

**TOWN OF RYE – BOARD OF SELECTMEN**  
**Tuesday, May 19, 2020**  
**9:30 a.m. – via ZOOM**

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

*Others Present: Attorney Michael Donovan, Town Administrator Becky Bergeron, Dan Philbrick, Library Trustees; Jeffrey Ross, Karen Oliver, Michael Moody and Victor Azzi*

**I. CALL TO ORDER**

Chair Winslow called the meeting to order at 9:30 a.m.

**II. READING OF ATTESTATION**

Statement by Phil Winslow:

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 through dialing the following phone number: 646-558-8656 and Password: 649173 or by clicking on the following website address: [www.zoom.com](https://www.zoom.com) ID #885-9610-8792

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](http://town.rye.nh.us) go to the Board of Selectmen page and click on the agenda for this meeting.

If anyone has a problem accessing the meeting please email the Town Administrator at: [BBergeron@town.rye.nh.us](mailto:BBergeron@town.rye.nh.us)

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:

- Keriann Roman
- Phil Winslow
- Bill Epperson

*(The Selectmen confirmed that they were the only ones in the room for the meeting.)*

### **III. DISCUSSION**

#### **a. Maintenance Agreement for Parsonage Parcel**

Chair Winslow explained that on March 4<sup>th</sup> there was a meeting at the TD Bank to talk about Warrant Article #7. The Library Trustees had some questions and concerns so they were asked to attend the meeting. Jeff Ross, Karen Oliver, the Selectmen and Dan Philbrick were at that meeting. At the meeting, it was agreed to address the issues of the Trustees. On March 6<sup>th</sup>, at the meeting at the Library for the Parsonage tour, it was confirmed that the Selectmen, Library Trustees and Dan Philbrick would look at the issues involved. On March 10<sup>th</sup>, the electorate authorized the exchange of the Parsonage, with +/- 0.4-acres, for the TD Bank. The 0.4-acres is important because it gives Mr. Philbrick the ability to slightly expand the current building to allow for six apartments. Subsequently, the Trustees and the Selectmen met on two different occasions. Vice-Chair Roman worked with the Trustees. The Trustees have worked with the Selectmen. A maintenance agreement was drafted, as it was indicated that an easement would not be acceptable. There is now a maintenance agreement that has gone back and forth three or four times.

Selectman Epperson stated it would be helpful to review the object of this whole exercise. There has been an ongoing discussion over the past decade about what to do with the Town Hall and its space needs. The TD Bank was turned down two or three years ago and was not an option. At that time, Mr. Philbrick bought the building. The Town floundered for a period of time to determine how to move forward. This idea of swapping the Parsonage for the TD Bank to give the Town more room and more options with the 3.0-acres in the back, seemed like the thing to do. The Selectmen knew this was going to be controversial and that some would be absolutely opposed to it. Over the months that the select board had the opportunity to discuss it and have meetings about it, they became more and more convinced that it is probably a viable alternative to the Town Hall. He continued that the consequences of not making this deal happen run very deep. This needs to be discussed with a conclusion at this meeting.

Chair Winslow noted there are five pieces to the puzzle. One is the Town Hall, which the Town has not found a solution for over the last ten years. The second part is the Parsonage. The third part is the TD Bank. The fourth part is the Trolley Barn. The fifth part is the Senior Serve van. The Selectmen are trying to put these pieces into place and come up with a puzzle which will service the needs of the people in Rye.

Vice-Chair Roman agreed with Selectman Epperson and Chair Winslow.

Chair Winslow noted that the maintenance agreement has gone back and forth three or four times. The agreement they will be discussing is the one dated May 15, 2020.

**Jeffrey Ross, Chair of the Library Trustees**, confirmed that the Trustees have received the revised agreement. He asked if they will be discussing the Trustees' concerns about the agreement, which were in his reply letter dated May 17<sup>th</sup>.

Chair Winslow stated that the May 17<sup>th</sup> agreement is a non-issue because it wasn't approved. He asked if they could address the May 15<sup>th</sup> agreement.

Mr. Ross stated that he thinks the simplest way to talk about the agreement is to start with something really simple in relation to sidewalks, snow removal and light control. In the current situation, the Library controls the property such that they can remove the snow, repair the sidewalks, and control the lights. The property maintenance agreement that is being discussed throws all that up into the air. The Library has no place to put the snow, the sidewalks cannot be accessed if they need to be repaired or replaced, and they do not control the lighting. He asked if they could find a plain English common-sense way to allow that to happen. The current language of the agreement puts the onus completely on the Library to deal with that. The Library did not create that situation. The property maintenance agreement creates that situation. He cannot believe they cannot find a mutually beneficial acceptable way to address that. The Trustees do not want to destroy stuff that is apparently not going to be on library property. However, they would like an equal opportunity to take care of what's on the library side.

Attorney Michael Donovan stated that those issues are what he would consider details, which could probably be worked out. He suggested that they focus on the major aspects of the maintenance agreement, which is the area that the agreement covers, the plan and who will approve the plan. Those were the changes that were made to the agreement between May 14<sup>th</sup> and 15<sup>th</sup>. Those are probably the more significant concerns of the Trustees. The sidewalk and light control are things that can be talked about; however, there are larger issues involved.

Mr. Ross commented that he only started with the smaller issues so everyone will know what is on the table and to indicate that the Trustees are trying to remain in a cooperative spirit in regard to this agreement. It is good to know that the Trustees' interests in making some changes to that could be done quickly, amiably and to everyone's happiness. He continued that he would be happy to talk about the more substantive things. He thinks that one thing the Library would like is to have this agreement be as straight forward and protective of the Library's interests as possible. It seems like there are too many middle-men here. The Trustees continue to believe that the simplest most straight forward thing would be to make the Library a party to the agreement. The only need for the Board of Selectmen to be involved in this agreement is if the hammer has to be brought down on the private property owner for not maintaining it. The initial review and approval of the landscape design should be between the Library and the owner of the Parsonage property. He thinks "approval" is a much better word than "review" because the Library is really seeking to be in league with the private property owner to achieve a vision that everyone has for this part of the town center. Reviewing it makes it sound like all the Library gets to do is to look at it and take it or leave it. Approving it means that the private property owner is seeking the Library's expression of good will. It will make it much better for the Town and much better for the Library. He would also think it would make it much better for the private party. He continued it is the same thing for the amendment process. If the Library Trustees are not allowed to be a part of the amendment process, what could happen is the initial agreement could be reviewed or approved, and any time forward, the private party could seek to amend it with the Library standing on the side lines only able to go to a public hearing in front of the planning board. He does not understand why the two parties that matter the most, the private property owner and the Library, do not have the opportunity to seek an amendment together. He assumes that any amendment to the agreement that the private party wanted to make would be something

they would want to work out with the Library anyway. He does not understand why the Library would be completely shut out of that process. He noted that those are the Trustees' substantive concerns with regard to being a party; approving rather than reviewing and being part of the amendment.

Attorney Donovan noted that paragraph 2 of the May 15<sup>th</sup> version removes the area adjacent to the Washington Road sidewalk from the agreement. This is something that resulted from the Selectmen's authorization, at the last meeting on the 14<sup>th</sup>, to go and negotiate with Dan Philbrick. This still leaves about 72% of the linear footage of the sidewalk within the maintenance agreement; the land within 6ft of that. In the third paragraph, masonry landscaping and knee walls were added to the description of the maintenance, as this is something Mr. Philbrick has in mind for the landscaping. The fifth paragraph states the description and goals of the plan. Mr. Philbrick's goals are to have a plan that creates a campus like atmosphere around the renovated buildings. Attorney Donovan stated that the version from May 14<sup>th</sup> came out of the last session with the Trustees. At that time, the Trustees wanted review of any disagreements about the plan. It had the requirement that Mr. Philbrick would review the plan with the Trustees and try to address their concerns in good faith. At the request of the Trustees, it was put into the agreement that any disagreement would be arbitrated by the planning board. The May 15<sup>th</sup> version puts arbitration of any disagreement back with the Selectmen. Attorney Donovan stated this is reasonable because it is the Selectmen who have the responsibility for carrying out the town vote to make the swap of the two properties happen, not the planning board. The concession that Mr. Philbrick has made between the May 14<sup>th</sup> version and the May 15<sup>th</sup> version is that he is willing to sit down with the Library Trustees and review the plan. Whereas originally, the version prior to May 14<sup>th</sup>, did not have Mr. Philbrick meeting at all with the Library Trustees. Attorney Donovan commented this is a significant change on Mr. Philbrick's part.

Mr. Ross stated he did not address the maintenance area itself but that is another issue. He is not sure the Trustees understand exactly what that is and what area is being referred to (L-21 curve) and on what drawing.

Attorney Donovan replied it is on Sheet 2 of both drawings; Plan A and B. It is the surveyor's way of marking the boundary. Basically, it is the end of the curve.

Mr. Ross commented that he has seen the drawings and he cannot read a lot of the details because they are printed so small.

Attorney Donovan explained that walking in from the sidewalk on Washington Road, it is a straight line in towards the Library. It curves around and parallels the parking lot sidewalk. The maintenance agreement ends where that curve begins.

Mr. Ross asked what would happen along the walkway from Washington Road up to that point.

Attorney Donovan replied it is not part of the maintenance agreement.

Mr. Ross asked the reason it is not part of the agreement.

Attorney Donovan stated that it does not appear to be as well landscaped as the other area. Also, there is already a break in the landscaping near the side door of the Parsonage. It is very close to the Parsonage. It is an area that could be more attractively landscaped by Mr. Philbrick and probably will be.

Mr. Ross pointed out it could also be more attractively landscaped by the Library. One of the reasons the Library has not invested a lot in that area is because the situation at the Parsonage has created such an eyesore. He does not understand why the maintenance agreement would not extend all along the sidewalks. The Library's interest remains along the entire border of the Parsonage. He does not think they are seeking to be in an adversarial relationship with the private property owner. The Trustees want to engage in a cooperative venture that has a mutual benefit for both the Library and the private property owner. The Library has maintained that property. The property is part of the Library. It is being given up to the private owner. The Library would just like to continue to have a say as to what happens along there, in that same way as along the parking lot side, for everyone's mutual pleasure and benefit.

Attorney Donovan explained that he was assigned the task a couple of meetings ago to try to negotiate something reasonable with Mr. Philbrick as a compromise to the many issues the Library Trustees have. In his view, this is a reasonable concession to make. The maintenance agreement covers 72% of the sidewalk, which includes the area that has the lighting.

Speaking to Mr. Ross, Selectman Epperson asked if the concern is that the area would not be landscaped in a way that would be pleasing to the Library Trustees.

Mr. Ross pointed out this is the underlying reason for the agreement in the first place. He continued the Trustees are not ill-disposed toward what might happen there now. The Trustees simply want to have an adequate voice to express their interests and have the Library protected for twenty years into the future, when perhaps there is a different owner or there is a different vision for the property.

Selectman Epperson asked if language such as "approve in conjunction with the Library Trustees" would work for the areas not included in the agreement. He commented that he does not believe that Mr. Philbrick would be opposed to doing something there that was pleasing to the Trustees.

Mr. Ross stated he does not understand why it cannot be part of the maintenance agreement. He asked why that walkway to the Library is any different than the walkway from the parking lot.

Referring to the walkway to Washington Road, **Dan Philbrick** stated that having it covered under the same type of maintenance agreement would not be an overburden to him. He thinks that what is going to be done there will be pleasing to the Library. He is not concerned about what is being done there. If it moves things along to expand that easement to include the 6ft wide piece out to Washington Road, he would not be opposed. Mr. Philbrick continued that one of the most recent concerns is the stakes in the ground for the new addition to the Library. He was surprised that the new addition is apparently coming off the side of the Library and goes all the way out to the concrete walkway. It appears the new addition is going to go right to the sidewalk, which means the addition will be roughly 3.5ft off the property line. This creates a different concern as far as green space. He asked how far along the plan is and if there are plans that he can see. He continued that up to this point, he had no idea the Library was going up to the side. He thought the addition was going in the back. In looking at the stakes, the side of the building would go right to the sidewalk. It would really create an alley type of a look. He would like to see the plans to get a better idea of what the Library is planning. It is important that it works for everybody. He reiterated that if continuing the maintenance agreement along the whole curve up to Washington Road moves this along, he does not have a problem with that. He also does not have any problem with lighting control. His only concern is that this is something they need to work together on to get the lighting appropriate for the hours they need it and for the hours the residents may need it. In regards to sidewalk

repair, he does not see that as a problem. He does not see the plowing issue as a concern; however, he does not want the snow to be pushed onto the landscaped area.

Mr. Ross stated the solution to the more practical things like sidewalks, snow removal, and lighting can be hammered out. It sounds like there could be a good conversation to come up with a solution for where to put the snow. The Trustees would be more than amenable to that kind of conversation. He thinks they would be much more comfortable to have the maintenance area be a very simple, easy to understand, border to border situation along the walkways. That would keep it clean and neat. As Mr. Philbrick develops his design for the landscape design, it allows the Trustees to see and understand the plan and advise about it.

Selectman Epperson noted that as a condition of approval for the subdivision there are going to be certain things written into the agreement; for example, snow removal. There could be other details that could be added as conditions of approval as well. That part of the planning board process can be accommodated.

Mr. Ross replied this is good to know. He continued that the larger issues about the Library being a party and “approving” rather than “reviewing” need to be hammered out. The goal of the Library is to have sufficient standing. That includes legally. If the Library is not a party to the agreement, they need to be rock solid as some sort of beneficiary to this. It does not seem that the way those issues are being written into the agreement will give sufficient standing of that type at all. Right now, the way he reads it, Mr. Philbrick would make a design and show it to the Library Board for review and then they would be completely out of the process moving forward. The Library would not be part of the amendment process and would not have a voice in maintaining the agreement other than to go to the Board of Selectmen to intervene on the Library’s behalf. That just seems too weak of a position for the Library to be in. He continued that he does not understand why it is not a good thing for the property owner of the Parsonage to be dealing regularly and directly with the Library Trustees. The Library is the next-door neighbor and are the ones that would care about maintaining a good relationship. He does not understand why this is not being weighed as part of this process.

Referring to the arbitration process, Selectman Epperson stated this is part of the responsibility of the Board of Selectmen. He does not see this as a huge issue.

Attorney Donovan stated that the Library is a third-party beneficiary whether or not they are a signature to the contract. He asked if there are some plans that Mr. Philbrick and the Selectmen can see for the Library expansion.

Mr. Ross replied there is a schematic design. He continued that the Library was proceeding towards an expansion with a schematic design and a fundraising campaign when it was decided to slow the process down so the Town might be able to catch up. The Library backed off talking about its plan for expansion in public, until they could see what the rest of the Town might do. There were even meetings with the Board of Selectmen to discuss ways the Library might participate in a town-wide program to collaborate and work comprehensively in the center of town. He noted that when the swap was announced in December, both he and Karen Oliver expressed their concerns about process. The Trustees expected that they would be a part of all the hard decisions around the actual property lines. He stated that the Trustees would be happy to show the plans for the expansion to Mr. Philbrick. That is really the only way the Library can expand. It cannot go out the front and cannot go in the other direction. There is very limited space out the back because that is where the septic system is located.

Chair Winslow stated that the Selectmen were hoping to come to an agreement at this meeting on the maintenance agreement. As he sees it, the snow removal, sidewalk maintenance, and extension of the sidewalk from Washington Road in has been agreed to by Mr. Philbrick. To Selectman Epperson's point, the conditions of approval from the planning board would include taking care of these issues. He continued that the concern of having a signatory on the contract, Mr. Philbrick is in disagreement on that and is not willing to consider it.

Attorney Donovan stated that he had drafted a version that had an acknowledgement signature line, which was taken off at some point. If the Trustees would be more comfortable with the acknowledgement signature line back on the agreement, that can be done. He does not think this changes the Library's legal standing, however. He pointed out that an acknowledgement doesn't mean the Library agrees with it. It just means they acknowledge it exists.

Vice-Chair Roman stated that she does not see why the arbitration would not be between the property owner, as one person, a member of the Library Trustees, as one person, and one person from the Board of Selectmen. It would be a three-member arbitration committee. She thinks this would make sense. It would be the three parties most interested arbitrating it together, understanding that the property owner and the Library are going to have different sides. Ultimately, if an agreement cannot be reached, the one selectmen representative would make the final decision. Having three people sitting down to have a discussion might set it up more for an agreement, as opposed to the Board of Selectmen saying "this is the way it is going to be". In her mind it makes sense to have a three-member committee; one member from each interested party.

Chair Winslow stated that if this proposal would be acceptable, he would certainly support it.

Selectman Epperson stated the fewer the people involved the better off it is. He would think that the three-members could come to some sort of agreement, at that time. He pointed out that the person who is arbitrating between the two parties really needs to be unbiased. He would be okay with this idea, as long as they had the right spirit going into the agreement.

Mr. Philbrick asked if the arbitration is to modify the agreement.

Attorney Donovan explained that when the landscape plan is taken to the Trustees for review, if their concerns cannot be addressed then the arbitration is over the differences with the plan.

Mr. Philbrick replied that he was not of that understanding. He asked if he could end up designing a plan and still need to arbitrate it and go through other boards to execute the plan.

Attorney Donovan explained this is what has been in the last couple of drafts of this. The question has been who does that arbitration.

Mr. Ross stated that the Library would definitely want to be part of any arbitration. He supports Selectman Roman's suggestion. He continued that he does not like to see things having to go through a million different hoops to get done. That is why he would like to see the word "approve" rather than "review". The only reason it would go to arbitration is if something couldn't be worked out during the approval process. He thinks it would be more likely it would end up in arbitration if the Library was only allowed to review. If the Library is given a little bit of leverage up front, they would be much more inclined to work it out to avoid arbitration. Mr. Ross stated that Mr. Philbrick is going to make a great

plan. The Library Trustees is a body that cares deeply about the Library but also about Mr. Philbrick's enterprise as a private person next door. He does not understand why there is a sense that the Library is going to be adversarial. There are mutually shared interests in each other's property. Giving the Trustees and Mr. Philbrick the best possible opportunity to set things right between them, seems to be the most straightforward process. Mr. Ross stated the Library does not want to involve the Board of Selectmen if they do not have to. The Selectmen have a lot more to do than to arbitrate a dispute between the Library and someone owning the Parsonage. If the process of how this is going to work is clear enough in the document, things will be fine.

Mr. Philbrick stated he would be concerned about going so far as allowing approval. He wants this to be taken in the spirit in which it is meant. None of what is being discussed here is in the contract. Trying to work with the Library, modifying it to go up to Washington Road, doing the 6ft buffer and the maintenance agreement, isn't even something in the contract. This is all being done in the spirit of trying to work with the Library. In that spirit, it is also going to be important for him to look at the Library's plans in order to see what this is going to look like. This needs to be done right. There needs to be enough green space for the Library that looks appropriate. Mr. Philbrick commented he is concerned about what the buffer is going to look like between the two properties. He noted that he has a vision, which is why he entered into this agreement. He thinks that vision will serve the Town well. When the Parsonage is done, it will be beautiful. The Town will be proud of it and the Library will be pleased. With that said, he would like it to be his vision, not the whole board's vision. He pointed out that he is now extending the landscaping easement out to Washington Road, in an effort to make this work for the Library. In a different analogy, if the Library were looking to do something, they wouldn't make it subject to his review or approval. The maintenance agreement is to work with the Library. He understands the importance. He just also knows that people have very different visions.

Mr. Ross replied that the expansion piece is one that can be put off for now. The swap and where the property lines are going to be set will cause huge setback issues. He does not think the expansion is happening anytime soon. He thinks the schematic design the Library has for the expansion is a problem. Most likely, the Library is going to have to go back to the drawing board. Mr. Ross stated it would be a good thing for the Library expansion if there was a rock-solid maintenance agreement to start with. Then when the Library expansion began to take shape, there would be a solid foundation from which to start with. As far as the landscaping that is there now, the Library understands there would be substantial changes and it would be an open campus concept. He does not think there is any opposition to that amongst the Library Board. The Trustees would like to understand it better and maybe make some suggestions as to how it would fit with the Library even better.

Speaking to Mr. Philbrick, Selectman Epperson asked if he could live with the landscape plan being in conjunction with the Library Trustees.

Mr. Philbrick replied he would look at it being subject to their review. He does not want to negotiate what is going to be planted onto his property with everybody on the board. Mr. Philbrick stated that part of what he brings to the table and part of what makes it work is his vision on what can be done with the Parsonage. He reiterated that he is very confident they are going to look at the plan and be very pleased with it.

**Victor Azzi, Library Trustee**, commented that he thinks they are making progress and it sounds good. He pointed out that the existing library and the two vegetative areas that accompany the walkways coming in from Washington Road and Olde Parish Road, are there as part of the original design that

included landscape architects, as well as building architects. Nothing there happened by accident. Similarly, a landscape and building architect has been retained as part of the team for the possible expansion of the Library. Nothing happens without a lot of input from a lot of people sharing the design process. He noted that the Library has been there for 100 years and will be there another 100 years. The Library does not have a lot of land on which to expand in the future. The expansion that is presently viewed on the schematic design is one that comes up to the concrete walkway coming in from Washington Road. Part of the reason the Trustees have been arguing to keep a 6ft wide vegetative strip between the walkway and the future use of the Parsonage property, is to protect the Library's use of that area. It is part of the front yard of the Library. The other part of the front yard is the vegetative strip coming in from Olde Parish Road. It is part of the land the Library was given the right to use, which was used during the construction process for the 1999 addition. His view is there should be an 8ft wide strip, along the walkway, coming in from Olde Parish Road, as well as a 6ft strip. These are the parts that the Library should continue to keep some control over.

Chair Winslow stated that Selectman Roman is proposing a change on 5B in the agreement. It currently states that any differences which cannot be resolved shall be arbitrated with the Board of Selectmen. Selectman Roman has suggested that the arbitration be between one member of the Library Trustees, Dan Philbrick and a member of the Board of Selectmen.

Mr. Philbrick stated he would like to leave 5B as the Board of Selectmen. It makes sense for arbitration to be done by an independent party.

Attorney Donovan stated that he will go back to what he said at the beginning that having the Board of Selectmen as the arbitrator is reasonable because it is the Selectmen who have the duty to make the swap work.

Mr. Ross stated that once the swap is done, it is done. The property maintenance agreement is what is going to be left. In this case, the Library is the one left holding the bag. The Library's interests are the ones that will be at stake. The Library keeps getting written out of the agreement so there is no leverage and no say. He continued that the history of the property lines that the Library is being asked to give up is significant. It goes back to a 1995 warrant article that says that property was acquired "for the purpose of the future expansion of the Rye Library". There is an RSA that says the Library controls the Library property. A case can be made historically that the Library is being asked to give up a lot here.

Attorney Donovan pointed out that the Library's property is that one small square lot that the front part of the Library is on.

**Karen Oliver, Library Trustee**, pointed out that part of the Library already sits on the Parsonage. The Library has already expanded into the lot that is being talked about.

Attorney Donovan noted that after the acquisition no one ever cleaned up any of this, in terms of lots. He continued that he understands Mr. Philbrick's plans. Mr. Philbrick will be preparing the landscaping plan for the Library's review as part of his building permit applications for the renovations. According to the agreement, Mr. Philbrick does not close until he gets his permits approved. Whatever the arbitration is, whether it is the Board of Selectmen or a committee, the plan will be submitted and reviewed by the Library. If there are any differences, they will be hashed out before the property is even swapped. If it is not worked out, he does not know what that would mean in terms of the closing. This will all happen before the swap is closed.

Mr. Ross asked about the Library's standing going forward if a year from now there is a problem.

Attorney Donovan noted that the Library will have to seek their own advice on that. It seems that it is being suggested that the Library might have some standing from preventing this from going forward.

Mr. Ross explained that as of right now, the Library reviews the maintenance plan, Mr. Philbrick closes on the property, and then if he wants to change the agreement, he can amend it without Trustee participation. Mr. Philbrick can go to the planning board and seek to amend it. The Library has no standing other than to go and participate in a public hearing. He asked if he is mistaken about this.

Attorney Donovan explained that the amendment provision, which is paragraph 6, deals with the amendment of the three-page written agreement. Paragraph 5C deals with subsequent changes in the landscape and lighting plan, which have to go through the same processing. That process includes review by the Trustees and the arbitration provision. It is just the language of the agreement itself. He noted that he does not think there would be any problem in amending the amendment provision to say that the Library would have some role in reviewing any proposed amendment to the language. Assuming that everyone agrees on a plan, Mr. Philbrick will go forward with the landscaping and everyone will be happy. If three years down the road he has some changes, he has to go back through the same process. Mr. Philbrick does not go to the planning board with those changes. He goes back through this same process.

Mr. Ross stated that amending the agreement would also include amending the maintenance area.

Attorney Donovan stated that if Mr. Philbrick wanted to reduce the maintenance area by 3ft or enlarge it by 4ft, that would be an amendment to the agreement.

Mr. Ross stated there is a lot in the agreement. It is difficult to understand every possible scenario from the Library's perspective.

Attorney Donovan suggested that one outcome of today's meeting might be to approve the agreement with the change to put the maintenance area next to the Washington Road sidewalk back in, but leave the language on the control of lighting and plowing of the sidewalk to be worked out. He pointed out the repair of the sidewalks is adequately provided by provision 4.1 that says; *"The Rye Library Trustees shall have a right to enter the maintenance area in order to maintain and repair the adjacent sidewalks provided the area is restored to its condition prior to repairs"*. In order to get this moving forward, the Selectmen may want to consider approving the agreement subject to the details of the lighting and snow removal being worked out.

Selectman Epperson asked if the details about lighting and snow removal could be put in the conditions of approval for the subdivision plan.

Attorney Donovan confirmed.

Mr. Ross stated his concern about the sidewalk repairs is that is says; "the area is restored to its condition prior to the repair". The condition on the other side of the sidewalk could be something as substantive as a brick wall with flagstone caps and expensive material to replace, which could be sitting right on top of the land that needs to be accessed in order to repair the sidewalk. He asked if the Library will be exposed financially to having to pay to restore something that costs thousands of dollars.

Attorney Donovan pointed out that when the Trustees and Mr. Philbrick sit down to look at the plan, that will be able to be addressed. It would not seem likely that Mr. Philbrick would do this, first of all. Attorney Donovan commented that he doubts a knee wall is going to be built right at the edge of the sidewalk.

Mr. Philbrick stated that his vision is to have a knee wall approximately 4ft off the line with flowers in front of it. He asked Town Administrator Becky Bergeron to forward the photo he provided, showing the wall, to the Trustees. He continued that he does not anticipate anything masonry right on the line. Right now, there is too much hardscape in this area between hot top, sidewalks and brick buildings. There needs to be more green space.

Chair Winslow asked the Selectmen to address Selectman Roman's recommendation and the maintenance agreement with the exclusion of the two items that Attorney Donovan has suggested. In looking at the agreement the Selectmen signed with Mr. Philbrick in public, it did not include, nor were the Selectmen aware of, the issues with the Library Trustees and it did not include those. Mr. Philbrick has made some significant concessions here in the process. Also, in looking at Mr. Philbrick's history, with his buildings in Rye and his donations and commitment to the Library, it seems there are two parties which have mutual visions.

Mr. Azzi stated that the main entrance to the Rye Public Library is coming in from Olde Parish Road. The entrance corridor, the walkway plus the vegetative strip, is 8ft wide. In the past, that 8ft was defined by a fence that was on the design drawings in 1997 that led to the expansion of that building and the landscaped vegetative area. If the Library is given a partial interest with only a 6ft strip, that would be contrary to the entrance of the Library. The vegetative strip is part of the entrance way that needs to be maintained. It needs to be 8ft coming in from Olde Parish Road and 6ft from Washington Road. The Library needs to have something to say about what is planted there.

Mr. Philbrick stated that he thinks he was being reasonable to allow the 6ft area to circle around to go back out to Washington. He thinks that was a reasonable gesture on his part and important to the Library. He does not think the 8ft is important to the Library, as opposed to the 6ft. He would prefer it to be 6ft all the way around; from Olde Parish Road around to Washington Road. As far as the appeal process, his preference is to leave it with the Board of Selectmen.

Ms. Oliver stated that the sidewalk from Olde Parish Road to the Library is centered on the entrance. The 8ft centers the sidewalk on the entrance to the Library. If that is made smaller, the sidewalk will not appear to be centered on the front of the Library. She asked if there is any other information that the Board of Selectmen have access to regarding this situation that the Library does not. She asked if there is any other information that has not been shared with the Library.

Chair Winslow replied not that he is aware of.

Attorney Donovan stated not that he is aware of.

Town Administrator Bergeron stated not that she is aware of.

Speaking to Ms. Oliver, Selectman Epperson asked if she is inferring something.

Ms. Oliver stated that she thinks the reason they are here is because there were zoning requirements that would make this deal work for Mr. Philbrick that the Board was clearly aware of and she does not believe the Trustees were. She guesses the Library should've gotten counsel before now. She feels like she should've said in the past "is there any information that the Board has that the Library does not have?" She would still like to know what has to happen with regard to the lot line. That is why the lines are being drawn where they are. It is in order to make the deal work. She thinks this is what Attorney Donovan said at the onset.

Selectman Epperson replied he thinks that is true. However, he thinks that it is being inferred that there is some hidden information or agenda that the select board has entered into in order to make one party or the other significantly more advantaged. That is not true. The only thing that he did not personally know of, is the preliminary survey that was done back in November; however, it was common knowledge.

Ms. Oliver stated she is not pointing fingers and thinks everyone is doing their darndest. She does think the people on the Library Board care more about this than the Board of Selectmen. If the Library had more information on what would be required to make this deal attractive enough to go forward with, this conversation would have happened a few months ago and not now.

Mr. Ross stated the other thing that is concerning is that at the March 4<sup>th</sup> meeting, when the issue of property lines was raised by three different members of the Library Board, there is a reference in the minutes to "the survey" and that it hadn't been done. He believes quite strongly, through personal evidence from his conversations with voters, that everybody assumed the Library's concerns about where the property lines would be located would be addressed after the election by way of their ability to know about, participate in and weigh-in on a survey that was "to be done". That was not the case. It is unfortunate that people were led to believe, particularly members of the Library Board, that this was the case. He continued that the whole reason a property maintenance agreement is being discussed is because of the fact that the Library is not being offered the opportunity to keep any part of property that the Library had used as its own. That is why this agreement has to be "tight as a drum" in order for the Board of Trustees to consider it. The Trustees need to know that there is sufficient protection of the Library's interest, and frankly the Town's interest in the Library, with regard to a private property. That is not in any way to reflect on Mr. Philbrick. The issue is protecting the Library and upholding the responsibilities as Trustees. The Trustees have tried to be very active, forthright and involved in the process, but it has just been a struggle.

Mr. Azzi stated that the history did not start on March 4<sup>th</sup>. The history of this deal started several months before. On December 11<sup>th</sup>, Attorney Donovan wrote a letter with a number of comments about this property with an attachment of a sketch plan. Mr. Azzi stated he thinks the original deal depended upon that sketch plan.

Attorney Donovan stated this is not correct. That was a sketch plan of the bank lot.

Mr. Azzi stated that he believes the deal was struck by someone pointing to edges of the concrete walkways leading to the Library and said "let there be a piece of land to be transferred along with the building that goes up to these edges". It was later that the surveyor was given instructions to proceed with a survey to get the actual area contained within those bounds between Olde Parish Road, Washington Road and the two edges of the two walkways leading to the Library. That is when the range of error of the 0.4-acres measurement came into consideration. He asked why the Library Trustees were not involved back in November, December, January, and February.

Referring to the December 11<sup>th</sup> document, Attorney Donovan explained that was a document that he wrote up and provided to Mr. Philbrick as part of the negotiations on the basic agreement to this lot, which outlined what he thought were the zoning and Land Development Regulation constraints on the renovation project that Mr. Philbrick was going to propose for the Parsonage lot. That is a public document and it was attached to the Underwood appraisal. Attorney Donovan explained that the December 11<sup>th</sup> document was a document he wrote responding to the appraiser who asked several questions about zoning. The December 11<sup>th</sup> document was attached to the appraisal report. It was a response to the appraiser's questions about zoning. It had referenced an enclosure. Attorney Donovan noted the enclosure were the zoning notes he had written up, as part of the negotiations with Mr. Philbrick, with regards to the zoning constraints on the Parsonage property. The sketch plan that was referenced was a sketch plan of the TD Bank lot. The appraiser wanted to know how the TD Bank lot could be developed beyond what is just there. Attorney Donovan commented that he had some opinions on that. He did a sketch plan for the TD Bank lot to show how if the bank was torn down it could become two lots. Attorney Donovan pointed out that Mr. Azzi made a Right-to-Know request, about a week ago, for those documents and he was provided with those by Town Administrator Bergeron. He was provided with the sketch plan and the notes that were provided to Mr. Philbrick. All of those documents are public records.

In regards to the Verra Survey, Attorney Donovan stated that was an existing conditions plan and nothing further. It does not include the proposed lot. In order for this to get done by the May 31<sup>st</sup> deadline, James Verra wanted to get out there and get the existing conditions documented, as part of his survey work, as soon as possible. Mr. Verra prepared an existing conditions plan. That is all that that was. It did not show the proposed conveyance.

Chair Winslow closed the public session. He asked the Selectmen to address Selectman Roman's suggestion. He noted that Mr. Philbrick is not acceptable to that and he is the one that has to sign this document so it is almost a moot point.

Vice-Chair Roman stated that she agrees that if one of the signatories does not agree to the change then it can't be made. She agrees it will have to be left as the Selectmen.

Referring to the May 15<sup>th</sup> revised maintenance agreement, Chair Winslow noted that Mr. Philbrick has agreed in part 2, where it says the sidewalk that abuts the parking lot from Olde Parish Road to curve L-21, to add that it would go around all the way to Washington Road, in lieu of it being just 73% of the sidewalk. It would then be 100% of the sidewalk. The other suggestion was that the issue of the snow removal and the lighting be looked at, which are details that need to be worked out. He asked the Selectmen if there is a motion to accept the maintenance agreement as written with the changes as discussed.

Selectman Epperson stated that he does not think they have resolved the acknowledgement of receipt by the Trustees.

Chair Winslow stated this is something Attorney Donovan had suggested. It wouldn't put the Chair of the Library Trustees in a position of being something he agrees with, but it would acknowledge the fact that this is the proposed maintenance plan that was agreed to. Speaking to Vice-Chair Roman, he asked her thoughts about the acknowledgement. He commented that if it is beneficial to the Library, he would certainly agree to do it. He does not think this would be a problem with Mr. Philbrick.

Vice-Chair Roman stated she would leave it to the Library and whether they would want an acknowledgement on there that they would sign or whether they are so unhappy with the state of things that

they would not want to sign on to it. She commented that it doesn't matter to her and it does not matter legally. She would leave it up to the Library.

Attorney Donovan stated that if it would make the Library Trustees more comfortable the acknowledgement could be put back on the agreement. If not, then it will be left off. Legally it does not make a difference one way or the other.

Chair Winslow opened to Mr. Ross to address the acknowledgement item.

Mr. Ross deferred to Karen Oliver.

Ms. Oliver stated that the one thing the Selectmen are giving the Library decision making power on is something that does not matter. It does not matter to her.

Attorney Donovan noted there are three lawyers saying it doesn't make any difference so it should just be left off.

**Motion by Phil Winslow to accept the maintenance agreement as written, revised May 15<sup>th</sup>, with the changes that it will go along the sidewalk from Olde Parish all the way around to Washington, and the snow removal and lighting issues will be addressed at a different time. Seconded by Bill Epperson. Roll Call Vote: Bill Epperson – Aye; Keriann Roman – Aye; Phil Winslow – Aye**  
**Motion passed.**

Mr. Ross stated that he appreciates that the Library has been involved, to the extent that they have been, in trying to redraft the agreement. He would like the Selectmen and Mr. Philbrick to know that as the Library Trustee Chair, he is going to carry that forward in good faith to his board; at which time, they will have a conversation about it. He apologizes that the property line issue started to become central to the conversation, as that was not the purpose of this meeting; however, it is a question that the Library asked in several different ways at several different times. The Library had always wanted to discuss this in order to gain information about how that whole situation had unfolded. He thinks this meeting gave a lot of good information about that and allows the Trustees to better understand why they are in the position they're in.

Mr. Philbrick stated that from the very beginning, the whole intention here was to do something good for the Town. He does not want that to get lost. The intention was to take his vision and do something appropriate with the Parsonage that would enhance the Library, while also helping out the Town. As far as he is concerned, everything that has been done to this point has been forthright and above board. He certainly does not have any special documents and there have not been any special deals for this landscaping. The landscaping really has nothing to do with the contract that has already been signed. This is all in spirit with working with the Library. In that same spirit, he does not think they have to consider this the final chapter. He is still open to whatever is right for the Library going forward. If the Library decides they want to buy the Parsonage property, he still thinks it's important for the swap to happen because it is important for the Town Hall solution and important for the Town to own that 4-acres. There may be an opportunity or some other way that the Library wants to participate in the Parsonage lot or they may want to own the whole Parsonage lot. Mr. Philbrick noted that he is not committing to something; however, if there is something that works better for the Library, it is important for everyone to get it right for the Town. That is what really matters. He does not have any question about anyone's integrity in working for the best interests of this town. He thinks everyone in this meeting cares what happens in the Town of Rye. If there is a better vision, he would like to talk about it. He reiterated that moving forward with the swap makes perfect sense because

without doing it, the whole cause of the swap does not advance and there has been a lot of work to get to this point. He appreciates everyone's cooperation in getting here, but there is more that they can talk about. Just because the swap happens does not mean everyone cannot work together to come up with the best result. The Library is one of the Town's biggest assets and everyone has to get this right. He commented that he is open to any of those conversations.

Selectman Epperson stated the only person who pre-dates him in Rye is Mr. Philbrick, as he was born here. Selectman Epperson stated he lives in Rye because he chose to live here, not because he was born here. He stationed here a long, long time ago, while in the Air Force, and always wanted to come back to Rye. He has been here for forty some odd years and has seen how things have either worked or not worked. In the last five years or so, there have been some very significant opportunities to move the Town's agenda forward. He thinks the transparency that they are trying to show filters out into the community and hopefully, endears trust in everybody. To Karen Oliver's point about the Selectmen not caring about the Library, he is not carrying water for the Library and is not carrying water for Dan Philbrick; however, he is carrying water for the Town. The position of the Selectmen is to do what they think is appropriate with a fiduciary responsibility for the Town of Rye. He thinks that is where they are trying to go. He continued that this is not a personal thing. This is something that needs to be addressed in some way without destroying relationships with one another.

Chair Winslow thanked everyone for attending.

#### **IV. OTHER BUSINESS**

The Selectmen discussed the possible re-opening of the beaches with Police Chief Kevin Walsh and Fire Chief Mark Cotreau.

Chair Winslow noted that the Governor wants to make a decision on reopening the beaches. He will only make the decision to reopen if Hampton, North Hampton, New Castle, Seabrook and Rye are in agreement. Senator Tom Sherman would like the Selectmen to review the proposal for re-opening, make changes and get it back to him by Thursday so he can get it back to the Governor's office.

Police Chief Kevin Walsh gave the Selectmen an update in regards to his phone conversation with Phil Bryce, Director of State Parks. Director Bryce is looking for support from the towns based on the outline that he has drafted to open the beaches. There will be some partnership that will need to happen with the seacoast towns. With regards to Jenness State Beach opening, Director Bryce is counting on being close to full staff with enough staff to manage the bathhouses, while the lifeguards control the social distancing on the beach. The biggest concern is the paid parking that is in that immediate area. Chief Walsh noted that Mrs. Leary, (owner of Dunes Motel), agrees with social distancing in her back parking lot and not having it used at its maximum. This is much like the plan the State and the Town has to reduce the parking, so when the beaches open, the number of people on the beach at the same time would be reduced, due to limited parking. Chief Walsh commented that he has not had a chance to speak with the owners of the Carriage House and that is the only other paid for parking lot at the beaches.

There was discussion with regards to Chief Walsh's request to close all on-street parking in the Town of Rye.

Chair Winslow asked if they should restrict on-street parking to all non-stickered parking. He pointed out that a family, with a small restricted driveway, could have an out of town family member visiting with no place to park. They could have one of their cars parked on the street to resolve this issue.

Chief Walsh pointed out that a lot of times when families have those issues, they will let the Police Department know. When they get the ticket, they can appeal the ticket. The department has been very accommodating for situations such as this. He pointed out that the goal is to reduce the amount of people at any one time on the beach. It is important to manage and control it from the beginning. He noted that he will keep the Town Administrator informed of how things are going, which can be communicated to the Selectmen. If it is felt that things are flowing well, those restrictions can be opened up. He likes to have things “black and white” in the beginning with the maximum restrictions and then it can be eased back, in order to allow things to fall into place.

The Selectmen agreed with Chief Walsh’s request to restrict on-street parking. Permit parking will be allowed where it is applicable and no parking in all other areas.

**Motion by Keriann Roman to amend the temporary parking ordinance in effect currently to include no parking on any road in Rye, until the Governor lifts the parking restrictions or on a temporary basis. Seconded by Bill Epperson.**

**Roll Call Vote: Bill Epperson – Aye; Keriann Roman – Aye; Phil Winslow – Aye**

**Motion passed.**

Chair Winslow noted that they will have to find a way over the next two weeks to effectively communicate these decisions, restrictions, parking constraints and the rules as far as the beach is concerned.

The Selectmen reviewed the State’s proposal for opening the beaches.

Parking:

- No parking on Route 1A and 1B along the Seacoast, except as is provided for parking at Hampton Beach.
- All parking, town, state and private, maintained at 50% capacity.
- Business and beach employees at all state and town beach parks are not counted against capacity limits.
- Capacity limits in all lots to be adjusted on a regular basis.
- Recommended: All streets owned by towns and access points for Route 1A and 1B be resident parking only. (Rye Selectmen are proposing there be no parking in those areas for Rye.)
- No drop-offs along 1A for beach access. (It was noted that this is going to create enforcement issues for the Rye Officers. State Police will be working with the towns to control this situation.)
- Include permit parking on Sawyer’s Beach. (The Selectmen agreed with permit parking on Sawyer’s Beach and in permitted areas.)

It was noted that there will be approximately 132 permit parking spaces available.

Traffic and Parking Communications Plan:

- Signage and media - Facebook, website and resident notices

Businesses along Route 1A:

Fire Chief Cotreau stated that the Department of Public Works, Building Department, Police Department, Fire Department and Dr. Snow drafted a plan for businesses, in accordance with the 2.0 recommendations. If a business already has outside seating and are going to be doing what they are already licensed to do, a copy of the recommendations will be dropped off and spot checks will be made; however, there will be no application process. For other restaurants that are opening with an additional outdoor area, they will need to fill out an application for a temporary permit, which will be held with the Fire Department. All businesses will need to follow the 2.0 recommendations, in order to maintain a safe process for opening. There are about 15 businesses defined as restaurants in Rye. The Fire Department will keep working with these businesses to help them get back open, while following the recommended guidelines.

Seacoast Beach Sand Plan:

- People on the beach must be walking, jogging, swimming or surfing. Cannot be sitting or gathering on the beach.

Chair Winslow requested that the Selectmen review the State's proposal and get any changes back to Town Administrator Bergeron to be submitted to Senator Sherman. He noted that the proposed date to open the beaches is June 1<sup>st</sup>.

**ADJOURNMENT**

**Motion by Bill Epperson to adjourn at 12:01 p.m. Seconded by Keriann Roman.  
Roll Call Vote: Bill Epperson – Aye; Keriann Roman – Aye; Phil Winslow – Aye  
Motion passed.**

Respectfully Submitted,  
Dyana F. Ledger