

DiStefano Request for Dimensional Waiver

Prepared by Phil McDuffie 02Aug 2022

Timeline Of Events

- Boynton property sold to DiStefano on 2/18/2020
- Distefano subdivides property into two parcels 1/25/2022
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Where Do I Fit Into This?

- Upon receipt of the Certified Letter, I visited the proposed building on 2/16/2022
 - I left with a strong impression that the site isn't suitable for building on. Getting out of the car, I felt like I was standing at the top of a gorge. Wheeler Brook is at the bottom of the site and is approximately 50 feet below Wheeler Road.
 - My major concerns
 - Slope of the property is very steep and poses runoff threat
 - Wheeler Brook is at the bottom of the building site, and I consider it as an ecologically sensitive area
- I reported my concerns to the Planning Commissioner (PC), the ZA, and a lister who works in the office with the ZA.
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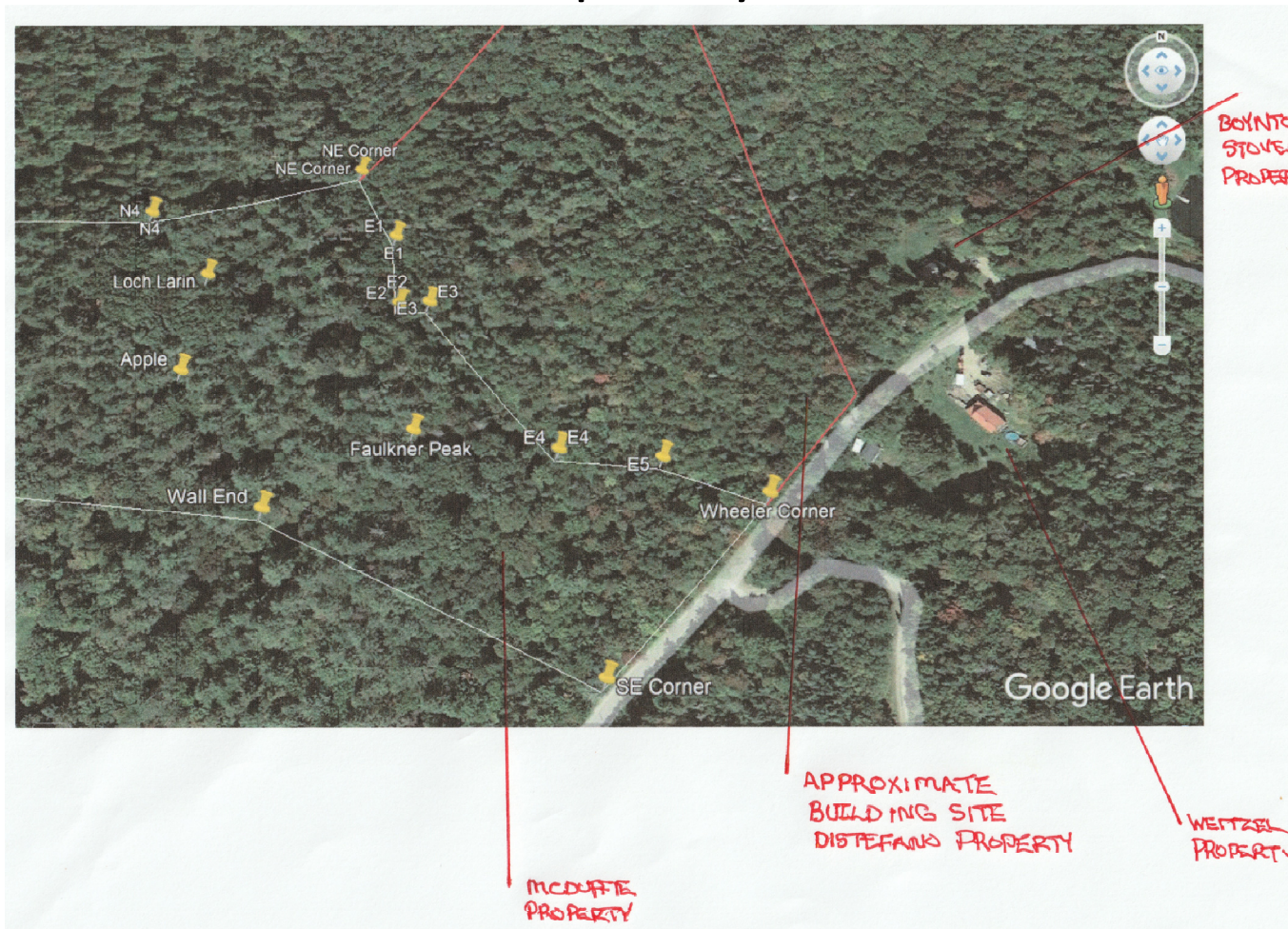
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Fast Forward to 7/6/2022

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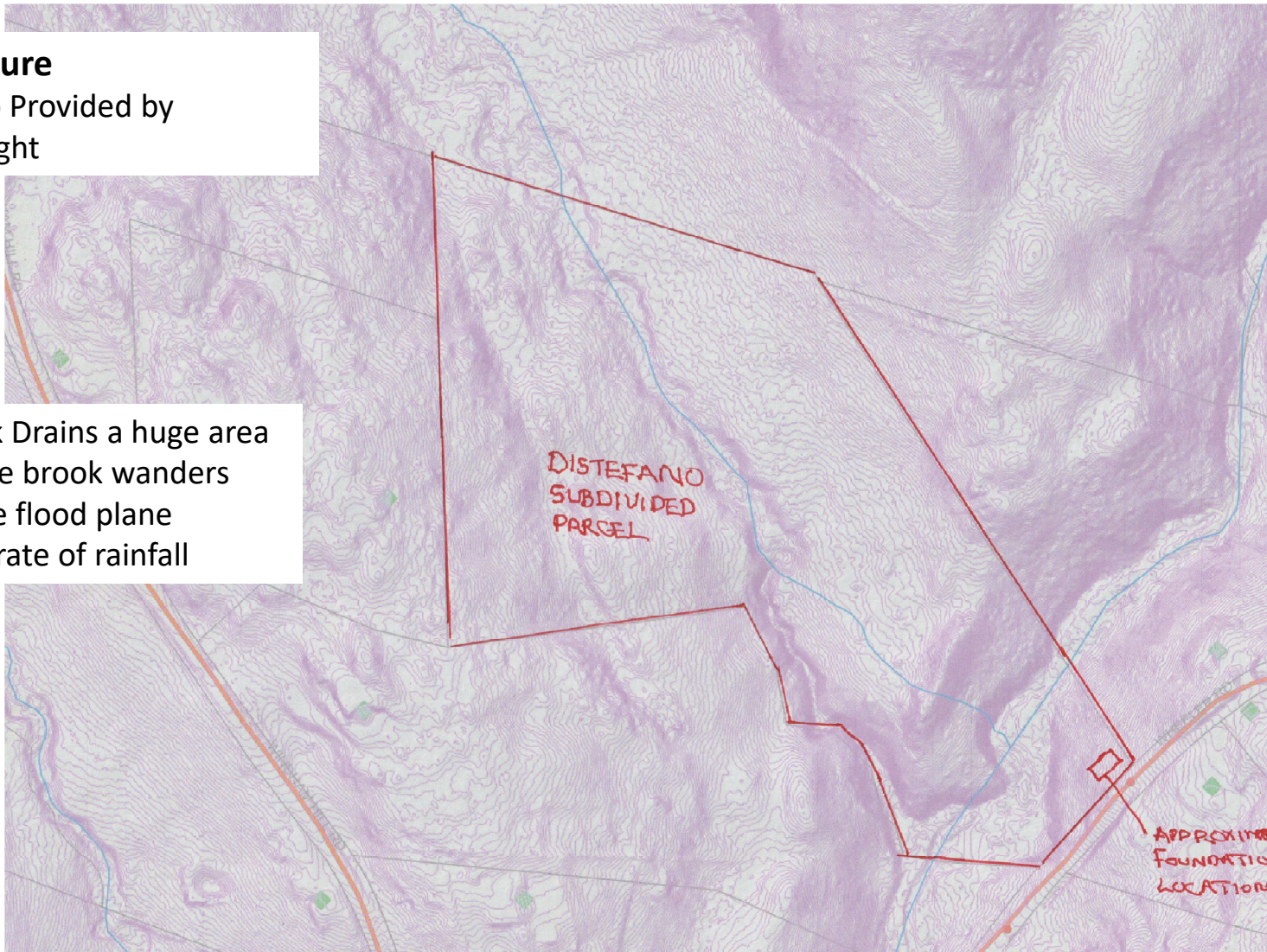
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The Big Picture

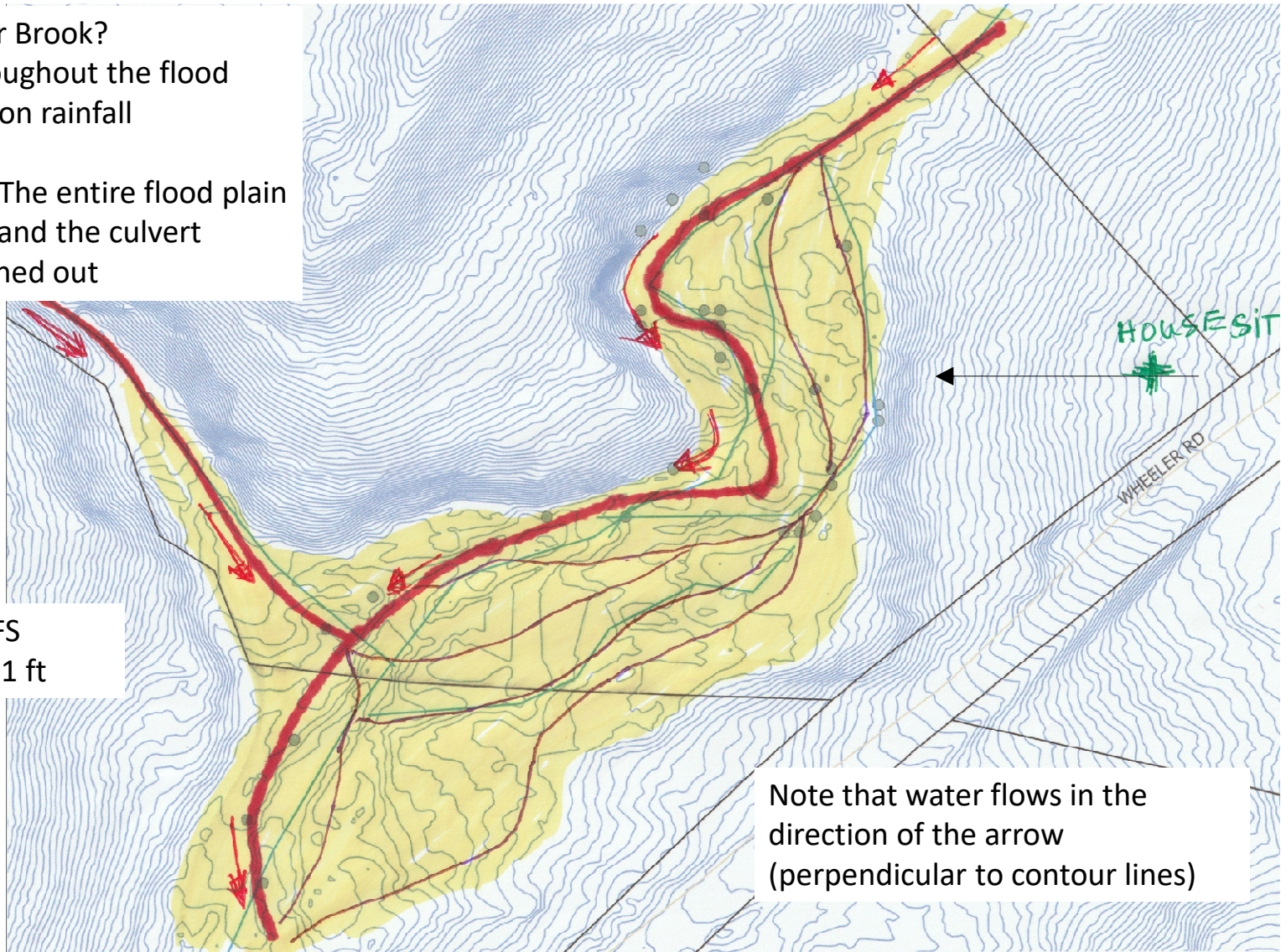
Contour Map Provided by
Frank Seawright

Wheeler Brook Drains a huge area
of land, and the brook wanders
throughout the flood plane
depending on rate of rainfall



Where is Wheeler Brook?
Well, it flows throughout the flood
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Last June (2021), The entire flood plain
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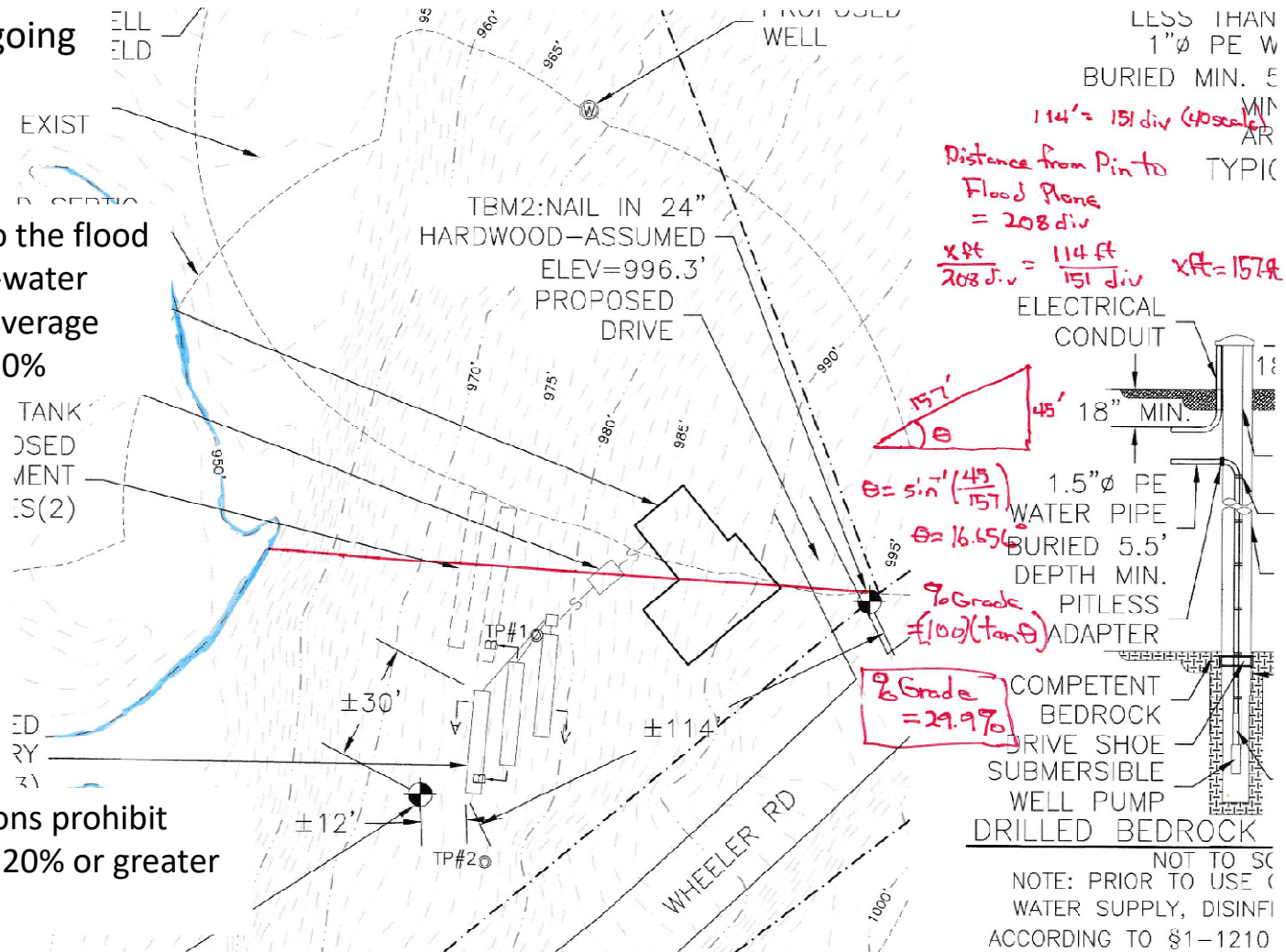
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Note that water flows in the
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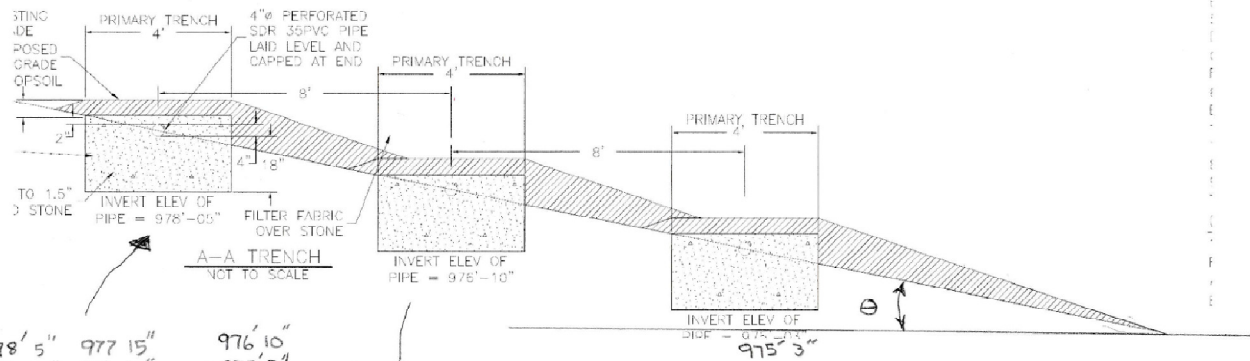
From the property pin to the flood plane (which is the high-water mark of the brook) the average grade is approximately 30%

Windham Zoning Regulations prohibit development on slopes of 20% or greater (Section 207)



LEVEL SLOPE LINE TO DISTRIBUTION BOX UNLESS INSULATED.

NOT TO SCALE



$$\begin{array}{r} 978'5'' - 976'10'' \\ \hline 1'5'' \end{array} = 1.4167'$$

$$\frac{1.4167}{8} = \tan \theta_1$$

$$\theta_1 = \tan^{-1}(.1771)$$

$$\theta_1 = 10.04^\circ$$

$$\text{Percent Grade}_1 = 17.7\%$$

$$\begin{array}{r} 977'15'' - 975'3'' \\ \hline 1'7'' \end{array} = 1.5833'$$

$$\frac{1.5833}{8} = \tan \theta_2$$

$$\theta_2 = \tan^{-1}(.1979)$$

$$\theta_2 = 11.2^\circ$$

$$\text{Percent Grade}_2 = 19.8\%$$

Ave Grade Across Primary Leach Field = $\frac{17.7\% + 19.8\%}{2} = 18.8\%$ grade

$$\frac{\text{Percent Grade}}{100} = \tan \theta$$

$$\theta \approx 12^\circ \text{ (from angular measurement)}$$

$$\tan(12^\circ) = .213$$

$$\text{Percent Grade} = 21.3\%$$

Even the slope going across the primary leach field is calculated at 20%


Concluding Remarks

- I feel like the town zoning office, as well as the owner/builder of the property made serious mistakes that skirted the intent of the zoning regulations, and has resulted in a foundation being poured after a zoning violation was observed by the ZA.
 - No building site plan was submitted to the ZA for review to conformance to Windham Zoning Regulations (In spite of Item 7 on the Zoning Permit Application)

7. Please attach a sketch of property on separate sheet that shows dimensions of Property, location of existing structures and relationship of proposed project. Include setbacks (distance between property lines and the structures), driveway locations, parking and fences. Identify location of septic and well where appropriate.

Certification of Applicant / Owner

The undersigned applicant/owner hereby certifies that all information submitted on this application is true, accurate and complete. The undersigned applicant/owner has full authority to request approval for the proposed use of the property and for any proposed improvements. This authorization allows Town of Windham Officials access to the property for the purpose of reviewing all aspects of this application. Applicant/Owner understands that a permit issued by the Town of Windham does not include any other governmental permits that may be necessary.

Owner Signature:  Date: 2/20/22

Applicant Signature:  Date: 2/28/22

- If upon inspection of the site, any of the above information is found to be incorrect, the Owner shall be held solely responsible.

Concluding Remarks (continued)

- Building Permit was approved without reviewing any site plan, including the ANR Septic Plan
- Foundation was poured after the ZA became aware of the setback violation, hence, if a stop-work order was issued prior to the foundation being poured, the owner did so at his own risk
- Despite the setback violations, the grade on this building site greatly exceeds Windham zoning regulations
- A grade limit of 20% is important to adhere to, especially considering that this property is immediately above Wheeler Brook and its flood plane.

Finally, I respectfully ask the Zoning Board of Adjustment to consider the criteria specified for dimensional waivers. I don't believe this request meets Item 3, Item 4b, 4d, and 4e. I also think the board should consider whether Item 5 is applicable.

Section 304 DIMENSIONAL WAIVERS

Dimensional Waivers under Section 304B of these Regulations dimensional waivers may be applied for when seeking approval for development that is not otherwise allowed under these Regulations. In applying for a waiver, the burden of proof is on the Applicant to demonstrate that the waiver request meets waiver criteria of Section 304

A. The Zoning Board of Adjustment may require a survey if essential to verify the location of property lines.

In the event that the Zoning Board of Adjustment grants a waiver, the permittee must comply with all other requirements of these Regulations.

Section 304 A Dimensional Waivers Criteria

The Zoning Board of Adjustment may grant a waiver to a dimensional requirement, other than density, after considering the criteria below:

1. Reasonable use of the property is only possible if the Zoning Board of Adjustment grants a waiver of the dimensional requirement.
2. The waiver is the minimum reduction in the dimensional requirement that will enable the reasonable use of the property.
3. The proposed project will still conform to the Town Plan and the purpose of the zoning district in which the land development is located.
4. The proposed project will not have an undue adverse effect on the following:
 - a) The appropriate use or development of surrounding properties;
 - b) The character and aesthetics of the neighborhood, as defined by the purpose of the district in which it is located;
 - c) Traffic patterns and circulation;
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5. The need for a waiver was not intentionally self-created by past decisions of the applicant.
6. The waiver is not to the detriment of the public welfare, including the safety and maintenance of the Town and State highways.
7. Structural enlargements that do not increase the degree of nonconformity do not require a waiver.

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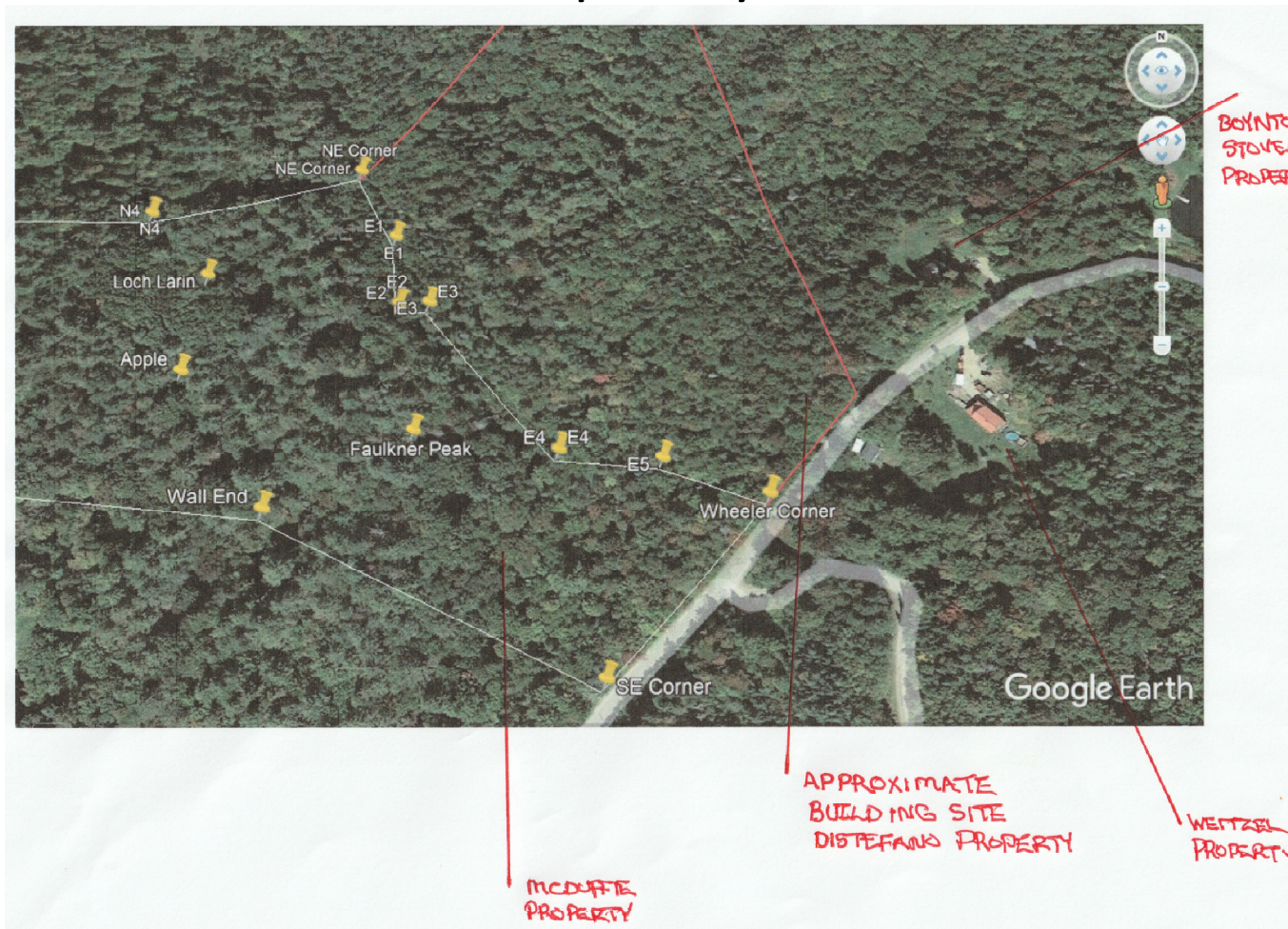
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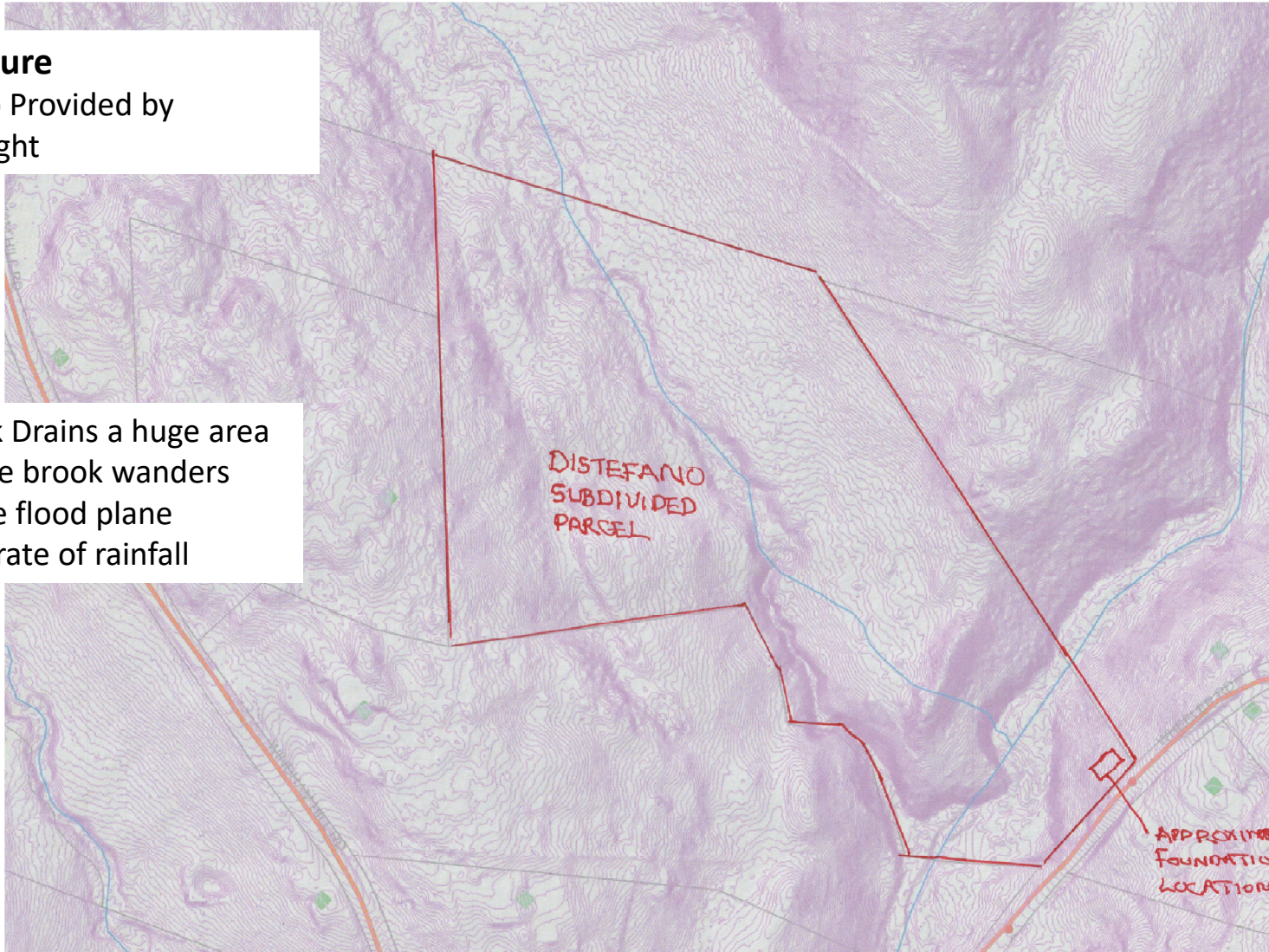
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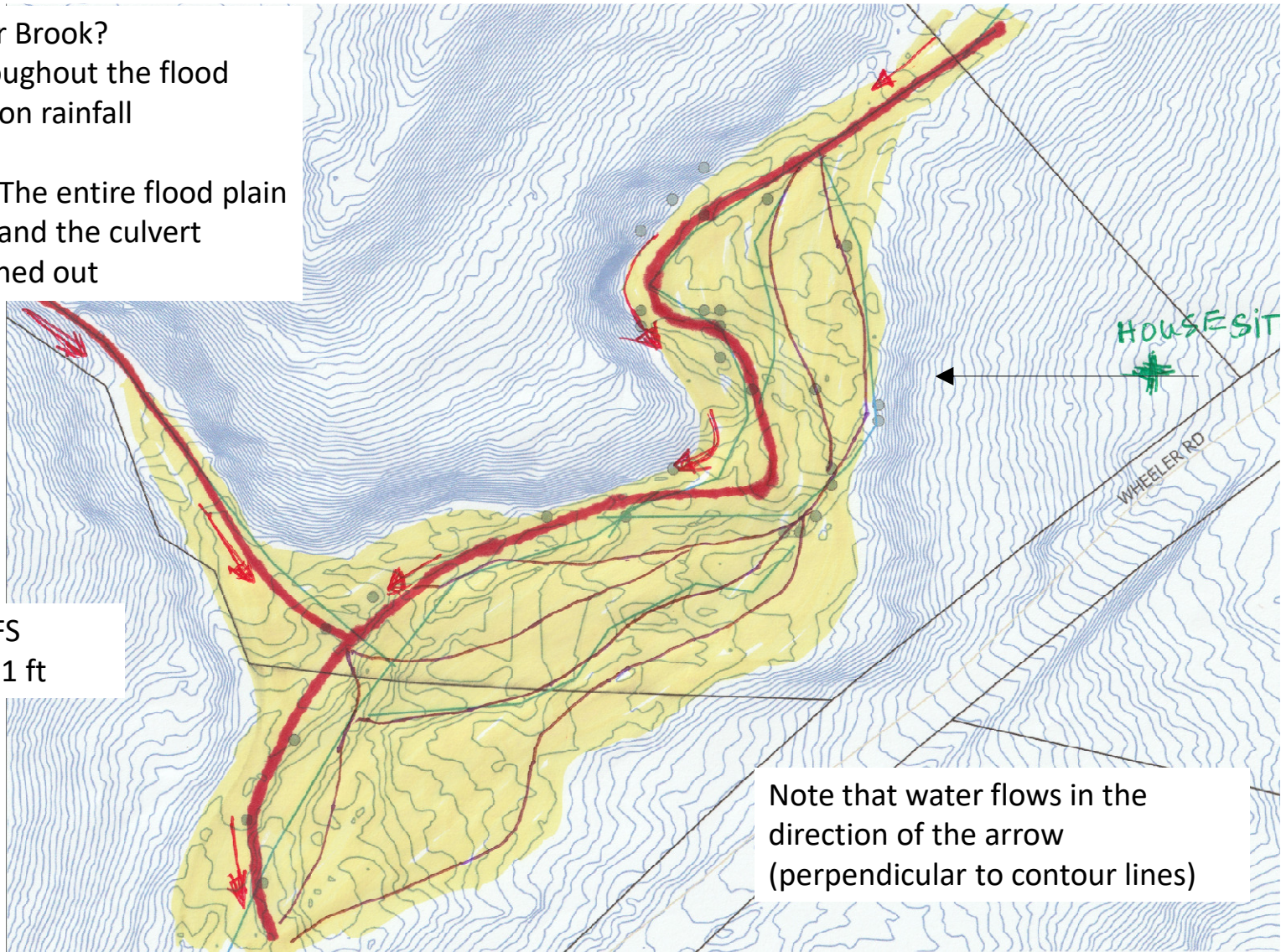
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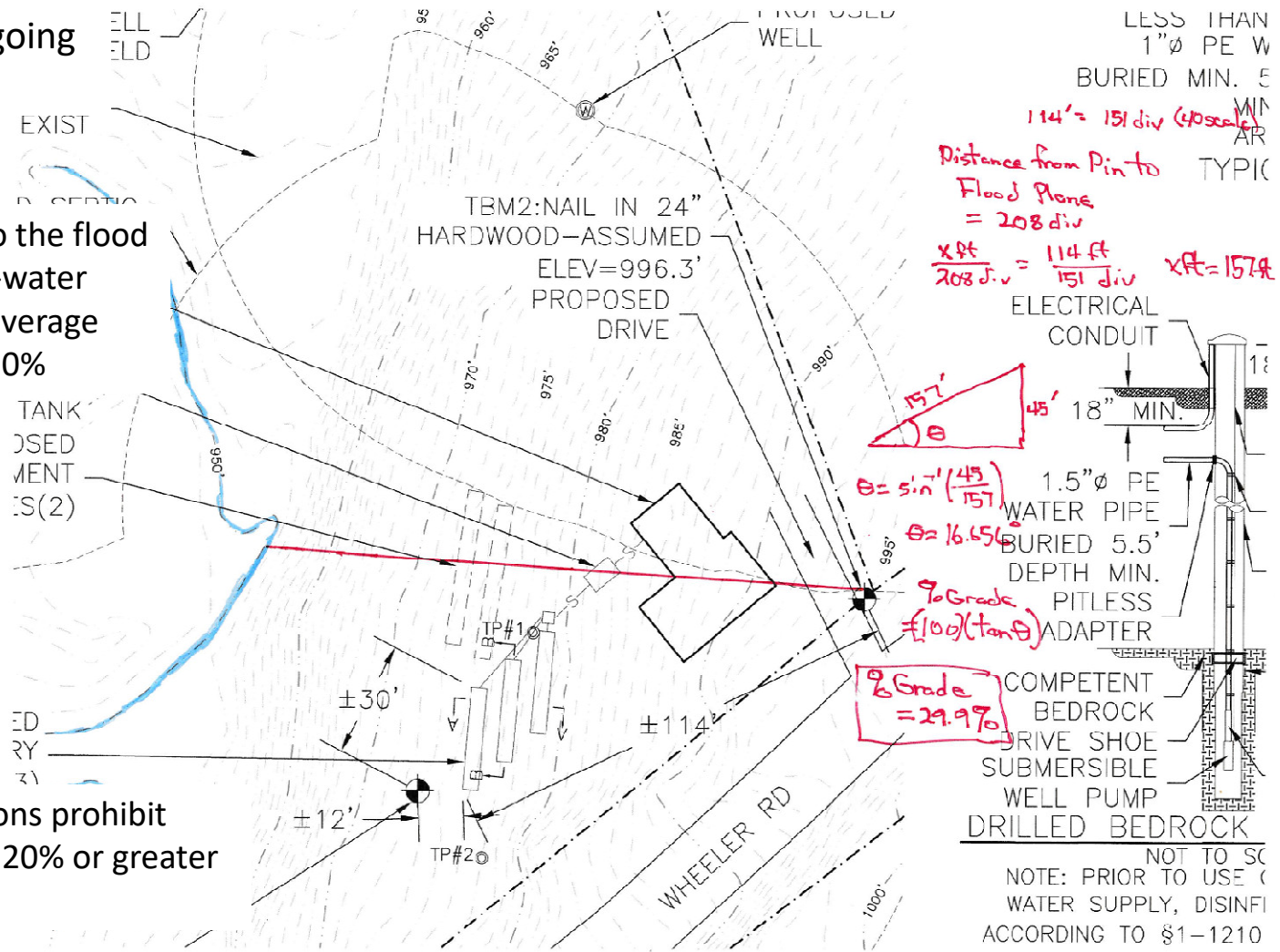
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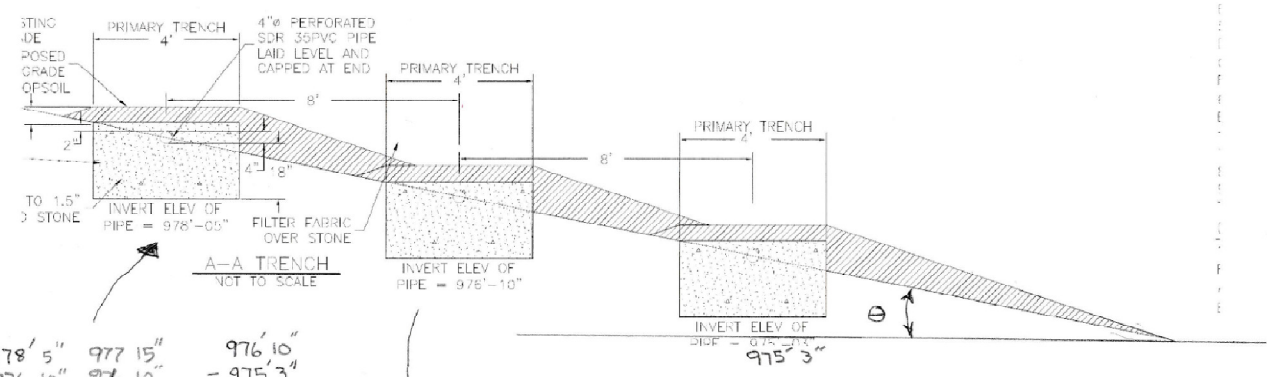


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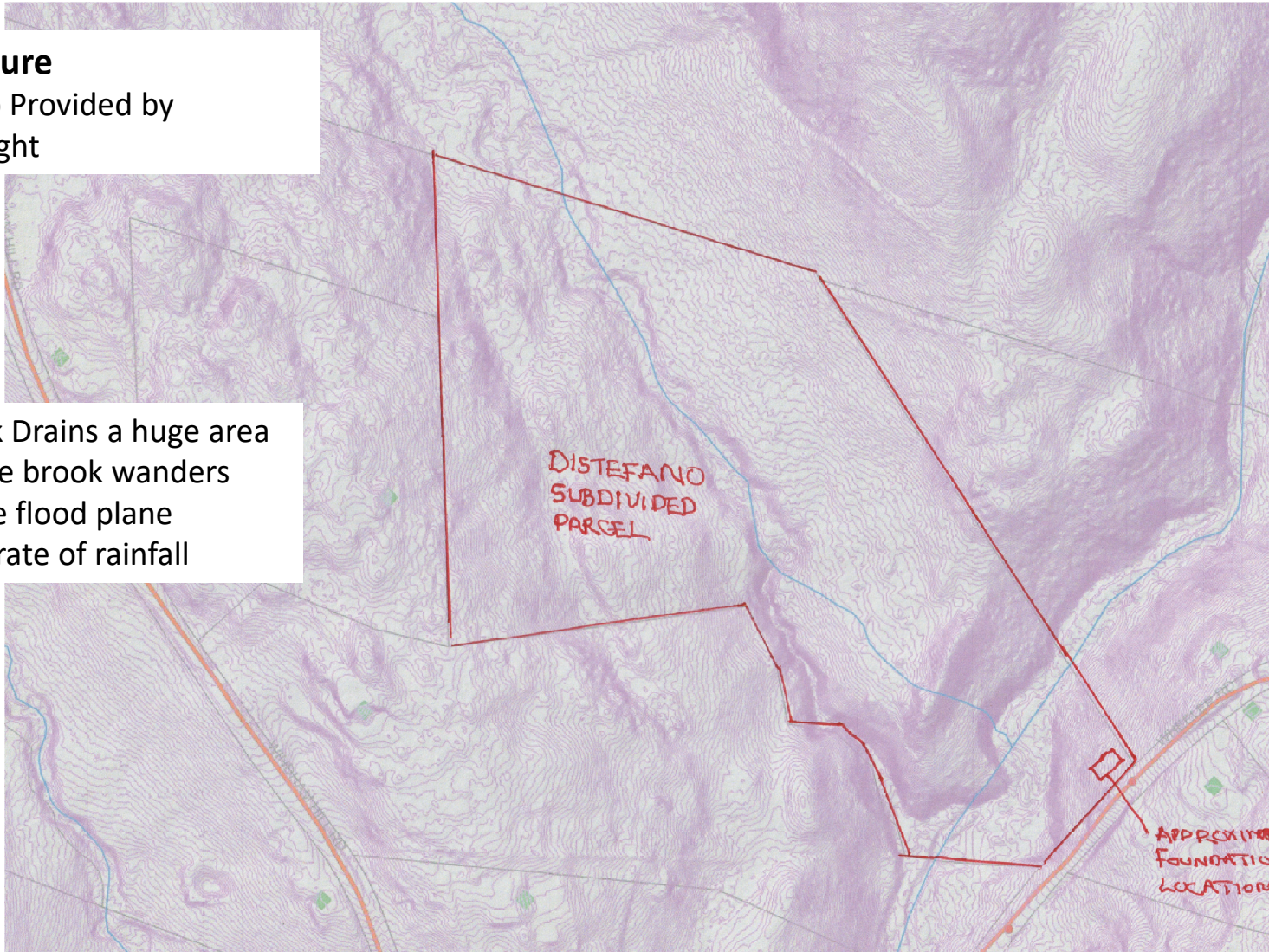
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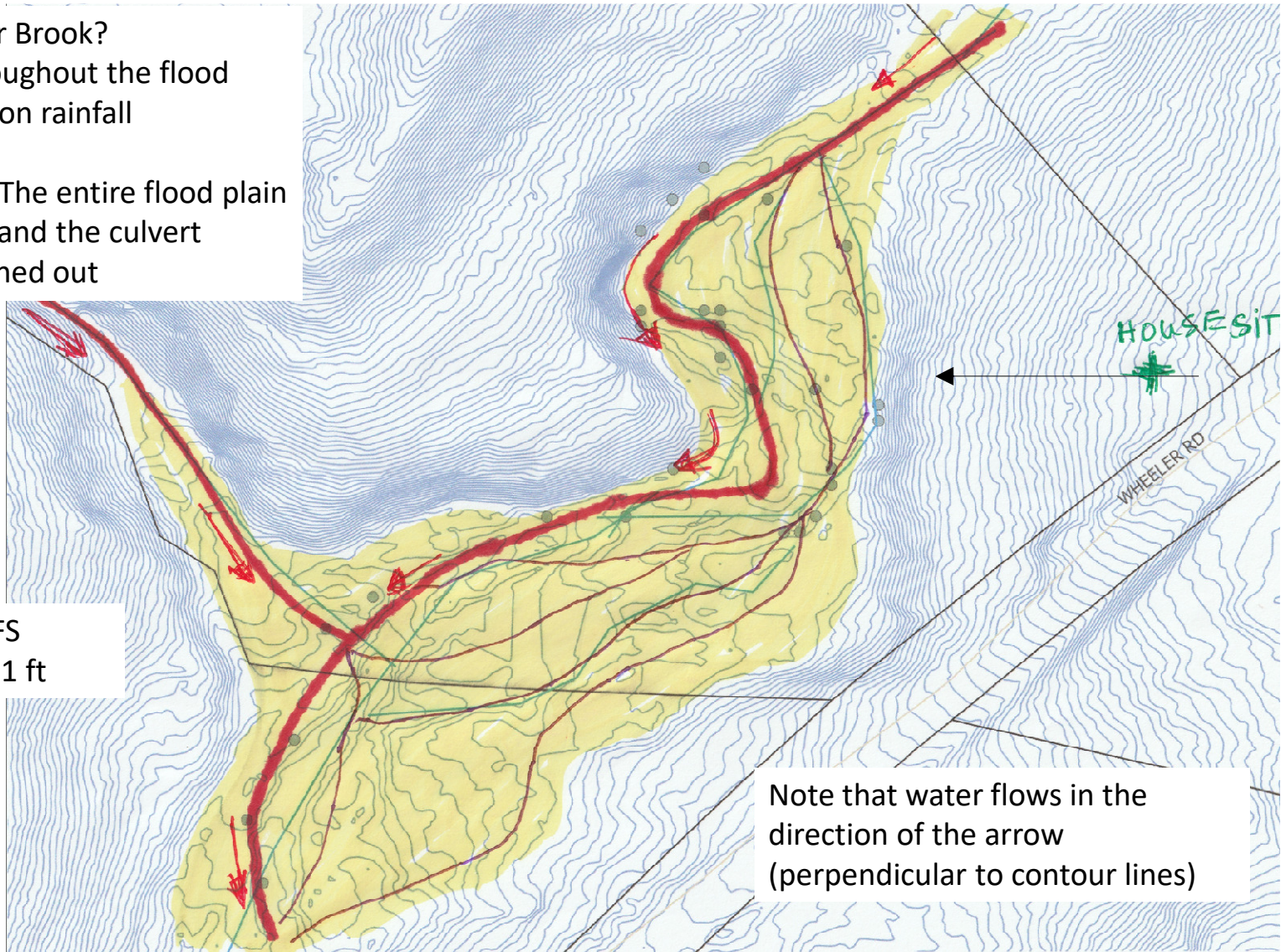
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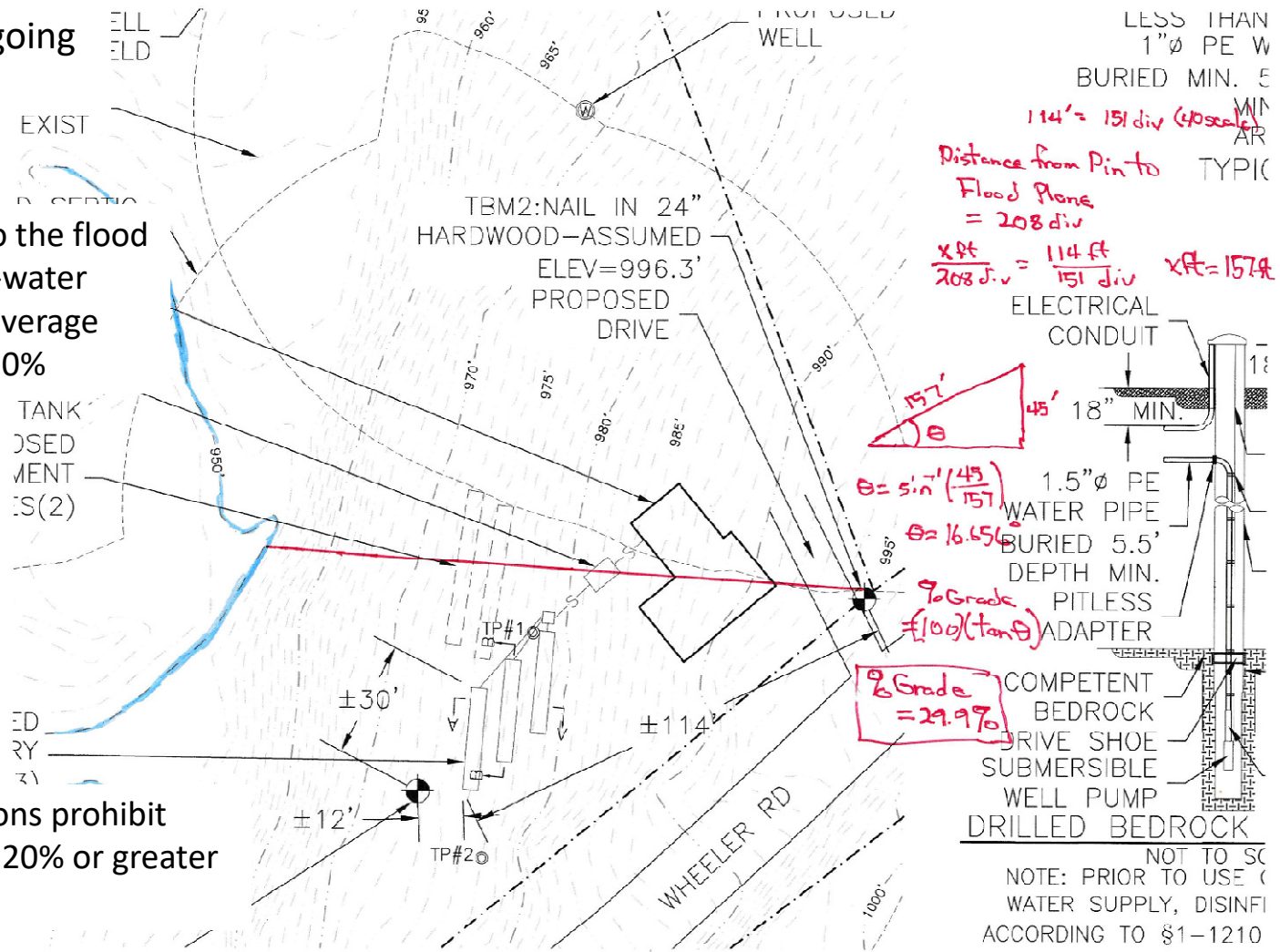
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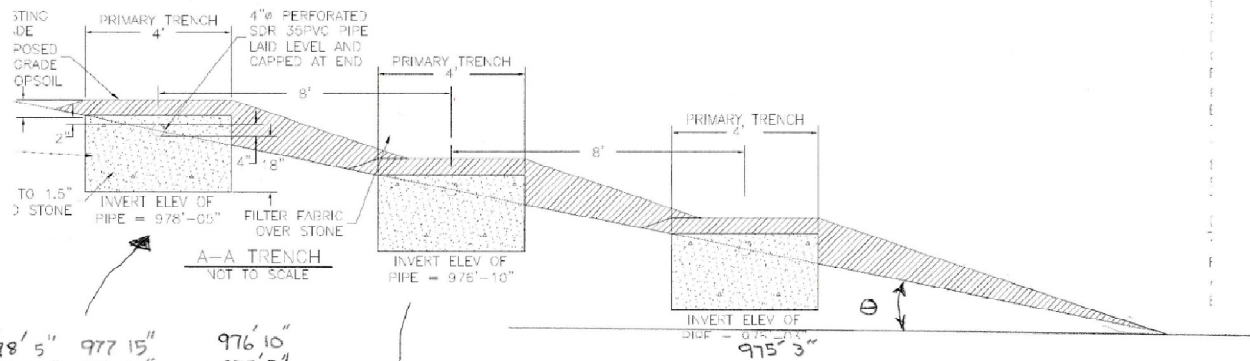
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$$\theta \approx 12^\circ \text{ (from angular measurement)}$$

$$\tan(12^\circ) = .213$$

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Even the slope going across the primary leach field is calculated at 20%


Concluding Remarks


- I feel like the town zoning office, as well as the owner/builder of the property made serious mistakes that skirted the intent of the zoning regulations, and has resulted in a foundation being poured after a zoning violation was observed by the ZA.
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7. Please attach a sketch of property on separate sheet that shows dimensions of Property, location of existing structures and relationship of proposed project. Include setbacks (distance between property lines and the structures), driveway locations, parking and fences. Identify location of septic and well where appropriate.

Certification of Applicant /Owner

The undersigned applicant/owner hereby certifies that all information submitted on this application is true, accurate and complete. The undersigned applicant/Owner has full authority to request approval for the proposed use of the property and for any proposed improvements. This authorization allows Town of Windham Officials access to the property for the purpose of reviewing all aspects of this application. Applicant/Owner understands that a permit issued by the Town of Windham does not include any other governmental permits that may be necessary.

Owner Signature:  Date: 2/20/22

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- If upon inspection of the site, any of the above information is found to be incorrect, the Owner shall be held solely responsible.

Concluding Remarks (continued)

- Building Permit was approved without reviewing any site plan, including the ANR Septic Plan
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- Despite the setback violations, the grade on this building site greatly exceeds Windham zoning regulations
- A grade limit of 20% is important to adhere to, especially considering that this property is immediately above Wheeler Brook and its flood plane.

Finally, I respectfully ask the Zoning Board of Adjustment to consider the criteria specified for dimensional waivers. I don't believe this request meets Item 3, Item 4b, 4d, and 4e. I also think the board should consider whether Item 5 is applicable.

Section 304 DIMENSIONAL WAIVERS

Dimensional Waivers under Section 304B of these Regulations dimensional waivers may be applied for when seeking approval for development that is not otherwise allowed under these Regulations. In applying for a waiver, the burden of proof is on the Applicant to demonstrate that the waiver request meets waiver criteria of Section 304

A. The Zoning Board of Adjustment may require a survey if essential to verify the location of property lines.

In the event that the Zoning Board of Adjustment grants a waiver, the permittee must comply with all other requirements of these Regulations.

Section 304 A Dimensional Waivers Criteria

The Zoning Board of Adjustment may grant a waiver to a dimensional requirement, other than density, after considering the criteria below:

1. Reasonable use of the property is only possible if the Zoning Board of Adjustment grants a waiver of the dimensional requirement.
2. The waiver is the minimum reduction in the dimensional requirement that will enable the reasonable use of the property.
3. The proposed project will still conform to the Town Plan and the purpose of the zoning district in which the land development is located.
4. The proposed project will not have an undue adverse effect on the following:
 - a) The appropriate use or development of surrounding properties;
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5. The need for a waiver was not intentionally self-created by past decisions of the applicant.
6. The waiver is not to the detriment of the public welfare, including the safety and maintenance of the Town and State highways.
7. Structural enlargements that do not increase the degree of nonconformity do not require a waiver.

DiStefano Request for Dimensional Waiver

Prepared by Phil McDuffie 02Aug 2022

Timeline Of Events

- Boynton property sold to DiStefano on 2/18/2020
- Distefano subdivides property into two parcels 1/25/2022
- Certified mail sent to abutting property owners 2/14/2022 indicates proposed septic and water well restrictions will overshadow adjacent properties (McDuffie/Boynton-Stover/Weitzel)
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Where Do I Fit Into This?

- Upon receipt of the Certified Letter, I visited the proposed building on 2/16/2022
 - I left with a strong impression that the site isn't suitable for building on. Getting out of the car, I felt like I was standing at the top of a gorge. Wheeler Brook is at the bottom of the site and is approximately 50 feet below Wheeler Road.
 - My major concerns
 - Slope of the property is very steep and poses runoff threat
 - Wheeler Brook is at the bottom of the building site, and I consider it as an ecologically sensitive area
- I reported my concerns to the Planning Commissioner (PC), the ZA, and a lister who works in the office with the ZA.
 - PC and Lister visited the site
 - Lister wrote an email sharing his concerns
 - PC gave me the name of a contact with ANR
- I proceeded to contact officials at ANR to learn about the process of Septic Plan Approval and share my concerns over the suitability of the site for development

Lister's impression of building site

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- Using the ANR contact that the PC sent to me, I proceeded to spend over a week calling a sizable group of individuals in an effort to learn about the approval process, and hopefully speak to the individual who would examine and approve the septic plan.
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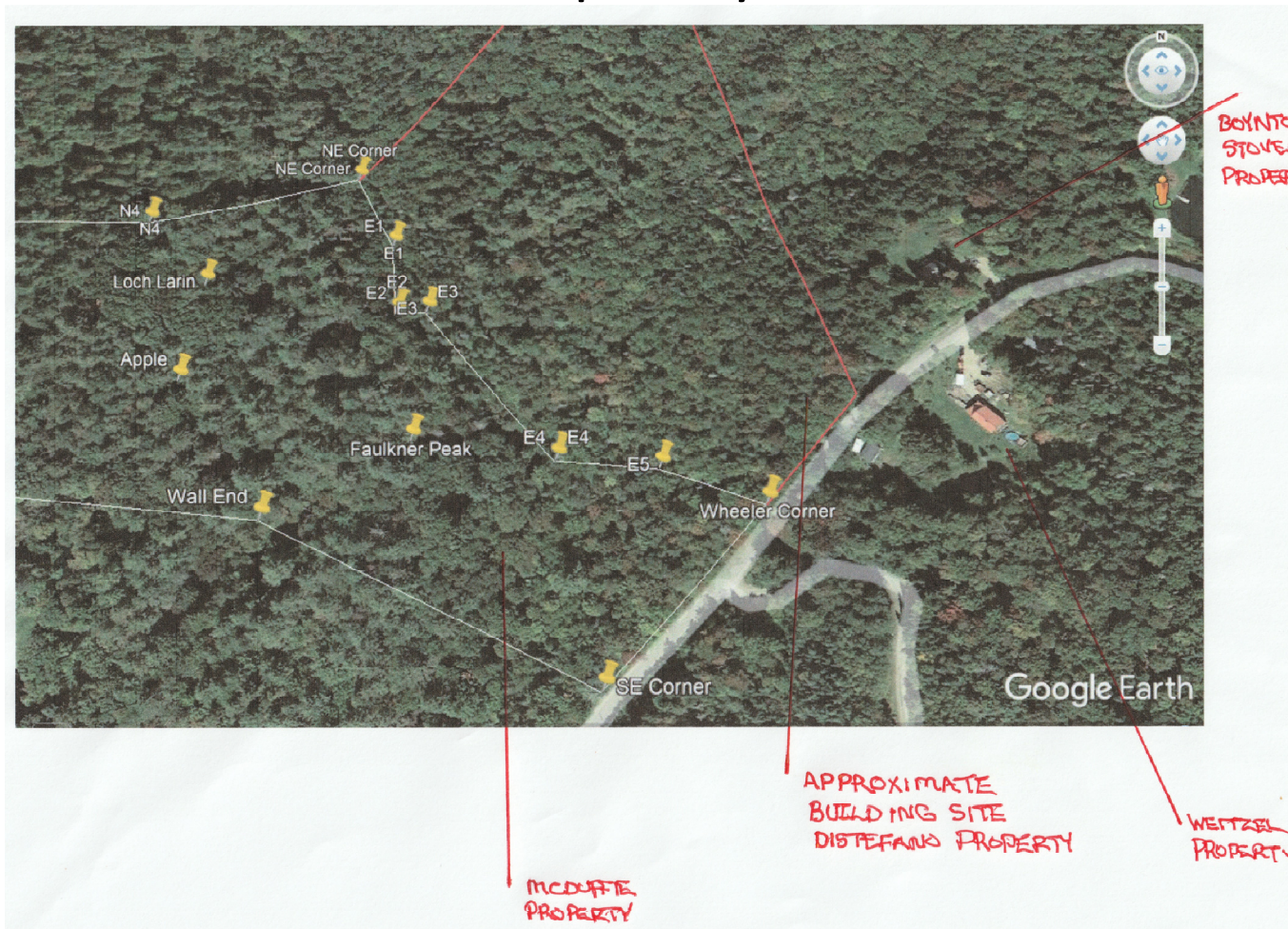
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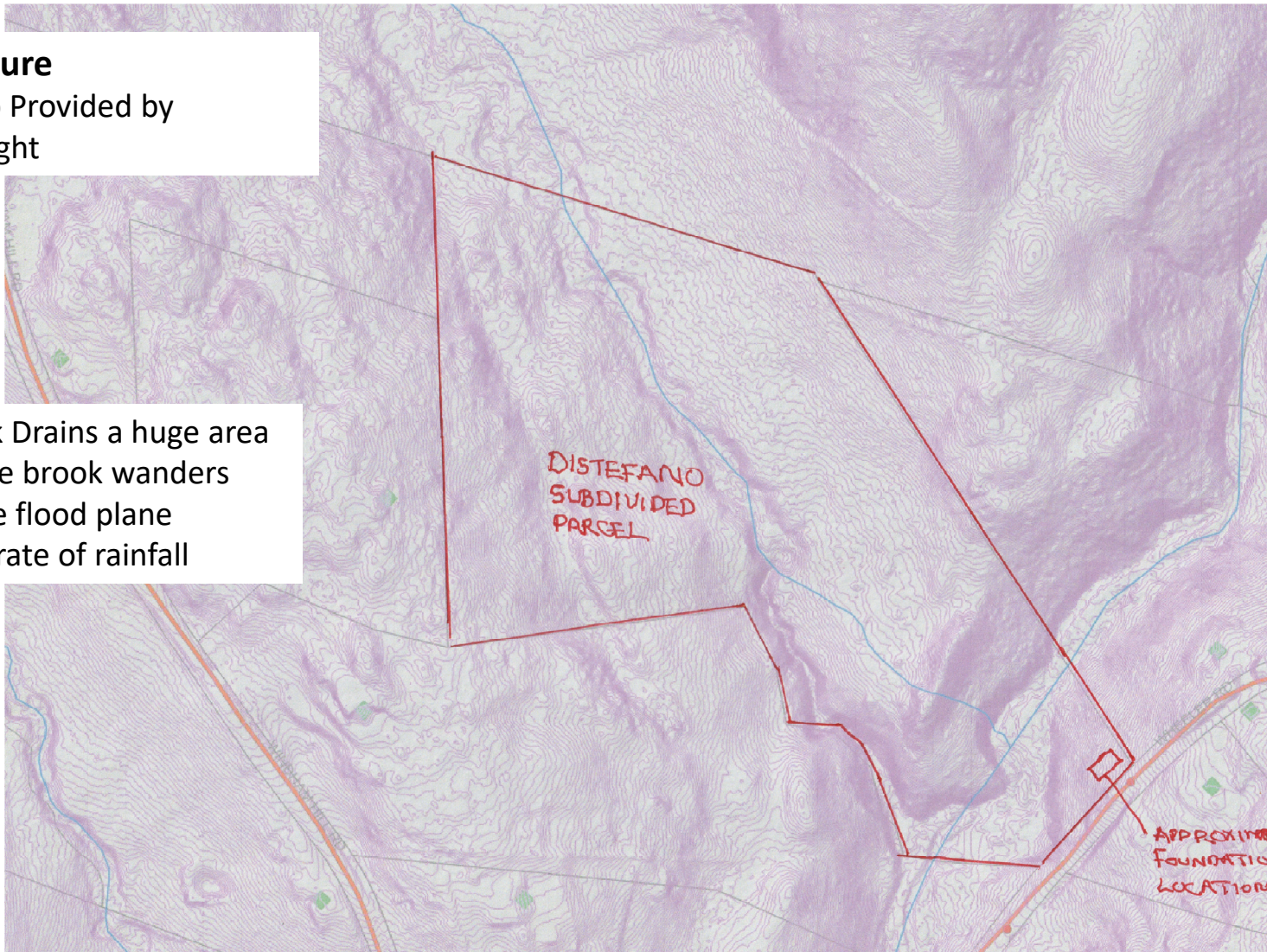
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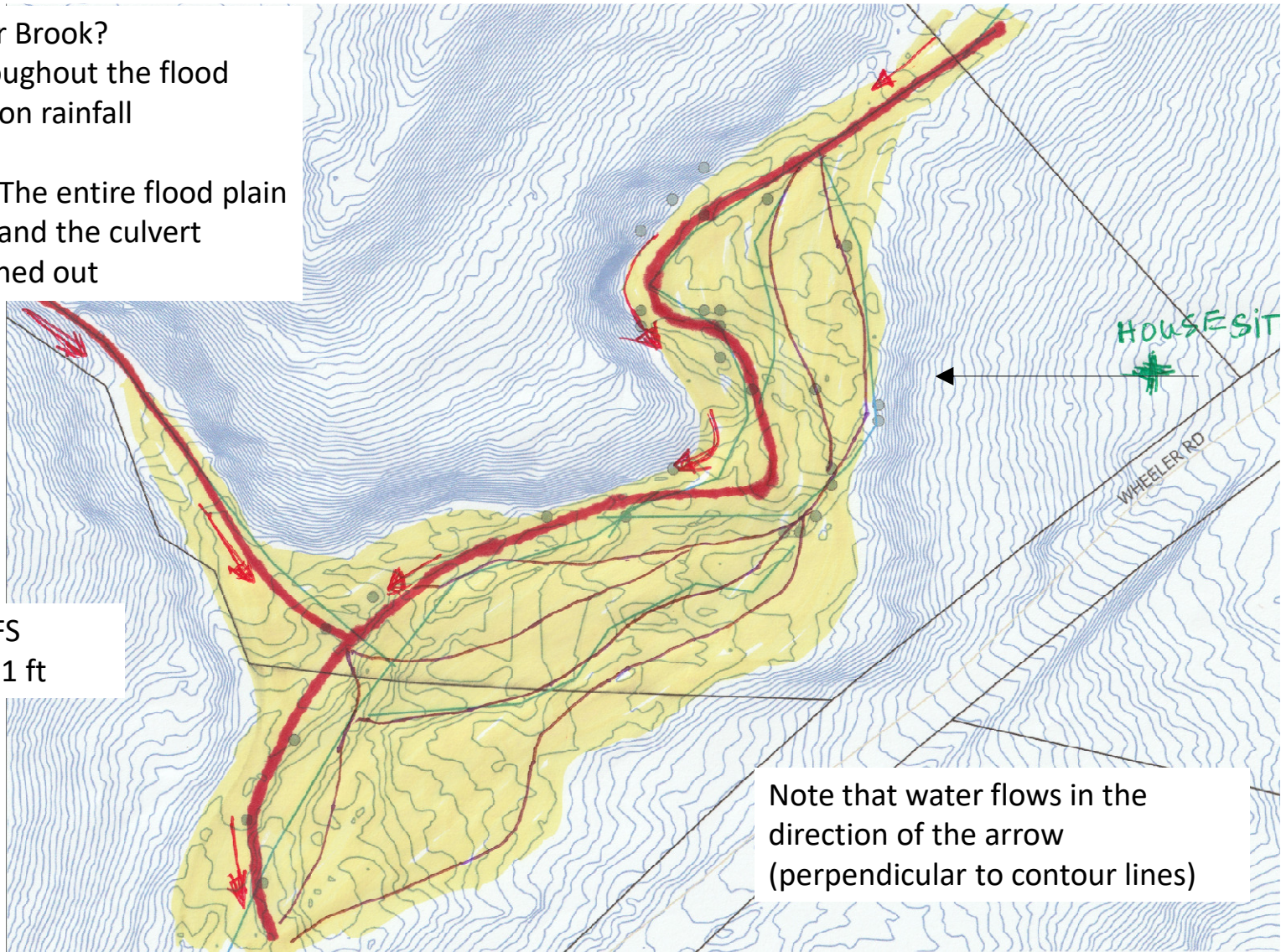
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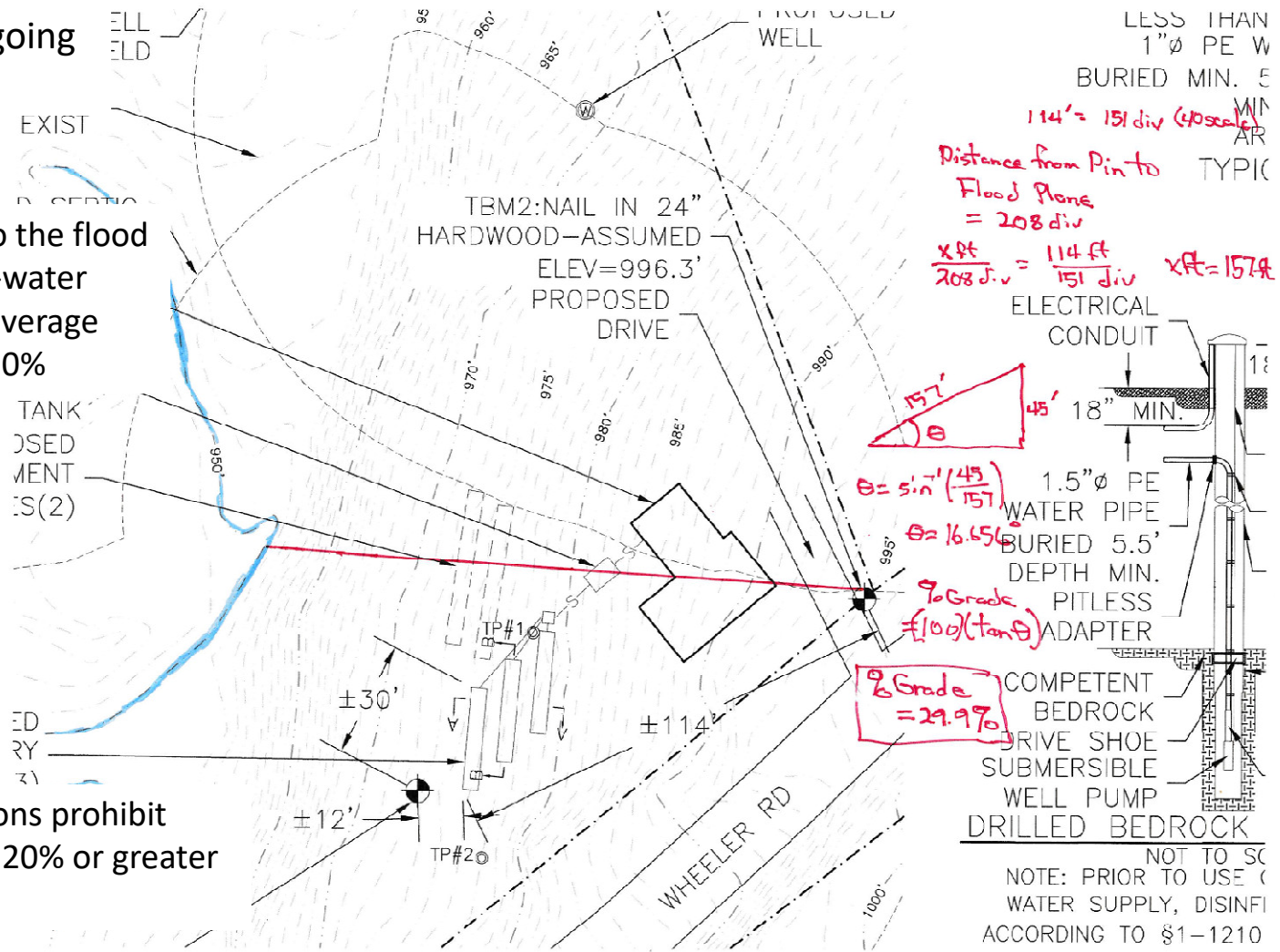
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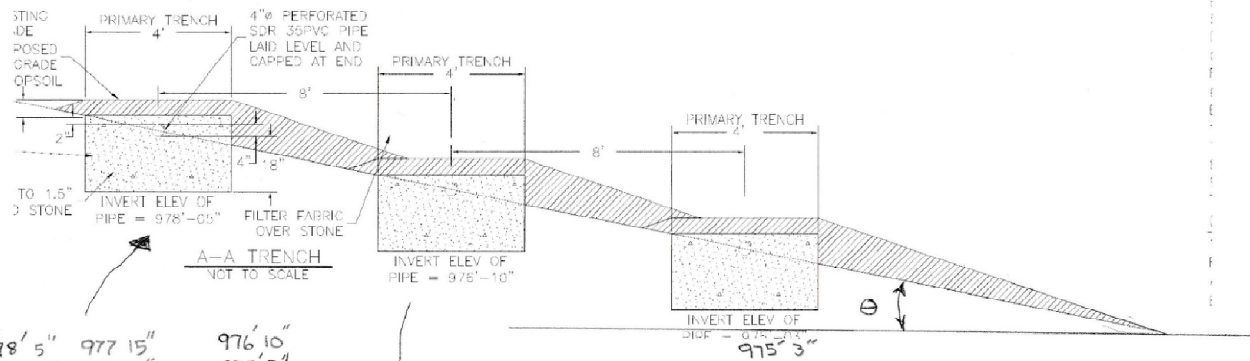
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Prepared by Phil McDuffie 02Aug 2022

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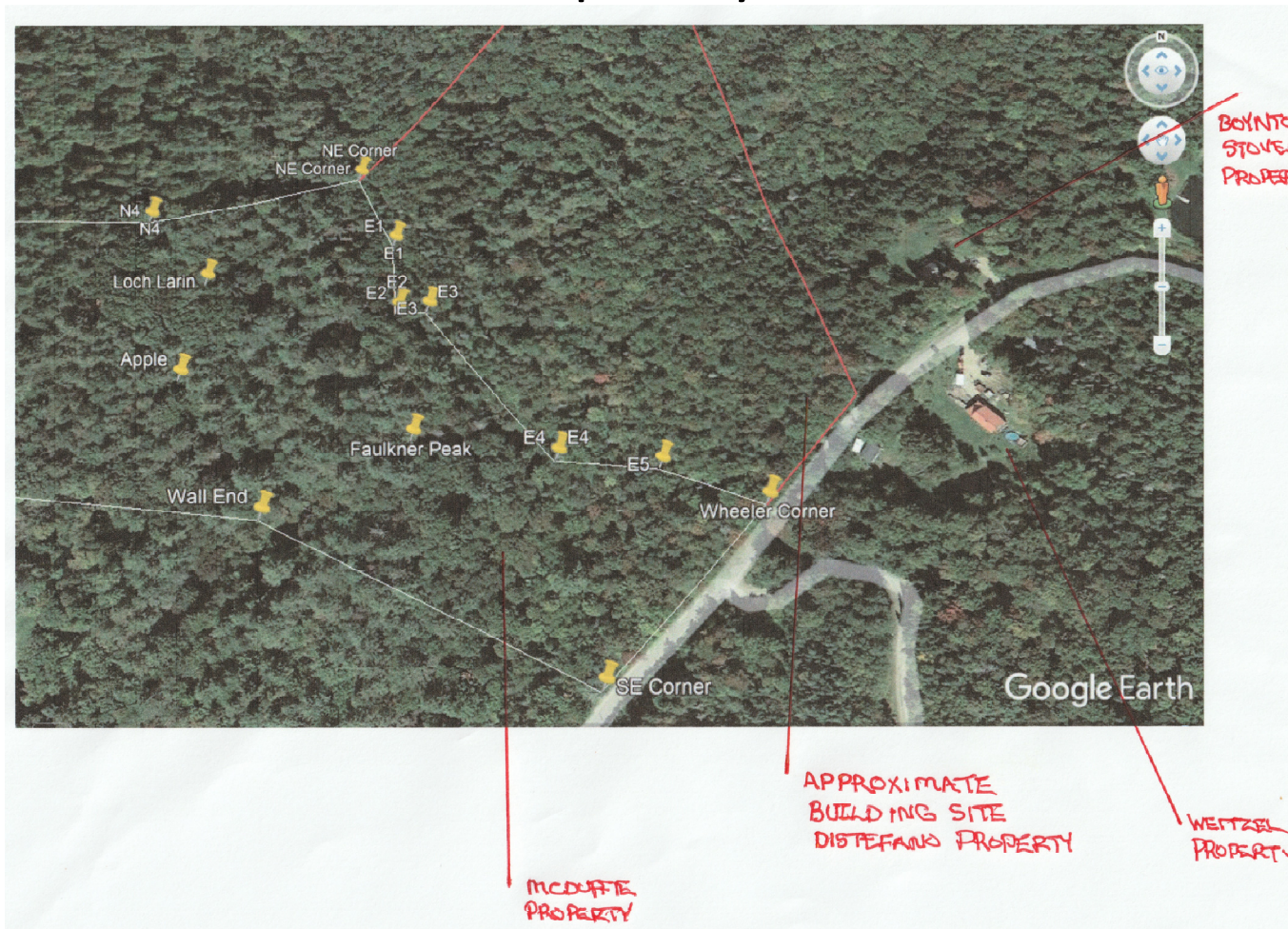
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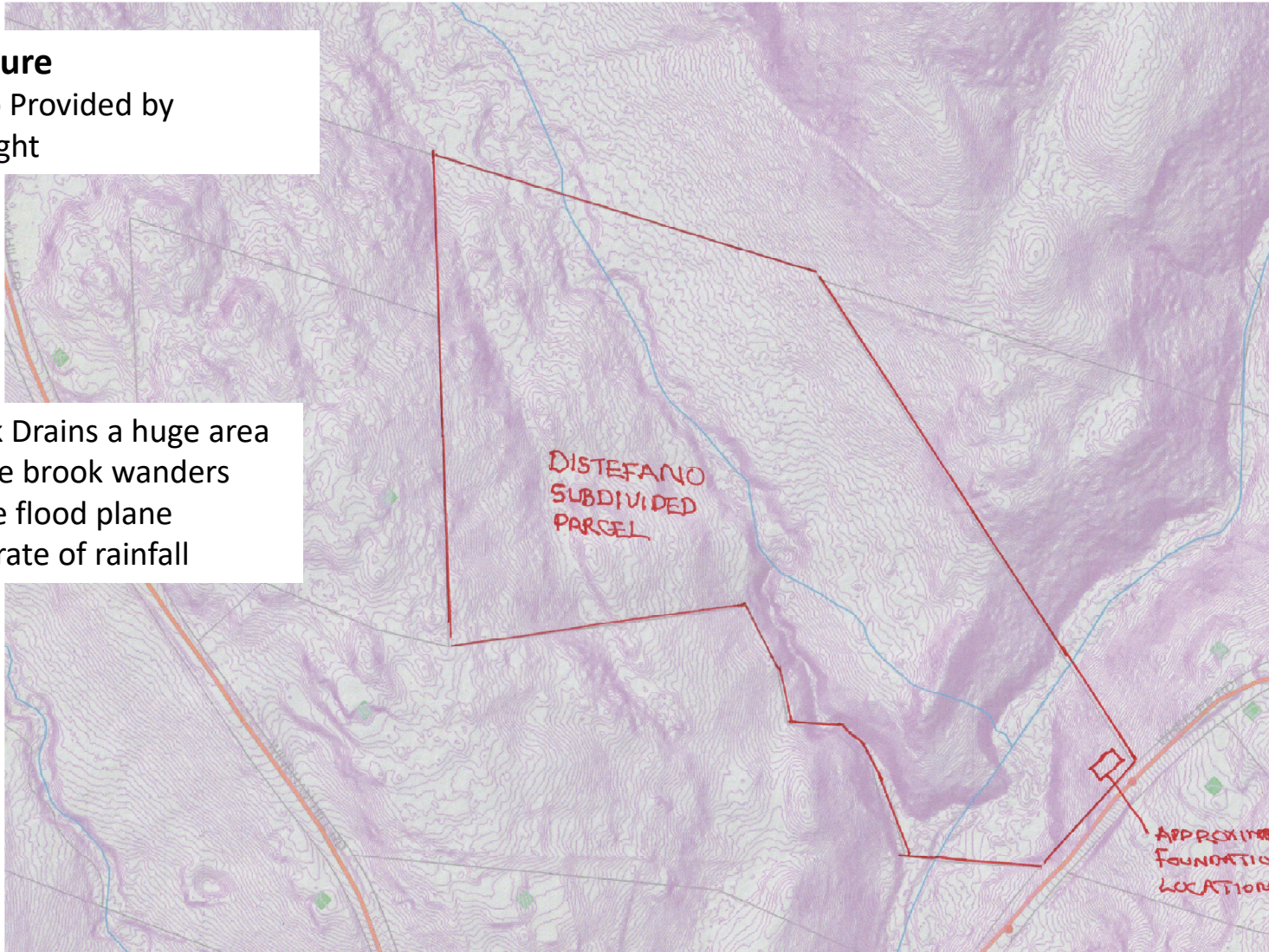
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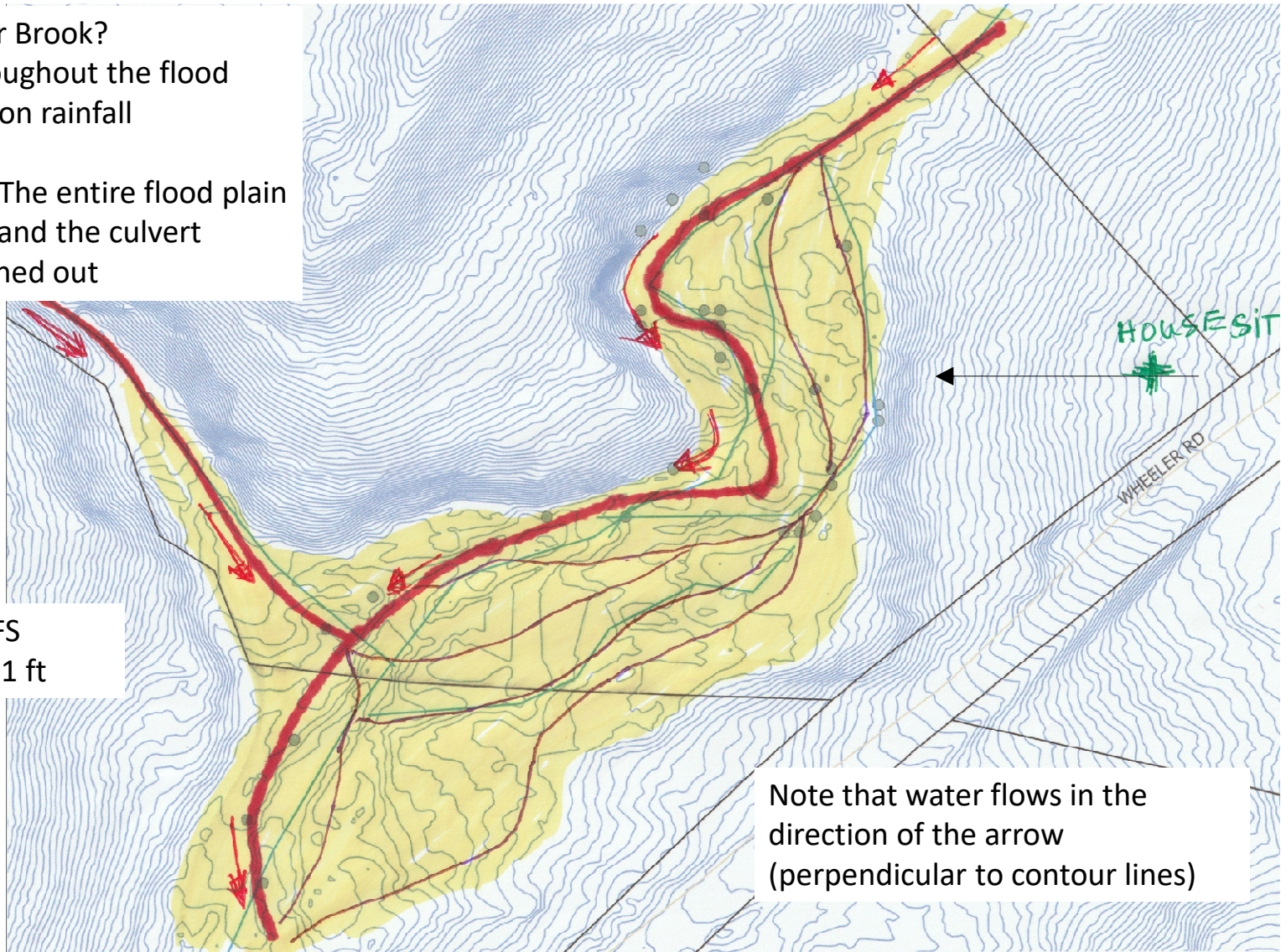
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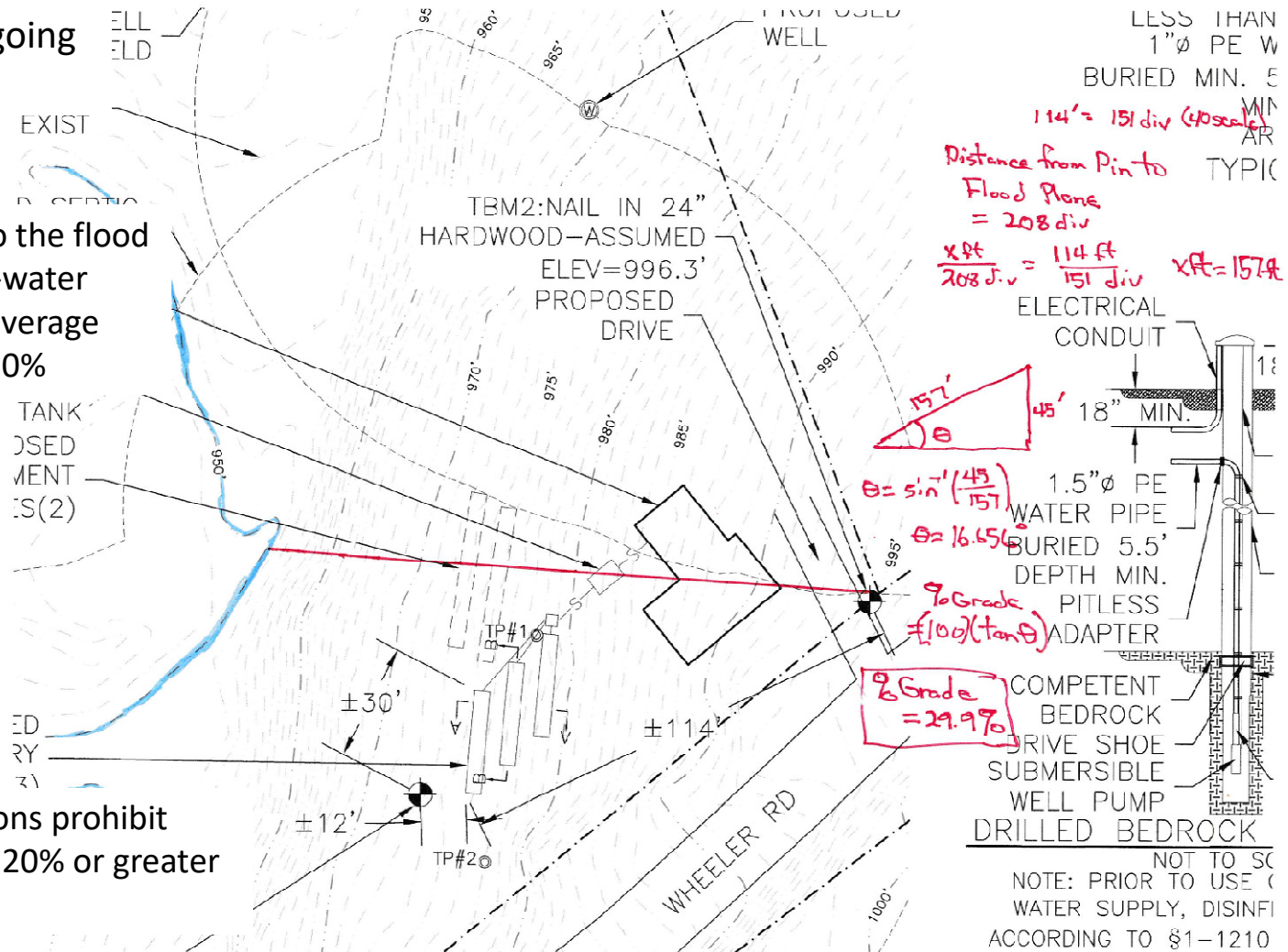
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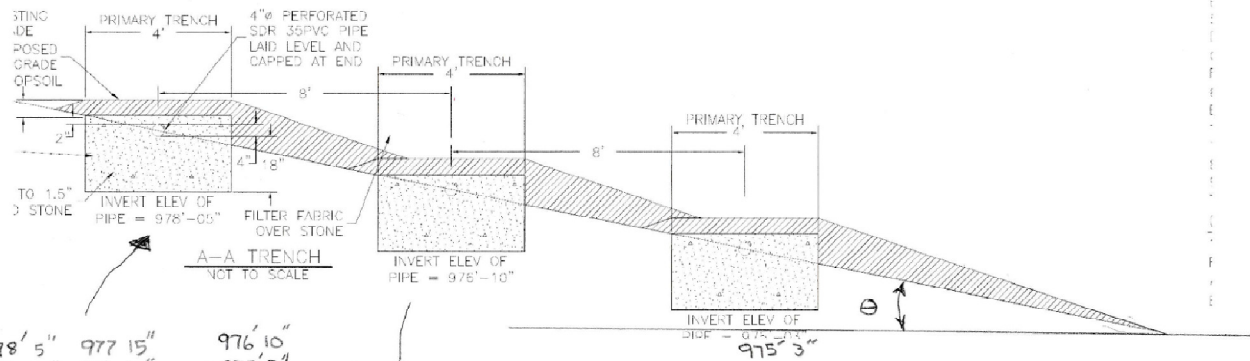
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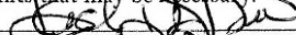
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7. Please attach a sketch of property on separate sheet that shows dimensions of Property, location of existing structures and relationship of proposed project. Include setbacks (distance between property lines and the structures), driveway locations, parking and fences. Identify location of septic and well where appropriate.

Certification of Applicant /Owner

The undersigned applicant/owner hereby certifies that all information submitted on this application is true, accurate and complete. The undersigned applicant/Owner has full authority to request approval for the proposed use of the property and for any proposed improvements. This authorization allows Town of Windham Officials access to the property for the purpose of reviewing all aspects of this application.

Applicant/Owner understands that a permit issued by the Town of Windham does not include any other governmental permits that may be necessary.

Owner Signature:  Date: 2/20/22

Applicant Signature:  Date: 2/28/22

- If upon inspection of the site, any of the above information is found to be incorrect, the Owner shall be held solely responsible.

Concluding Remarks (continued)

- Building Permit was approved without reviewing any site plan, including the ANR Septic Plan
- Foundation was poured after the ZA became aware of the setback violation, hence, if a stop-work order was issued prior to the foundation being poured, the owner did so at his own risk
- Despite the setback violations, the grade on this building site greatly exceeds Windham zoning regulations
- A grade limit of 20% is important to adhere to, especially considering that this property is immediately above Wheeler Brook and its flood plane.

Finally, I respectfully ask the Zoning Board of Adjustment to consider the criteria specified for dimensional waivers. I don't believe this request meets Item 3, Item 4b, 4d, and 4e. I also think the board should consider whether Item 5 is applicable.

Section 304 DIMENSIONAL WAIVERS

Dimensional Waivers under Section 304B of these Regulations dimensional waivers may be applied for when seeking approval for development that is not otherwise allowed under these Regulations. In applying for a waiver, the burden of proof is on the Applicant to demonstrate that the waiver request meets waiver criteria of Section 304

A. The Zoning Board of Adjustment may require a survey if essential to verify the location of property lines.

In the event that the Zoning Board of Adjustment grants a waiver, the permittee must comply with all other requirements of these Regulations.

Section 304 A Dimensional Waivers Criteria

The Zoning Board of Adjustment may grant a waiver to a dimensional requirement, other than density, after considering the criteria below:

1. Reasonable use of the property is only possible if the Zoning Board of Adjustment grants a waiver of the dimensional requirement.
2. The waiver is the minimum reduction in the dimensional requirement that will enable the reasonable use of the property.
3. The proposed project will still conform to the Town Plan and the purpose of the zoning district in which the land development is located.
4. The proposed project will not have an undue adverse effect on the following:
 - a) The appropriate use or development of surrounding properties;
 - b) The character and aesthetics of the neighborhood, as defined by the purpose of the district in which it is located;
 - c) Traffic patterns and circulation;
 - d) Public health, safety, and utility services;
 - e) Storm water management;
 - f) Water and wastewater capacity;
 - g) The preservation of open space or scenic vistas;
 - h) Historic resources identified in the Windham Town Plan.
5. The need for a waiver was not intentionally self-created by past decisions of the applicant.
6. The waiver is not to the detriment of the public welfare, including the safety and maintenance of the Town and State highways.
7. Structural enlargements that do not increase the degree of nonconformity do not require a waiver.