
Attorney for Defendants # 661

Attached:

Exhibit 1: Settlement in Principle (2 Shts.).

Exhibit 2: 10/27/17 Outline of Some Possible Conditions of Approval

Approved and So Ordered:

Date

Marguerite L. Wageling
Presiding Justice

November 20, 2017

SETTLEMENT IN PRINCIPLE

PROPOSED STONELEIGH PRESERVE SUBDIVISION

TOWN OF RYE'S SETTLEMENT OFFER¹

1. Planning board would accept the two cul-de-sac plan but only ¹³ lots. No Lot ~~2~~.
LOT 6 BECOMES 2 LOTS. PARKWAY ACCESS TO ONE LOT.
2. Remaining uplands go to RCC. This appears to be about 19 acres, about 15 acres of uplands.
3. No blasting for infrastructure construction or for house construction/lot development.
4. New Drainage Study/Plan will be required. Reviewed and approved by Sebago.
Applicant to pay Sebago's fees for review.
5. Drainage/Stoneleigh Way.
 - a. No drainage to vernal pool.
 - b. Drain it all to facility on Lot 4.
 - c. All drainage sheet flow to lots where possible.
6. Drainage/Francis Path
 - a. Break it at high point. Some to north, some to south.
 - b. Drainage to south crosses South Rd. and flows into large wetland.
 - c. All drainage sheet flow to lots where possible.
 - d. Minimize depth to CB's and pipes to minimize rock hammering.
7. Streets to be private street. (40 ft. ROW required). *→ REMAINS OPEN*
8. Woodland buffer preserved for abutters to east and west.
9. Buffer provided for Seiner property as portrayed by Mr. Falzone in initial application package.
10. Realistic Lot Development and Grading Plans submitted for each lot.
11. Damages claims dropped. Global settlement of issues.
12. Discussion of framework for conditions of approval to take place if basic settlement concept agreed upon.
13. *PAYMENT OF 400,000 BY TOWN.*
14. *LOT 2 DONATED TO RCC.*

¹ As previously indicated to opposing counsel, any settlement reached in mediation will require approval by the full planning board. This would be at a nonpublic meeting.

Jeffrey Falzone 11-30-17

Markus Dams

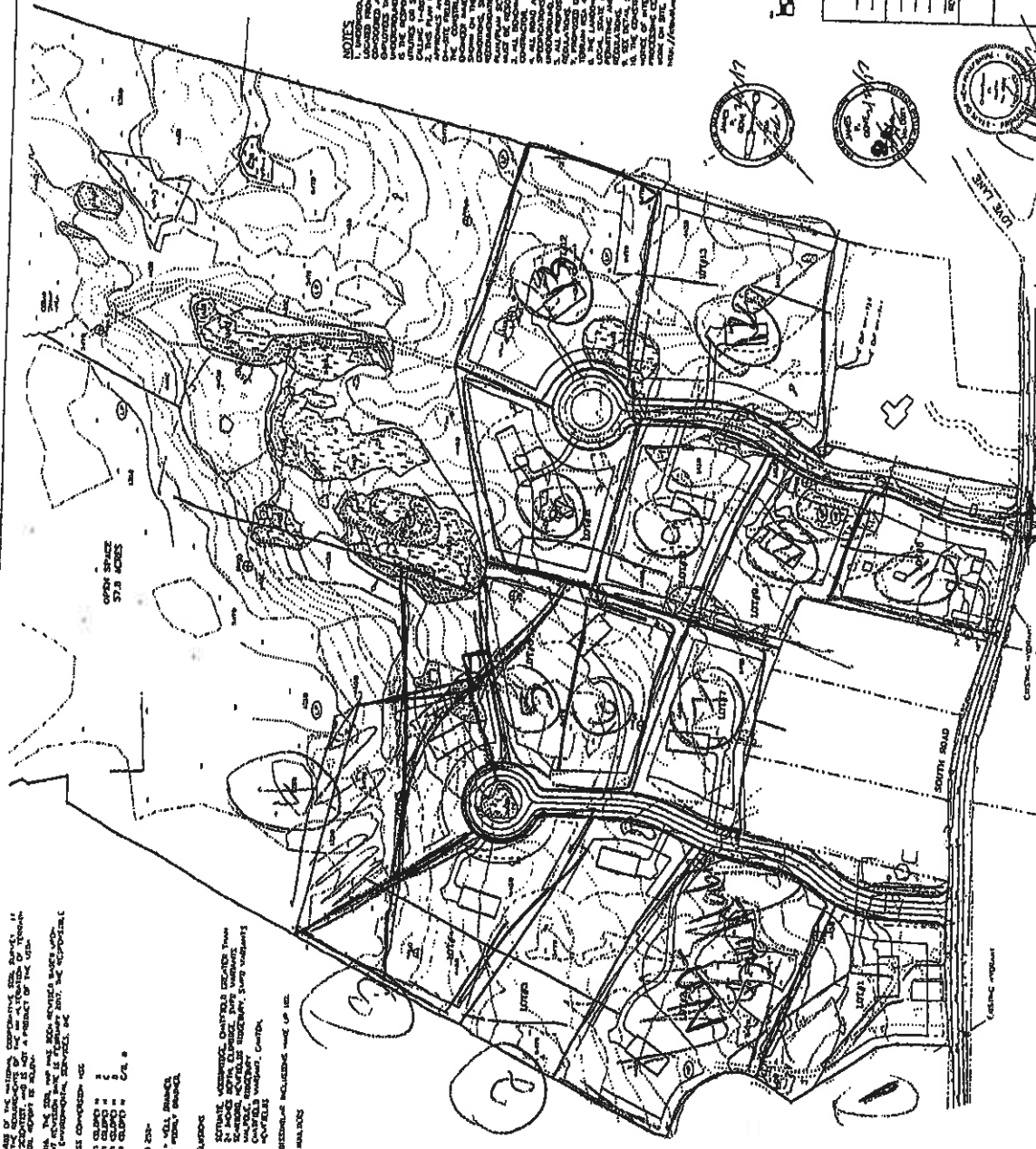
13 lot Subdivision \$700. -
 lot 2 Non-Buildable
 17 total

Settlement on
 principle

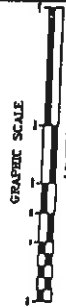
-Donor work in
 building

THIS MAP AND PROJECT IS VARIOUS THE TOWN OF...
 THE TOWN OF...
 THE TOWN OF...
 THE TOWN OF...

LEGEND
 UNIT FILL
 TOP SOIL
 HIGH POINT
 LOW POINT
 BOUNDARY VECTOR
 STATE LINE
 DISTANCE CONTAINER - 10'
 DISTANCE CONTAINER - 20'
 DISTANCE CONTAINER - 30'
 DISTANCE CONTAINER - 40'
 DISTANCE CONTAINER - 50'
 DISTANCE CONTAINER - 60'
 DISTANCE CONTAINER - 70'
 DISTANCE CONTAINER - 80'
 DISTANCE CONTAINER - 90'
 DISTANCE CONTAINER - 100'



NOTES
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APPROVED FORM OF THE PLANNING BOARD	DATE
SUBDIVISION SITE PLAN	
PLAN FOR RESIDENTIAL DEVELOPMENT SOUTH ROAD RYE, NH	
DATE FEB 2007	SCALE 1" = 100'
PROJECT NO. 104-03	SHEET NO. 1 OF 3

Joseph Feby 11-20-17

Approved Donor

Stoneleigh Preserve Subdivision Application
Outline of Some Possible Conditions of Approval

1. Homeowners Association required. (One or two?).
2. Septi Tech systems required. Conditions of Approval similar to Marjorie Way (Hoefle Subdivision) Conditional Use Permit conditions. See Attached. See also StoneHill proposal.
3. Now standard provision re: ownership and maintenance of drainage facilities. See Sea Glass Condition No. 4 (464 Brackett Rd. SD – Falzone).
4. Lot development to conform to Lot Development & Grading Plans submitted to planning board. Building Inspector responsible for compliance with this condition.
 - a Impervious surface not to exceed the area stated in the Post Development Drainage Calculation Table.
 - b Add calculation of area to be cleared for house construction, lawns and driveways to lot development plans.
 - c House, driveway and septic system to be built in locations depicted on lot development plan.
 - d Drainage flows in same direction as indicated on plan.
 - e Woodlands depicted on lot development plans to be preserved, and so marked every 30 ft. in field and identified by a metes and bounds description as a deed restriction.
5. Vernal pool and wetland buffers to be marked every 30 ft. in field.
6. No salt requirement and no nitrate fertilizer requirement.
7. No lawn irrigation systems.
8. Drip edges and rain barrels for all houses.
9. No variances to RZO Section 508 (Grading and Drainage Plans).
10. Deed restrictions relative to preservation of vernal pool and wetland buffers and tree preservation.
11. Standard conditions regarding letter of credit; sufficient escrow to cover all consultants bills; escrow agreement for planning board engineer monitoring of infrastructure construction; submittal of as-builts; expiration of conditional approval; commencement of active and substantial development; monumentation; legal counsel review of all documents. See attached circled conditions to 464 Brackett Rd.