

TOWN OF RYE – BOARD OF SELECTMEN
Friday, May 1, 2020
10:00 a.m. – via ZOOM

Selectmen Present: Chair Phil Winslow, Vice-Chair Keriann Roman and Selectman Bill Epperson

Others Present: Town Administrator Becky Bergeron, Attorney Michael Donovan, Police Chief Kevin Walsh, Library Trustees Jeffrey Ross, Karen Oliver and Victor Azzi

I. Reading of Attestation

As chair of the Rye Board of Selectmen, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, I am confirming that we are providing public access to the meeting by telephone, with additional access possibilities by video and other electronic means. We are utilizing Zoom for this electronic meeting. All members of the board have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting by clicking on the following website address: www.zoom.com ID #824-1093-2725
Password: 648913

Public notice has been provided to the public for the necessary information for accessing the meeting, including how to access the meeting using Zoom telephonically. Instructions have also been provided on the website of the board at: town.rye.nh.us go to the Board of Selectmen page and click on the agenda for this meeting.

In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled. Please note that all votes that are taken during this meeting shall be done by roll call vote.

Roll call attendance of select board:

- Phil Winslow
- Keriann Roman with her husband
- Bill Epperson

II. Call to Order and Pledge of Allegiance

Chair Winslow called the meeting to order at 10:05 a.m. and led the Pledge of Allegiance.

III. Discussion

a. Parsonage Parcel

Vice-Chair Roman noted that today, May 1st, is the deadline to get a subdivision plan to the planning board. The plan subdivides the Parsonage parcel off the 1.9 town owned parcel, which the Library sits on part of. That is the reason for this meeting. She noted that there was a plan that was prepared by Jim Verra and was submitted to the Planning Administrator. Vice-Chair Roman commented that the plan has been forwarded to Jeffrey Ross and the other Selectmen for review. The plan is not reflective of what the end result will be; however, something had to be submitted. She continued that at the pre-vote meetings, where the Library participated, there was discussion about giving the Town an easement on a portion of the boundary of the Parsonage parcel for landscaping. In speaking with Dan Philbrick, he is not in favor of an easement. She pointed out that both sides are worried about the same thing. The Library wants to make sure they have some control over the entrance to the Library. Mr. Philbrick also wants control over what's planted and done on his property. It seems this is at a bit of a stalemate. She commented that the agreement with Mr. Philbrick does not say "easement". However, in conversations that were held prior to the vote, she felt there was a commitment that there would be an easement to the Library on all sides.

Vice-Chair Roman stated that whether they call this an easement or something else, she is not sure that matters. It does not matter legally. What matters is that the Library has some input and guarantee forever with regards to the parking lot side entrance and the entrance off of Washington Road. She pointed out that whatever this is called, it has to be guaranteed and permanent so future owners of the Parsonage are bound by it. She commented that the Library had a meeting about this recently, so it would be appropriate to have them talk about what they discussed. She continued that another proposal that has been brought up is a recorded property maintenance agreement that would be off the sidewalk six feet and all the way around. It would cover the area down the parking lot side and around to Washington Road, so it would hit sides of the Library. The property maintenance agreement would say; *"landscaping to be designed by the owner of the Parsonage with an attractive area around the entrance to the Library and accounting for that appropriately. This landscaping plan and any future changes, must be coordinated and agreed to by the Library. Any disagreement between the owner of the Parsonage and the Library will be arbitrated by the Selectmen."* She noted this is not something that has been committed to by any means. She is just putting this out there as an option, as it has been discussed with Mr. Philbrick. The goal of this meeting is to try to figure out a compromise.

Chair Winslow asked if Mr. Philbrick has agreed to the recordable property maintenance agreement.

Vice-Chair Roman confirmed.

Attorney Donovan noted that the agreement is subject to fine-tuning the language with Mr. Philbrick's review. He also noted that if the agreement is acceptable to everyone, it would become a condition of planning board approval.

Vice-Chair Roman pointed out this would also be on the subdivision plan and recorded, which would give the planning board authority for enforcement.

Jeff Ross, Library Trustee, stated that the library board met this past Wednesday to discuss this issue specifically. The board definitely agrees that they would like some sort of Library control over the boundary with the Parsonage. The areas that they are referring to are the landscaped strips from the sidewalk towards the Parsonage on both sides. It is probably about eight feet. It is also the area where the Library has planted lilacs and cedar trees on the Washington Road side with arborvitaes and deciduous trees on the parking lot side. He continued that it sounds like they are moving in the direction that some sort of "control" is what the Library would end up with.

Mr. Ross stated that the Library did research into why things are where they are, going back as far as 1995. The landscaped eight-foot strips on either side are there by design. It is documented on construction and site plans, which went through approval processes with the planning board and other town boards, including the Board of Selectmen. It was also done very intentionally by the architects and the people in Rye who expanded the library, because it defines the library entrance visually and functionally. The Library Board feels strongly that it is their fiduciary responsibility, to the Library and the Town, to make sure that property is maintained in ways that do not adversely affect it visually, functionally, historically or legally. Mr. Ross stated that the Library has heard a lot about what Mr. Philbrick has said in public about his intentions for the property and his interest in being a neighbor to the Library. This was encouraging and was discussed when the swap was being negotiated. With all the things that could happen to the Parsonage, having a good neighbor with the best interests of Rye and the Library was attractive. With regards to the idea of putting together some language on paper and discussing it with Mr. Philbrick, the Library would be very amendable to that. It sounds like this is in a reasonably good place and they should try to move forward.

Karen Oliver, Library Trustee, stated that she keeps coming back to the Library Board's fiduciary responsibility. She does not think they could agree for there not to be something in regards to sharing responsibility for that property. She understood that everyone pretty much wanted the same thing; what Mr. Philbrick wanted is what the Library wanted. Now, the devil is in the detail. She thinks it would make sense to talk about common goals and what each side wants. She asked for an explanation on the difference between a property maintenance agreement and an easement.

Attorney Donovan explained that the easement is a form of property right that runs with the land in perpetuity. An easement cannot be changed without the approval of the party that benefited

from the easement. This is a pretty significant constraint on the owner of the property burdened by the easement. The property maintenance agreement is basically a condition of planning board approval. If it needs to be changed in the future, it is much easier to change. One would go before the planning board and ask for a change in the condition of approval. It is much less of a constraint on the owner's bundle of property rights.

Mrs. Oliver asked what this will do for Mr. Philbrick functionally. She asked what is different, from a month in a half ago, that makes the easement something he is not willing to do at this point.

Vice-Chair Roman stated that her sense is that when Mr. Philbrick said "easement" at the TD Bank March 4th meeting, he wasn't fully understanding or contemplating what an easement means. Now that everyone is ready to put "pen to paper", he does. The concept of working with the Library and having an open field with gardens is still the same; however, the way to accomplish that has changed. She continued this is a bit of a compromise, as an easement would be on the property forever and could not be changed without library and town agreement. She asked Mr. Philbrick if he would agree to record such an agreement and he said he would. That addresses her concern with regard to anyone buying the property in the future. This would show up in a title search, so that no one buying the property could say they are not responsible for the agreement. She pointed out that she helped write the language with Attorney Donovan, but this is not something she is necessarily advocating. She is just putting this out as something Mr. Philbrick would agree to.

Mr. Ross stated that at the Library Board's recent meeting, the driving force of the conversation was the board's fiduciary responsibility to the Library and the Town to maintain those boundaries. A private individual cannot be allowed to take ownership of that property and have any "wiggle" room to do anything that would hurt the Library and thus the Town. Mr. Ross continued that he is all for negotiating with Mr. Philbrick to meet the Town's contractual obligation, but that needs to be the bedrock on which this is placed. If it can be done in a way that is palatable to Mr. Philbrick, but is also ironclad for members of the select board and the Library Trustees, that is the most important thing. He stated the Town has spent a lot of money on the Library over the years. He wants to be sure things are written in the deed that will legally allow the Library to maintain an appropriate level of control over that property.

Vice-Chair Roman commented this proposal does not give the Library control. The property agreement would be that the owner of the Parsonage would design landscape and would then meet with the Library. If the Library had changes, and it could be worked out, it would move forward. If the Library said no and there was a disagreement, it would go to the Selectmen for a decision. This would be forever into the future.

Mr. Ross stated that whether Plan A or B is used, the Town is giving up control of about eight feet of property around the Parsonage. The Town would only own up to the sidewalks and that is a big concern.

Attorney Donovan noted that the language in the agreement is still being worked on. He continued that the town voted to convey that .4-acres, which is based on the dimensions right up to the sidewalks. The .4-acres in the agreement was based on the measurement between the right-of-way and the sidewalks.

Mrs. Oliver stated the very idea that the Library, or any fiduciarily charged organization, would allow property lines to go right up to sidewalk of its property is just ludicrous. She would not have personally supported the swap if she was aware that's where the property line went. She does not believe this is what the Town's people voted on. It is not what they believed they were voting on.

Selectman Epperson stated they should not lose sight of what they are trying to achieve. Clearly, the Library is concerned about the portions of land they are essentially losing control of, which they want to have input on too. This issue is going to live on. The decisions that are made now, are going to live well beyond everyone at this meeting. It was agreed that the swap of the Parsonage with the TD Bank was exactly the right thing to do. If this does not happen, the Town loses the bank and the Library loses absolute control of the Parsonage and anything that goes in there. It makes sense to work really hard to come up with an agreement that makes sense for both sides. The select board has a fiduciary responsibility and a moral responsibility to the Town to do exactly the right thing. He also agrees there was discuss at one point where Mr. Philbrick had talked about easements. Maybe he didn't understand what an easement was. Selectman Epperson stated that if the maintenance agreement is recorded and cannot be changed without going before the planning board, he would support it. At some place in the middle there has to be a compromise.

Attorney Donovan explained the agreement is not going to give one party or the other the final say on the maintenance of this strip. If the parties do not come to a reasonable agreement, it will be kicked to the Board of Selectmen. It places a lot of faith in Mr. Philbrick and the Library Trustees as being reasonable people who are able to work out something that is in the interest of all parties.

Referring to the maintenance agreement, Chair Winslow asked if the planning board would be involved if there was a difference of opinion in the landscaping.

Attorney Donovan explained that they talked about it being addressed by the Selectmen. The planning board is something that could be considered. He is not sure that Mr. Philbrick had a real concern about that one way or the other.

Selectman Epperson suggested the wording "with the approval of the select board with the assistance of a certified landscape architect".

Mr. Ross stated it would seem weightier if the recorded property maintenance agreement was backed, not only by the Library Trustees, but the Board of Selectmen as well.

Chair Winslow commented that if the Selectmen sign the contract with Mr. Philbrick, they are obviously supporting it as signers of the contract. Referring to the agreement, he thinks this is one step below an easement, but is better than a sidebar agreement. If this can be recorded as part of the deed, it would give some solace that future buyers would be aware of this.

Referring to next steps, Vice-Chair Roman stated that if they are tentatively okay with this concept, she presumes that Attorney Donovan and herself would draft it up and work with all parties on the language. If there are concerns with the agreement at that time, it would be appropriate for Mr. Ross and Mr. Philbrick to meet. If the Library is saying at this meeting “absolutely not”, then Mr. Ross and Mr. Philbrick need to meet right now.

Mr. Ross stated that he does not feel he can agree to anything today. He would like to meet with the members of the Library Board, apprise them of the situation and get their feedback.

Mrs. Oliver agreed.

Vice-Chair Roman suggested that she and Attorney Donovan draft some language for the agreement so the Trustees can have it to discuss at their meeting.

Attorney Donovan pointed out that the planning board will be having a public hearing on the subdivision at its meeting on May 12th. His hope was that the language of this agreement would be finalized, at least in draft form, so it could go before the planning board.

There was some discussion on the time needed for drafting some language for the agreement. It was agreed that a draft would be ready for May 5th, for the Selectmen and Mr. Philbrick’s review, with the Trustees reviewing it in a meeting on the 8th. Mr. Ross agreed to meet with Mr. Philbrick on May 4th or 5th.

Regarding future potential expansion of the Library, Mr. Ross stated that the schematic design has the building going towards the sidewalk where the portico entrance is located, which is towards the Parsonage.

The group reviewed the location on the plans.

Chair Winslow asked how far the expansion comes out on that side.

Mr. Ross replied to where the portico is now. He commented that if an agreement is made with Mr. Philbrick, it prevents the Library from expanding in the only direction it can expand, which will not make people happy twenty years from now. He feels this is an issue that is directly related.

Vice-Chair Roman pointed out that if this can be resolved through a property maintenance agreement, anything that is done landscape wise, the Library would have to be in agreement. If the Library did not agree, it would go to the Selectmen for a decision. This does not resolve

buildings in that area; however, Mr. Philbrick has to comply with exact footprint. If he designs something new, he has to comply with setbacks. She is not sure this will negatively affect the Library's expansion.

There was discussion on the timeline for this process and the closing on the Parsonage. Attorney Donovan and Vice-Chair Roman will work on the language for the agreement. It will be submitted to the Selectmen and Mr. Philbrick for review. The Library Trustees will meet to discuss the agreement on May 8th.

IV. Other Business

- **Beach Use Restriction**

Chair Winslow stated that Rye's beach use restriction expires as of today. He opened to Police Chief Kevin Walsh for an update.

Chief Walsh explained the select board's motion to close the beaches was to follow Governor Sununu's orders, or May 1st, whichever came first. Unfortunately, the virus is still not under control and New Hampshire is still looking at ways to mitigate the problem. The Town must be unified with Governor Sununu and state health officials in how this is handled moving forward. Chief Walsh reported that on a positive note, the hospitalizations in New Hampshire due to the virus are starting to improve. Things are starting to move in the direction of improving because of social distancing. However, there are still some ongoing deaths and contamination of the virus. He is asking the Board to amend their motion to say the Town of Rye is staying under the orders of Governor Sununu. He asked that the beach closures and temporary no parking ordinance stay in place as long as the state parks and state beaches are closed.

Chief Walsh stated that communication has been going really well with the state parks and some of the other seacoast partners. He noted that he sent a memo to the Selectmen from Director Bryce of state parks regarding what a plan for opening back up might look like. At this time, the Governor is under the belief that unless Massachusetts and Maine are opening their beaches, the beaches will remain closed in New Hampshire.

Vice-Chair Roman commented that it seems the State of Maine is anticipating opening their beaches June 1st. She hopes this does not tie New Hampshire to opening June 1st. Just because Maine might be ready at that time, does not mean New Hampshire will be ready to open their beaches.

Chief Walsh noted that he will express this concern to Director Bryce.

Chair Winslow stated the select board does not want any pressure communicated to the State that the Town of Rye wants to open up the beaches. It should be based on science not emotion. He suggested the motion be for June 1st or until the Governor opens up the state beaches.

Motion by Phil Winslow to continue the closure of the beaches in Rye, along with the State beaches per Governor's orders. As part of this, for enforcement purposes, all permit parking areas will become "no parking", all town road parking areas, to be identified by Chief Walsh, with regard to parking and access to the beach, such as, Perkins, Old Beach and Locke, will be "no parking" and the beach accessways, identified by Chief Walsh, to be blocked off and signed. This will be in effect until June 1st or until the State lifts the closure of the state beaches, whichever occurs first, and is a temporary emergency order per the Selectmen. Seconded by Keriann Roman.

**Roll Call: Bill Epperson – Aye; Keriann Roman – Aye; Phil Winslow – Aye
Motion passed.**

- **Budget Committee Meeting Update**

Chair Winslow stated the Budget Committee had a meeting recently and reviewed the financial stress tests that have been prepared. The Committee has asked if the Governor would allow the Town to put off the warrant articles because of the emergency with COVID-19.

Vice-Chair Roman explained that NHMA, on behalf of the towns, have the Governor's ear. She would be strongly in favor of this idea. NHMA would take a vote of their board and if there is majority agreement, it will be taken to the Governor. NHMA has had a lot of success with things they feel are important to municipalities. She would be in favor of asking that any special warrant articles or CRF funding, that the Town chooses, not be funded this year.

Selectman Epperson agreed.

Chair Winslow stated that the Committee also asked about the housing of the Senior Serve van. It was discussed that the rear part of the safety building is being considered, which would also allow the oil tanks to be heated in order to save money on oil. The Committee suggested looking at the salt shed if that is not going to be expanded. It might be less costly to put a small area behind the salt shed. He asked the Town Administrator to discuss this idea with the Public Works Director.

Adjournment

Motion by Bill Epperson to adjourn at 11:15 a.m. Seconded by Keriann Roman.

**Roll Call: Bill Epperson – Aye; Keriann Roman – Aye; Phil Winslow – Aye
Motion passed.**

Respectfully Submitted,
Dyana F. Ledger