

- C. Minor 2 Lot Subdivision Plan by the Town of Rye for property owned and located at 575 Washington Road and 8 Olde Parish Road, Tax Map 12, Lot 43 and Tax Map 12, Lot 43. The proposed adjustment will create a 0.4 acre +/- parcel around structures identified at 575 Washington Road and another lot 1.56 acres +/- . The proposal is shown on a plan entitled “Subdivision of Land, Tax Map 12, Lot 43, 575 Washington Road, Rye, NH” by James Verra and Associates, Inc. **Property is in the Single Residence and Historic District. Case #04-2020.**
 - **Continued**

IV. New Business

- **421 South Road Subdivision issues concerning drainage, fill and further permits**

Chair Losik stated there were some concerns brought to the board’s attention. She and JM Lord visited Stoneleigh on April 28th. There were a number of areas that gave them concern, between drainage, fill, grading, and the gravel access road on lot 4. The Conservation Commission had raised questions about their two access points. One is a paper street that comes off Autumn Lane between lots 5 and 6. The other is between lot 11 on Signature and the road into the bio-retention pond on lot 12. There was some ponding on lot 10. There is a wetland area that is a concern. There is a haul road between lots 8 and 9 that was used by the developer. There were also concerns with respect to tree cuts. She continued that through the process, anyone that was on the board understood that it was a difficult resource. The developer and his team worked diligently. The Planning Board worked diligently with the board’s experts and came to a good conclusion. Yet, despite very specific lot development plans and conditions of approval, there are these areas that have caused the board to reach out to Sebago and Danna Truslow. The board will also be reaching out to Joe Noel or another wetland scientist. She believes that Danna Truslow from Truslow Resource Consulting visited the site today. She asked Attorney Donovan if he would like to add anything.

Attorney Donovan stated that as a result of these visits and Zoom conferencing amongst the building inspectors, Kim Reed and some Planning Board members, there are two things that have happened. The group has come up with revised procedures with the Building Department for both the issuance of building permits on six lots that have not yet had building permits pulled. Also, procedures have been set for the certificate of occupancy on two or three properties that have had building permits pulled, but have not yet had certificate of occupancies issued. Those procedures will require a fairly extensive site plan of existing conditions at the time of building permit application. The site plan will be sent to Steve Harding, Sebago Technics, for a review as to whether condition #15 of the conditions of approval are being complied with. This is the condition that says; “The lot development shall conform to the lot development plans that were submitted to the Planning Board and approved”. The determination of that was originally left with the building inspector. That is now going to be something that Sebago weighs-in on. The same thing will happen when the builder comes in looking for a CO. The as-built plan that is required will have to show exactly what is there and it will be submitted to Sebago to see if it conforms with the lot development plan the Planning Board approved.

Attorney Donovan continued that he has looked at photos and has looked extensively at the lot development plans, particularly lots 8 and 4. It appears there are several instances where those lots have not been developed to conformance with the lot development plans. Lots 8 and 4 are two examples. He stated there is a draft Notice of Violation (NOV) that he has supplied to the board, which orders Mr. Falzone, as developer, to restore the whole road on lots 8 and 9, which was created to make it more

efficient for the development of the subdivision. He reiterated that the board has the draft notice of violation. He recommends the board authorize by vote to put the developer on notice.

Chair Losik noted that Steve Harding has reviewed the area and his recommendations are consistent with the NOV.

Vice-Chair Lord commented that he agrees with Attorney Donovan. One of the key issues that needs to be addressed, right off the bat, is the haul road between lot 8 and lot 9. There has been some work done in that area to put a stonewall back in place. What really brought clarity to him was that the developer sent a plan to show the location of the break in the stonewall, recently. In walking out there, that is where the break in the stonewall is and it is still there today. He thinks what they are looking at is a totally different haul road that was created to keep traffic off of South Road to go in between the two developments without having heavy equipment on South Road. He thinks they are at the point in time now where they have to go back and close up what was created for convenience to develop these lots.

Chair Losik asked Vice-Chair Lord if he is referring to the area going from lot 8 to 9 that was to the south.

Vice-Chair Lord confirmed. He noted that the break in the wall and where the equipment was taken back and forth can be seen, but it is very different than this (referring to paperwork in front of him).

Selectman Epperson stated this particular negotiate on this subdivision was excruciating, as everyone knows. Everyone spent years trying to get this right. In looking at this now, especially with the haul road and some of the environmental things that have been done, it really does not match what the board had envisioned. On lot 4, there is a road that is clearly delineated on the site plan, which does not exist. Before a CO is issued there, someone is going to have to do very extensive excavation to create that road. With regards to lot 5, he has been wondering what is going on over there with all that fill. He cannot believe that a house is going to be built on all that fill with a 10ft drop in the back. He commented that they need to make sure the sites are built the way the board envisioned them to be built.

Chair Losik stated the observations were on a significant number of the lots. Thus far, CO's have only been issued for lots 8 and 11. Building permits have been issued for lots 4, 9, 12 and 13 with no CO's. No building permits have been issued for lots 1, 3, 5, 6, 7 and 10. In going back to the lot development plans and the number of conversations that were had between the applicant and the Planning Board in consideration of all the criteria that was discovered in looking at the resource, it was found that those lots are significantly different. They do not fit the initial concept of the drainage plans and desires that were expressed in the approved subdivision. It was felt best to go to a new process, whereby the lot development plans that were approved would be compared to the plans when they came in, to look at what is going to happen to topography, and drains. With the example of lot 4, there is a very expensive drainage facility in the gravel wetland. There is concern about the functionality of the first area that is the sediment bay but there is no way to get to it. There was an access road on the plans but that has changed. She believes that Christian Smith and Steven Harding have had a conversation and many of these things are going to be worked out. She commented that it might make sense for the Planning Board to hold a site walk.

Speaking to Attorney Donovan, Alternate Paul asked if the Notice of Violation is a detailed list of how they did not comply or a general notice.

Attorney Donovan replied that the notice deals only with the restoration of the haul road.

Alternate Paul asked if there was a way to get an itemized list of what has been done versus what is expected.

Chair Losik pointed out that some of that is going to come from Steve Harding's work.

Attorney Donovan noted there are two subsequent documents that he prepared as a follow up to a couple of Zoom conferences. After Mr. Harding's report is received, the list can be put together of the concerns, which would be helpful for the site walk.

Danna Truslow stated it will be helpful if she visits the site with the board. She can take a look at Mr. Harding's feedback before making comments. She reminded the board there is monitoring work that is supposed to be starting soon. She would like Stonehill Environmental to get back out to the site. She could reach out to them to coordinate this.

Alternate Quinn asked if this is a situation where the developer has not paid attention to the detail and agreement or if this is something the sub-contractors have done in the execution of their job. He asked who has been overseeing this from the developer's side.

Attorney Donovan replied the answer is a little of both. He thinks it falls on the developer and the builder. In one case, it falls on the property owner who cut trees on Rye Conservation Commission land.

The board members agreed a site walk should be scheduled.

Chair Losik opened to Christian Smith for comments.

Christian Smith, Engineer with Beals & Associates, stated he applauds the idea of sending the plans to Steve Harding on the onset. It makes a great deal of sense to do the as-built tree lines. It has to be kept in mind that the piece on Autumn Lane went through a logging and clear-cut phase several years before Mr. Falzone had any interest in the property. Those internal tree lines were never actually picked up by the land surveyors. The proposed tree lines that were shown on the lot development plans are really more a limit of cut. He does not think, except in the case of the conservation land, the builder has gone outside those limits of clearing. The tree line within the property has holes in it. It has skidder tracks. It has excavator roads that were needed to get out to the location of the test pits. That is one point he wanted everyone to be clear on. He thinks that will be served well by doing the existing tree lines on the parcels and getting them to Mr. Harding, along with the proposed septic plan ahead of time. Mr. Harding can do the review on the as-builts as compared to the lot grading plans. Specific to individual lot grading, there is only so much elevation difference that actually can be allowed because of the 35ft height restriction in town. In looking at the as-built for lot 9, while the builder did not build that exactly to the septic design and the original lot development plan, it has to be kept in mind that those are minimum grades to achieve installation of the septic system. In the case of lot 9, it appears they took the 3 to 1 and shallowed the slope up. At the end of the cut area, the grades are all the same and it appears the stormwater is all going to run in the same direction.

Speaking to Mr. Smith, Attorney Donovan asked if he has had a chance to look at lot 8 and how that was built out. There was at least 5 or 6ft of fill put on the north side adjacent to the driveway for lot 7. In

addition to the tree line, the concern is there are places where too much fill was allowed. He believes this was done by the builder.

Mr. Smith replied that is probably the case because Mr. Falzone does not have anything to do with the individual lot development. He continued that he has not reviewed that particular lot. However, he did visit lot 4 last week with Severino. That clearly has a lot more fill than was contemplated on it. Mr. Falzone actually had Severino build that access road. It now sits under about 5ft of fill that was installed for that house construction. He noted that he and Severino came up with an idea to rectify the situation and get the access drive reestablished. However, that will have to go through Steve Harding to make sure he is comfortable as well.

Attorney Donovan commented that on lot 4 the drainage plan changed significantly. It appears that originally the drainage was to go into the middle of the cul-de-sac, which was pitched to the inside of the loop, and was to come out in a storm drain under the road, under the access road and to the gravel wetland. He was told the cul-de-sac was changed to pitch to the outside which created a new headwall for the drainage ditch on the frontage of lot 4, which is one of the reasons the access road no longer exists. He asked Mr. Smith if this was a change that he made to the cul-de-sac.

Mr. Smith replied it was. This was at the request of Severino because of the nature of the ledge that was in the middle of the cul-de-sac. This went through Steve Harding who looked at it and agreed with Severino. Mr. Smith commented this was done back in the summer of 2018. It was very early in the process of them doing the subgrade of Autumn Lane. He noted that he and Steve Harding both missed this and did not accommodate for the road. He thinks there will be a simplistic resolution; albeit, it will require a good deal of earth moving. He reiterated this was all reviewed with Steve Harding and approved by Alteration of Terrain prior to the change.

There was some discussion on possible ways to rectify the situation.

Chair Losik asked Mr. Falzone if he would like to make any comments.

Joseph Falzone, developer, stated he received Attorney Donovan's letter and reviewed it with his attorney. He understands what is being requested and will submit the package timely.

Mr. Smith requested to be copied on the list of concerns from the board.

Attorney Donovan noted that after a Zoom conference held on May 7th, he prepared a document which included a description of the procedures for future certificate of occupancies and building permits. He will get this information to Mr. Falzone, Mr. Smith and Persimmon Homes, so everyone will understand what those procedures will be.

Mr. Falzone stated that when the lot designs were agreed to with the initial plans that were submitted, it stated that the grades were in the general elevations as proposed, until it was know exactly what type of house was going to be built on it.

Vice-Chair Lord commented that he thinks Mr. Falzone is fairly correct. When he thinks about the time the board spent reviewing this, they were extremely particular on the grading of the lots, drainage, sheet flow and the location of the underdrains. A mock plan was done for every lot in the subdivision. He thinks the board had a pretty good idea from what was presented and from what was approved and the

board made a decision on that. He thinks one of the critical decisions of approval was how suitable was this land for development. When he looks at the lots now compared to what was approved, he would say there are two issues that really stick out. One is with regards to the as-built tree line on all the lots. Its like everyone took liberty on every single lot to take the tree line further than what was on the approved plan. More importantly, the amount of fill that is being brought on this property onto all of the lots is tremendously, incrementally different to what was really ever proposed. To look at what is there today and ask if this would ever be approved, he would say “probably not”. There is a massive amount of fill on every single lot that’s required to make these developable and that is what is starting to be seen. He does not think that what was presented comes really very close to what is out on the site today.

Referring to the lot development plans, Mr. Smith stated there was a note that clearly said those were based on preliminary septic designs. The septic designs showed the minimum grades required to get the septic systems in place. On lot 9, all the developer did was soften the grades and make a shallower slope and a shallower lawn out to the limits of the tree clearing. Essentially, the grades on that lot are very similar to what was proposed.

Chair Losik replied it is not on lot 9. She pointed out that on the plan it says “surface drainage shall be directed as portrayed on this plan. Areas of impervious surface and grass shall not exceed the areas indicated in the drainage calcs table, unless approved by the building inspector. The building inspector may require submissions of a detailed drainage and grading plan at the expense of the property owner”. What the board was thinking then was if changes were going to happen in areas that were significant with wetlands and shallow to bedrock, it may need to go back for another look at the drainage plan.

Attorney Donovan pointed out he did not see anything on the plans that said about the grading being approximate or dependent on septic system layout. Whereas, the language of condition #15 says “the grading should not be markedly different from the approved lot development plan”. The key words are “markedly different”. It seems that lot 8 is markedly different. Lot 4 is markedly different.

Mr. Smith replied that he would certainly agree with lot 4. He thought that when this went through the process, some flexibility would be allowed with regard to the individual lot grading. That is something that could not really be contemplated because the actual footprint of the homes was not known. He commented that moving forward, they will be more involved through the building process.

Vice-Chair Lord commented it sounds like the builder has a fair amount of responsibility here. It seems like they have taken great liberty in adding fill any place they really want. They might be matching the ground level but they do it with 2 to 1 slopes versus 3 to 1 slopes. There are great flat lots out there on a piece of property that was anything but flat.

Motion by JM Lord to approve and move forward with the Notice of Violation in order to comply, which was drafted by Attorney Donovan. Seconded by Bill Epperson.

Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Tim Durkin – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes

Motion passed.

The board agreed to hold off on scheduling a site walk until information is received back from Steve Harding with Sebago Technics. Attorney Donovan suggested making lot 9 a priority, as the building itself is ready for a CO. He noted there is some question on lot 9 about the grading and drainage, along with questions about the stonewall and trees.