

**TOWN OF RYE – BOARD OF SELECTMEN**  
**Friday, September 25, 2020**  
**3:00 p.m. – Via Zoom**

*Present: Chair Phil Winslow, Selectman Bill Epperson and Selectman Mae Bradshaw*

*Others Present: Town Administrator Becky Bergeron, and Recreation Director, Lee Arthur*

*Rye Soccer Association Representative Leif Honda and Stephen King*

**I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Chair Winslow called the meeting to order at 3:08 p.m. and led the Pledge of Allegiance.

**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: 987456 or by clicking on the following website address: [www.zoom.com](https://www.zoom.com) ID #857-3624-1258.

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:

- Phil Winslow
- Bill Epperson

*Note: The Selectmen stated where they were located and confirmed that they were the only ones in the room for the meeting.*

## **II. TOWN RECREATION FIELD USAGE**

**Recreation Director Lee Arthur** led the discussion with a short background update. She explained that shortly after the beginning of the pandemic, Primex sent out a legal and HR bulletin regarding ‘Private Business Use of Public Premises’ during a pandemic. She then forwarded the recreation field use form to Primex for review. Following their recommendations, she has updated the field use form. What has been encountered is that groups using the fields, up to now, have had pre-pandemic insurance policies, so there were no exclusions within those policies. They met all the requirements and were vetted through Primex. Since the pandemic, the new policies will most likely have exclusions. Rye Soccer Association is the first such entity that has run into the problem of not being able to provide the insurance information that is required by the Town. Ms. Arthur pointed out that this is leading to a much larger problem. It is not just the Rye Soccer Association there are numerous events in town.

**Town Administrator Becky Bergeron** agreed with Ms. Arthur. She added that whatever is decided today will become part of a larger picture, on how the Town grants permission for events to happen in Rye on any town owned property. She stressed that there needs to be one unified response, regardless of who is in control of the property, when it comes to insurance requirements for applications of permitted use. It has to be consistent.

Administrator Bergeron went on to say that she has been in contact with Mike Ricker at Primex. He has stated that if an organization using town owned property has insurance coverage that excludes coverage of virus and pandemic, the Town’s insurance will be primary. Primex is not saying that the Town cannot host these events; however, they want all parties and entities to be aware of the assumed liability. The financial input is the increase in the Town’s loss run, which will equate to an increase in the Town’s premiums.

**Tim Barnhorst** spoke to the Board. He noted that he is on the Board of Seacoast Lacrosse. He works in the insurance business insuring ski areas. He pointed out that this is a hot topic and he understands everyone’s concerns. As far as getting a waiver, in the State of New Hampshire it would be tough to have a waiver that is enforceable for a minor. It really hasn’t been tested in the courts yet. The biggest recommendation would be for the Town to abide by local, state and federal guidelines and have controls in place, which is key. The goal is to prevent things from happening and not concentrate on what will happen after someone contracts the disease. Mr. Barnhorst stated that Rye Soccer Association’s protocols are very good. They look at the pre-lost side of the issue and the lost management side.

Selectman Bradshaw pointed out that waivers have to be separately executed in order to be effective. Even if the parent or guardian had received a bold disclosure of what they are waiving, it is questionable. She also pointed out that there has not been a lot of case law on a minor release.

**Rye Soccer Association Representative Leif Honda** stated that he has submitted the plan of their protocols on cleaning and sanitization. This is a living document as it changes for new things, as they are working through what they are learning on the startup. It does outline the things they are doing to prevent transmission. They also have a robust waiver in place that indemnifies the town, schools and the board of director of the properties they use. They are also using a phase in approach. Mr. Honda and Mr. King are

the safety officers and will handle all the communication with the parents. They have a very strict dialog as to the quarantine period, masking policy, number of kids that can pay at one time, and games being shut down.

Tim Barnhorst suggested having a contractual provision, where the event coordinator names the Town of Rye as an additional insured party, to make sure that the coordinator's insurance is primary. He pointed out that the Town of Rye must require liability coverage limits in order to allow events. Mr. Barnhorst stated that for most entities and non-profits, it is cost prohibitive to buy pandemic insurance. A lot of times it is not listed as a pandemic exclusion, but is listed as communicable disease exclusion. If a policy doesn't have it in 2020, he can almost guarantee it will have in 2021.

Chair Winslow clarified that if Rye wants to move forward in allowing these events, the Town will be liable. The liability exposure would be increased in the cost of the Town's insurance policy coverage.

Selectman Epperson pointed out that as long as the Town was following the CDC guidelines properly, there would be protection.

Mr. Barnhorst agreed and added that the burden of proof with the contact trace would be a very difficult battle to prove. A willful disregard for protocols is where there would be trouble. Pre-lost risk management is paramount to keeping the kids safe.

Selectman Bradshaw recommended having a joint meeting with all parties involved, recreation, schools and town, to develop a very comprehensive policy/protocol.

Chair Winslow asked if the Town would be liable if they require the entities to list the local and state and CDC guidelines they will be following and those guidelines are not followed.

Administrator Bergeron stated that if the entity's insurance has an exclusion virus or pandemic coverage, it doesn't matter if negligence is proven because they were never going to cover it anyway.

Mr. Barnhorst stated that the Town of Rye isn't alone in this matter. He reemphasized that the focus should be on the risk management side. He added that he really doesn't think that the risk transfer of insurance can be relied on. The protocols that Mr. Honda has put in place have worked well for Portsmouth, so far, with getting their kids back into athletics. It's a great model. He used that model at the Seacoast Board meeting the other day for lacrosse to open back up.

Chair Winslow said that with everything that Mr. Honda and Lee Arthur has presented, he is inclined to go forward and take the risk; however, this would be setting a precedent with other organizations and he isn't as comfortable with those other organizations. He stated that he would be interested in hearing from NHMA as to how other towns are handling this. He said that he would certainly support Rye Soccer and Rye Lacrosse.

There was further discussion regarding the protocol as written by Mr. Honda.

Chair Winslow asked if the teams were all from Rye schools and who they would be playing.

Mr. Honda noted that ninety-eight percent of the teams are Rye students; however, there are a few from Portsmouth, New Castle, Newington, and Greenland. Mr. Honda also noted that this year they would not be playing teams outside the Seacoast area, which typically they would.

Chair Winslow asked if it was included in the application that Rye Soccer League would not play against teams outside the Seacoast area.

Ms. Arthur asked Mr. Honda to explain the phase-in plan.

Mr. Honda explained that as far as the field use application is concerned, there was nothing that they could not do with that; however, they are airing on the side of caution. They have set up Phases 1 through 4, with 4 being active play. Right now, they are playing in Phase 2, which means they are playing with in-town teams only. Phase 3 is intra-league, which is where they would be able to go outside the area to play other teams. However, from what Mr. Honda has read, their plans don't even come close to what his protocol is, so he is just not going to engage that at this point.

Chair Winslow recommended that if the Board does approve the plan, they restrict it to just Phase 2 at this time. Chair Winslow asked that Mr. Honda come back to the Board if he wants to expand it in the future.

Mr. Honda agreed.

Selectman Epperson pointed out that as far as setting a precedent is concerned, if the Board isn't totally satisfied with an entity's protocols, they have the right to deny them. Approval should be on a case by case basis. Selectman Epperson told Mr. Honda that he has done a great job laying out the plan. He encouraged Mr. Honda to make sure the protocols are followed and that they keep the kids as safe as possible. He added that he supports Mr. Honda's plan.

**Motion by Phil Winslow to approve the Rye Soccer Association's application for participation of activities on Rye Town property through November 1, 2020; contingent upon Mr. Honda informing the Board immediately if there is any exposure and the Seacoast Enrichment Association complying with their written protocol as presented to the Town. Seconded by Mae Bradshaw.**  
**Roll Call Vote: Mae Bradshaw – Aye; Bill Epperson – Aye; Phil Winslow – Aye.**

### **III. OTHER BUSINESS - None**

### **ADJOURNMENT**

**Motion by Bill Epperson to Adjourn at 4:20 p.m. Seconded by Phil Winslow.**  
**Roll Call Vote: Phil Winslow – Aye; Bill Epperson – Aye**  
**Motion passed**

Respectfully Submitted,  
Dyana F. Ledger