

**TOWN OF RYE – PLANNING BOARD  
MEETING**

**Tuesday, November 10, 2020**

**6:00 p.m. – via ZOOM**

***Members Present:* Chair Patricia Losik, Vice-Chair JM Lord, Steve Carter, Jim Finn, Katy Sherman, Alternate Jeffrey Quinn, Alternate Bill Macleod, Alternate Nicole Paul and Selectmen's Rep Bill Epperson**

***Others Present:* Planning/Zoning Administrator Kim Reed, Attorney Michael Donovan (on behalf of the Select Board Members and the Town of Rye), Selectwoman Mae Bradshaw, Selectman Phil Winslow and Eric Maher (on behalf of the Planning Board)**

Chair Losik called the meeting to order at 6:05 p.m.

Statement by Patricia Losik:

As chair of the Rye Planning Board, 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](http://www.zoom.com)  
ID #883 5797 9707 Password: 123456

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 Planning Board 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:

- Katy Sherman
- Steve Carter
- Jim Finn
- Steve Durkin
- Bill Epperson
- JM Lord
- Jeffrey Quinn
- Bill Macleod
- Patricia Losik

**I. Resignation of Tim Durkin**

Chair Losik noted that Tim Durkin has offered his resignation from the Planning Board, effective immediately. Alternate Nicole Paul has agreed to sit on the board as a member until March 2021.

**Motion by JM Lord to seat Nicole Paul for the remainder of Tim Durkin's term. Seconded by Steve Carter.**

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

**Motion passed.**

**II. Approval of meeting minutes**

- October 20, 2020 meeting minutes

**The following corrections were noted:**

- **Page 1, it should be noted that Chair Losik called the meeting to order at 6:05 p.m.**
- **Page 2, it should be noted that under Roll Call: Steve Durkin should read Tim Durkin.**
- **Page 9, 1<sup>st</sup> paragraph, 3<sup>rd</sup> sentence should read: When the system was designed for the special exception, it was known that they were 3,000 gallon per day systems and a sixth leachfield was not needed.**
- **Page 9, 2<sup>nd</sup> paragraph, 1<sup>st</sup> bullet should read: The lights be switched to 12' max.**
- **Page 10, #4, 1<sup>st</sup> line should read: The proposed use will not cause a significant reduction in the long-term volume of water contained in the aquifer or in the storage capacity of the aquifer.**
- **Page 13, 2<sup>nd</sup> paragraph, 2<sup>nd</sup> sentence should read: Mr. Piela stated that in reading the last meeting's minutes, Attorney Donovan said that the leachfield reserve areas are somewhat fictitious, which he agrees with.**

- Page 13, 2<sup>nd</sup> paragraph, 5<sup>th</sup> sentence should read: He appreciates that there was a miscalculation made, but he is still sensitive to this.
- Page 13, 3<sup>rd</sup> paragraph, 2<sup>nd</sup> to last sentence should read: Mr. McGonagle stated that in his opinion, this is an abomination to the profession of civil engineering.
- Page 13, 2<sup>nd</sup> paragraph, last sentence should read: They should be available for utilization ahead of the site of the previously located leachfield #6.
- Page 21, last sentence should read: They can look at the table that converts lumens to wattage, but there are various bulbs being used.

**Motion by JM Lord to approve the minutes of October 20, 2020 as amended. Seconded by Katy Sherman.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson – Yes; Patricia Losik – Yes**

**Motion passed**

**Motion by JM Lord to continue the application of Jak Nadeau Revocable Trust to the December 8, 2020 meeting. Seconded by Katy Sherman.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson – Yes; Patricia Losik – Yes**

**Motion passed.**

### **III. Public Hearings on Applications if they are complete and/or have been continued:**

- a. **Minor subdivision by the Town of Rye for property owned and located at 575 Washington Road, Tax Map 12, Lot 43, to subdivide the 1.96-acre parcel into two lots of 0.407 acres and 1.56 acres in size, respectively. The proposal is shown on a plan titled “Minor Subdivision, Tax Map 12, Lots 43 and 12, 575 Washington Rd, Rye, NH, Plan C” date of October 2, 2020 by James Verra and Associates, Inc. Property is in the Business District, Historic District and Aquifer/Wellhead District. Case #09-2020.**

Chair Losik stated that all parties are to be applauded for the overwhelming participation in solving this matter. Everyone is here tonight for the public hearing. While clearly the planning board members have personal views on this matter, as do so many others, she sincerely thanks everyone for sharing their thoughts over the last few weeks. She assures everyone that the Board has read everything. She would like to be very clear, tonight the planning board members are solely attending to the request for subdivision approval on this lot, subdividing one piece of land into two. The Board recognizes there are ancillary matters which do not impact the Planning Board. Therefore, tonight’s discussion will be limited to the subdivision of this lot, which is shown on Plan C. She noted that when there is discussion about Plan C or its attributes, this is talking about pages 1 through 3 of the plan. The Board will be talking about attributes such as, lot lines, the notes (#11 regarding the 3’ sidewalk maintenance and lighting easement. #12 regarding the septic easement for under the parking lot. #14 regarding the relocation of the driveway from Washington Road to Olde Parish Road.) She reiterated that the determination

tonight is on the application which allows the Town to subdivide its own property. During the public hearing, she is going to ask to hear from the applicant first. Board members and board alternates may ask questions. It will then be opened to the public in order to hear the public's interest. Questions from the public will be addressed first. The hearing will then move on to statements from the public against the application and then statements in favor. Follow up remarks from the applicant will be heard, along with any lagging public comments, before the public hearing is closed. The Board respects that this is an important issue to everybody, but again, they will not be talking about the ancillary matters.

Chair Losik turned the presentation over to Attorney Donovan.

**Attorney Michael Donovan, Town Counsel for Rye**, introduced Surveyor James Verra, who prepared the plans, and select board members Phil Winslow and Mae Bradshaw. He stated that the applicant here is the Town of Rye, not the select board. The Town voted in March by Articles 7 and 8, to sever off 0.4 acres from a larger 1.96-acre parcel to swap at par for the former bank building. Somebody has to get that done. That duty falls on the Select Board, under their duty to manage the prudential affairs of the Town, which is a statutory duty RSA 41:8. As Town Counsel, it is his duty to assist the Select Board with carrying out the will of the town voters. He reiterated that the applicant is the Town, not the Board of Selectmen.

Attorney Donovan noted that there is plenty of information before the Board about why the swap is hopefully going to be done. He would like to summarize the three main reasons. 1) To allow some town offices to be relocated from the overcrowded town hall to the former bank building. This has become especially critical in the last six or seven months with the Covid-19 pandemic. The spaces in town hall are just too close to safely protect the Town's employees and the people who interact with them from risks of the pandemic. This will allow some of the town offices to spread out at proper distances and have many other efficiencies beyond what exists now. 2) The second objective is to therefore allow the second floor of the Town Hall to be restored to its former historic grandeur as a meeting space. 3) To rid the Town of the financial and public safety burdens of a large, old, deteriorating building in the middle of the town center.

Referring to the subdivision application, Attorney Donovan pointed out that before the Board are sheets 1 and 2, which have been slightly revised from what was before the Board on October 20<sup>th</sup>. What was the 8.5' landscaping, lighting and maintenance easement, parallel to the sidewalk, has been replaced with a sidewalk, maintenance and easement that is 3' wide. This is indicated on Note 11 on Sheet 1. Also, Note #14 has been added to Sheet 1. This note indicates that the driveway on Washington Road will be discontinued and relocated off Olde Parish Road. A driveway permit will be required and there is a waiver request pending, which will be discussed at this meeting. Attorney Donovan noted that a new color-coded sheet has been provided (Sheet 3), which some board members wanted for a better display of the proposal.

Planning Administrator Reed presented the plan on the screen for review showing Sheet 3.

Referring to the plan, Attorney Donovan explained that the boundary of the parcel is marked in red. The purple outlines the larger parcel from which the 0.4 acres is proposed to be severed. The boundary at the corner of Olde Parish Road and Washington Road runs roughly 90' to the

edge of the sidewalk that parallels the parking lot. It then runs down the easterly edge of the sidewalk, around the edge of the sidewalk and to the sidewalk that goes out to Washington Road. It then runs out to Washington Road and intersects the sidewalk in that location. From there, it runs up the westerly edge of the sidewalk on Washington Road back to the corner of Olde Parish Road and Washington Road. There is a septic system easement shown by a green-dashed line, which lies under the parking lot. It is a chambered septic system approved in the late 90's for the eight dwelling units that were part of the Parsonage housing project for twenty years. The understanding with Mr. Philbrick, who is the other party to the swap, is that the deed that conveys the property to him will grant an easement to use that leachfield. The maintenance and repair costs of that leachfield will be shared by him and the Rye Historical Society Museum, based on water consumption. Any repairs that need to be made must be approved by the Town.

Attorney Donovan continued that the second easement is the 3' easement that parallels the sidewalk. He noted that he has previously provided the Board with the language of the easement. That easement will be reserved in the deed conveying the Parsonage. In other words, it is reserved by the Grantor, which is the Town. The Town would reserve this sidewalk maintenance and lighting easement over the 3' area. Within that easement, the Town, acting through the Library Trustees, would have the authority to enter the land for the purpose of maintain and repairing the sidewalk. They would have the authority to place snow removed from the sidewalk in that area. At this time, public works plows the library parking lot but the library staff take care of the sidewalk. This would allow them to push the snow into that area, provided that they use green snow removal substances. They would also have the authority to operate, maintain and repair the lighting system that exists as of this day. However, should Mr. Philbrick end up with this property, he intends to replace the lighting with lighting that is more in keeping with the historic district. At that time, he would own the lighting, would be responsible for its maintenance, repair and operations and would be paying the electric bill. He would be able to put in additional lighting along the Washington Road sidewalk, as there is no lighting now. However, the Town would retain the authority to dictate what time those lights are on, which would presumably be done through the Library Trustees so they would not be losing control over the hours of operation of those lights.

Attorney Donovan stated there is one other condition of approval which has been requested and supplied to the Board in writing; *"The applicant shall prepare a plan sheet for recording purposes, which meets the recording standards of the Rockingham County Registry of Deeds, to be signed by the Planning Board Chair and then recorded."* He noted that Sheets 2 and 3 are drawings that have too much extraneous information on them, when the purpose of a subdivision plat is to show the new lot lines and any easement lines. He is requesting that a subsequent plan be prepared, signed by the chair and filed showing the lot lines and easements.

Attorney Donovan stated there is also a waiver request pending, relative to the driveway. The waiver request is from Land Development Regulations (LDR) Section 202-6.2.B(7) to allow the relocated driveway to be within 100' of the Olde Parish Road/Washington Road intersection. This would make the lot conform to the LDR requirement that driveways be on a lesser travelled street, which is a more important traffic safety consideration than the 100' separation requirement. Having the driveway off Olde Parish Road and getting the well-travelled Washington Road to have one less driveway, which would have six or seven parking spaces with

cars going in and out, is a much preferable condition. The rationale he would suggest the Board adopt in granting that waiver request is *"specific circumstances relative to the subdivision and conditions of the land indicate that the waiver will properly carry out the spirit and intent of the subdivision regulations"*.

In closing, Attorney Donovan noted that the application has been before the Board, in one form or another, for the last six months. He and the Select Board appreciate the Board's patience and tolerance in dealing with the situation. There have been four different renditions in front of the Board, although, this is the first hearing that has been held. He believes it is a straight forward minor two-lot subdivision and he asks that it be approved tonight.

Selectwoman Mae Bradshaw pointed out that the removal of that driveway off of Washington Road will be particularly helpful with the application to revise the walkway and the roadway through the town center because it will permit a continuous sidewalk along that way, which will be safer for the children who commute between the library and the junior high school. That will be an enormous improvement in the direction of what the Town Center Committee is working on.

Selectman Phil Winslow stated that the Select Board has been meeting with Mr. Philbrick and the Library Trustees for the last five plus months to develop a plan that meets all parties' needs. Following multiple failed attempts, there is now the plan that has been presented to the Board tonight. The Select Board believes this plan is in line with Warrant Article 7, which was passed at the March election. He read Warrant Article 7:

To see if the Town will vote to authorize the Selectmen to convey the Parsonage and  $\pm 0.4$  acres to 500 Washington Road, LLC and to acquire in an exchange at par the former TD Bank building and its 3.7 acre parcel pursuant to a Contract for Property Exchange/Swap signed by the Selectmen and Daniel Philbrick, AND FURTHER, to authorize the Selectmen to grant a septic system easement to 500 Washington Road, LLC as set forth in said Contract.

Selectman Winslow explained that unfortunately, they could not get a solution that totally met the needs of the Library. They attempted over five months to do so and this is the best that could be brought forward. The Select Board believes it offers the Library some substantive benefits; i.e. 75' of no-build on the south end of that lot. He pointed out that is actually 40% of the land that Mr. Philbrick is going to acquire. There is no requirement for Mr. Philbrick to do this, but in order to support the Library he is offering a no-build zone and also to build a park in that area to enhance the entrance to the Library.

Attorney Donovan noted that the 75' restriction would also be a covenant in the deed itself. Should the conveyance go forward, the deed is going to cover the right of the new owner to use the septic system, retention by the Town for the sidewalk lighting and maintenance easement, and the restriction on the lower 75'.

Chair Losik opened to the Board for questions.

Referring to the lighting easement, Alternate Quinn stated that it sounds to him that eventually the lighting would be changed according to Mr. Philbrick's prescription. He would be responsible for changing those lights, their operation and maintenance. Alternate Quinn asked why this would be called a lighting easement if Mr. Philbrick is responsible for the operation of those lights. He asked why an easement would be necessary at all. He continued that he understands the length of the easement, but is unclear as to when it hits the radius going up towards Washington Road and whether that is included also. He asked if it is 3' all the way to the sidewalk abutting Washington Road. He asked if the oval (shown on the plan), next to the easement, is the planting bed for the arborvitae.

Attorney Donovan replied the oval is the planting bed. He pointed out that the easement runs along the entire sidewalk, including the curve, and out to Washington Road. (Shown on the plan as a red line.) In regards to the question about the easement, Attorney Donovan explained that Mr. Philbrick has the right to not replace the lighting. Until it is replaced, the Library Trustees have the right to operate and repair the lighting, just as it is now. When the new lighting goes in, the Town is not retaining the lighting in that respect, but the wording in the last part of the easement gives the Town the right to dictate the operation of the lighting. It will still be an easement in that respect. The Town will have the easement right to dictate the hours of operation for the lighting.

Referring to the arborvitae bed, Alternate Quinn asked if any portion of that is in the easement.

Attorney Donovan replied it is outside the easement.

Referring to the waiver request, Alternate Quinn stated it is certainly a difficult problem and he understands the rationale; however, this is offering another entry into an intersection which is busy enough with cars moving in and out of the parking lot, the in and out that goes to the public safety building, along with the realty group across the street, and the traffic that goes north and south on Washington Road. It's a very congested area by its own right. Putting a driveway closer to that corner, just adds another factor of movement. He wants to make sure everyone is on the same page and understands what that could do. He wonders if there is any way to cut into the sidewalk, so the driveway to the library acts as a portion of the driveway to this new property. Vehicles would enter to the back of the property. Would that be a way to give useful traffic movement and parking to the new lot, while alleviating some of the congestion at the intersection?

Attorney Donovan commented that it is certainly a different scheme. However, given the difficulties the Select Board have had with dealing with the Trustees over three leased parking spaces at the end, it seems like it is something that would be strongly resisted by the Library Trustees. Attorney Donovan pointed out that he has a degree in traffic engineering. It might be a safer arrangement, but the practical difficulties of working through the Trustees would probably take forever and may not be successful.

Speaking to Attorney Donovan, Alternate Quinn asked if he has any caution.

Attorney Donovan stated he thinks the board members have to balance the traffic risks of the two situations; leaving the driveway on Washington Road or putting a new one on Olde Parish Road. He pointed out that at Olde Parish Road there is a crosswalk. Pedestrians have the right of way at a crosswalk. There is no such right of way at a driveway. There is no sidewalk on Olde Parish Road, so there shouldn't be a lot of pedestrian activity. He thinks it's a balancing of safety issues. He thinks the safer solution would be to relocate the driveway to Olde Parish Road. This is his opinion as a former planner.

Speaking to Alternate Quinn, Chair Losik stated that she would like to remind him about the information that came from the charette that was done on the town center. There is a diagram that shows the raised crosswalk all the way from the junior high to the corner of Central and Washington Road. In the comments regarding streetscapes and traffic calming, sidewalks on the west side of Washington Road connecting the middle school to the library and then across to Town Hall, making the sidewalks along the street a nice visual enhancement to compliment the historic setting, were two key components. She continued there has been discussion about the charette and the Town Center Committee has been working on it. Back to Selectwoman Bradshaw's point, she thinks that enhancing the consistency for the sidewalk all the way through to the Library is a significant gain.

Alternate Quinn commented it just gives him pause to add a new dimension right there.

Selectwoman Bradshaw stated they should also remember that Police Chief Walsh reviewed this and gave an okay on it. The Police Chief and Fire Chief both agreed it was a much safer approach, rather than coming out onto Washington Road.

Member Sherman stated there has been a lot of talk about the library expansion. She asked if what is being approved tonight will prevent the Library from expanding.

Attorney Donovan explained it will not prevent the expansion that is in the works now, as he understands it. The board members saw at the site walk the two blue stakes that were planted close to the sidewalk. That is his understanding of what the Library has in mind right now. As opposed to the Lot A and Lot B schemes that created two lots, the Library would have bought half the 0.4 acres closest to the present library for \$250,000. He thinks there were some members of the Library Trustees that thought this would be used for future expansion. Certainly, the 0.4 acres going to private ownership would prevent that land from being used by the Library.

Member Finn asked how many feet the proposed driveway is from the corner.

Attorney Donovan explained they do not have the exact layout because that would come with the driveway permit.

Selectwoman Bradshaw stated that the Library Trustees were asked by the Town Center Committee if they had interest in the Parsonage back on October 1<sup>st</sup>. Library Trustee Azzi said absolutely not. He indicated that he was checking with the Trustees again and that was an absolute not. She continued that before anything was entered into as a final contract, the Library was consulted about whether they would ever want the Parsonage. They said very distinctly no.



She believes the stakes where they are placed is what has been talked about from the get-go by the Trustees as to the extent of the expansion they were looking at. This plan actually enhances their expansion plan as it has been presented and talked about over the years since they had their strategic planning sessions. It opens up a whole 75' x 90' in front of where they would be putting their extension. In fact, it is a great enhancement of the plans as they developed them to date.

Attorney Donovan pointed out that he has scaled off the drawing, in order to answer Member Finn's question. Referring to the existing parking lot shown on the plan, he pointed out that the plan shows eight parking spaces that exist on the Parsonage lot. He commented there are actually nine paved parking spaces because there is a handicap space near the larger building. The driveway regulations require a driveway to be 20' wide at the street. If the driveway was centered on the existing parking, it would be 25' to the crosswalk. He pointed out that under Mr. Philbrick's scheme, the parking is going to be slid a bit to the west. The easterly edge of the driveway would end up being between 25' and 28' from the crosswalk.

Chair Losik stated that one of her questions was about the 3' sidewalk maintenance and lighting easement area and whether it could be shown on Sheet 3 (the colored plan). She thinks the response was it's tight because it's running right up against what was the 8' landscape easement. She thinks it would be a good idea to have a representation on the plans, even if the landscaping ellipse was removed.

Attorney Donovan explained that for recording purposes, Jim Verra's plan was to have a sheet at a larger scale that would allow this to be better depicted.

**James Verra, James Verra and Associates**, stated that as far as recording this plan, this subdivision is going to require two sheets. Sheet 1 as it is and Sheet 2 with a lot less detail. On Sheet 1, he will prepare detail on a larger scale to show the 3' easement. He noted that in one of the earlier proposals, detail was shown for the 8' easement. He reiterated that for the subdivision recording plan there will be details of that easement shown on Sheet 1.

Chair Losik clarified that they could reflect that the 3' sidewalk maintenance and lighting easement area as detailed on Plan C page 1 of 3.

Mr. Verra confirmed it will be on Sheet 1 of the recording subdivision plan.

Attorney Donovan corrected it will be Sheet 1 of 2 of the plot plan for recording.

Chair Losik stated the second question she has is in regards to the trees and landscaped buffer. She understood that Mr. Philbrick is receptive to keeping the seven deciduous trees planted in the late 90's along Lot 1's western boundary.

Attorney Donovan replied Mr. Philbrick is amenable to retaining the healthy ones. He noted that the photo shows a healthy one and an unhealthy one. He reiterated that Mr. Philbrick is amenable to retaining and maintaining the healthy deciduous trees along the sidewalk. He commented that this could be a condition of approval if the Board would like.

Speaking to the Board, Chair Losik stated that she has measured this off. Clearly, the lighting is within the 3' easement. All of the plantings, except for the plantings that have encroached into the 3' easement, are outside of the 3' easement. Speaking to Attorney Donovan, she asked if it is four of the remaining mature deciduous trees that will be retained and maintained if healthy.

Referring to Sheet 2 on the screen, Attorney Donovan pointed out a deciduous tree on Olde Parish Road by the overhead wire. He pointed out the one on Washington Road on the corner. He explained that Mr. Philbrick wants to have at least two deciduous trees planted on each side of the new driveway. If these (existing trees) are healthy, he would maintain them and put two more in. If they are not healthy, he would get rid of the ones that are not healthy and put a total of four in; one on each side. Mr. Philbrick thinks the one on Washington Road may not be all that healthy. Attorney Donovan continued that there are also two deciduous trees on the corner near the Parsonage main building. Those trees will go. Mr. Philbrick's vision is to have an attractively landscaped open space that creates a nice scenic view of the Library through that open space for the people on Washington Road. He commented that those two deciduous trees would obstruct that vision, so those will come down.

Chair Losik asked if the Town would be seeking to subdivide the property absent the agreement with Mr. Philbrick.

Attorney Donovan explained that when there were two plans before the Board last month, one of those plans envisioned a subdivision that would give the Selectmen the flexibility to go out and seek bids for both Lot A and Lot B or the two combined. He pointed out that it could not be sold without town approval. However, they would then have numbers to give at town meeting to ask for approval to sell the lot. He thinks that if the latest proposal by Mr. Philbrick had not come forward about a month ago, the Selectmen would still be asking the Board to approve a subdivision.

Selectwoman Bradshaw stated that she agrees with what counsel has said. It's incumbent upon them not to maintain a rapidly deteriorating building that is unsafe and has to be worried about for a variety of liability reasons. She would suggest that they would be moving to sell as quickly as possible, if the transaction with Mr. Philbrick does not go forward.

Selectman Winslow commented that he concurs. The Select Board has a fiduciary responsibility to the Town to handle the Town's money as best as possible. This includes maintaining a low tax rate and delivering quality services to the Town's residents. The Select Board's belief is that the Parsonage building cannot be maintained cost effectively. Should Mr. Philbrick decide not to go forward, the lot is best served to sell. He pointed out that this does not preclude the Library from purchasing it. However, it is the Select Board's responsibility to look for the best possible price on that piece of property. He noted they had an appraisal on the property prior to going into this. The appraisal was based upon the land. The appraiser indicated the fact that there is no value in the actual building itself. It was simply the value of the land.

Referring to the septic easement regarding the use of the system under the parking lot, Chair Losik commented that she believes there was reference to DES approval being required before the use of that system.

Attorney Donovan confirmed.

Chair Losik asked if this would be a condition.

Attorney Donovan replied it could be a written condition, but it is also a condition to the extent that it is right in the notes (Note #12). Attorney Donovan commented that they are hoping the DES approval will come along quickly. The existing system was designed for eight dwelling units and this is only a maximum of five.

Member Sherman stated she is sure another concern people are having are about those last three spots that are going to be allotted to this property. She also read that there will be four spots across the street at the church. She thinks it is important for the public to know that these three spots are going to be returned with four and the 75' no-build easement.

Vice-Chair Lord asked if there is presently a crosswalk between the Library and the church property.

Attorney Donovan confirmed. He noted it is shown on Sheet 2.

**Jeff Ross, Library Board Chair, 333 West Road**, stated that in regards to library expansion and land available for that, the only available land for the Library to expand on would be in that northerly direction onto the walkways and what is being referred to as the "Parsonage lot". The interest of the Library in purchasing half of the Parsonage lot, which fell apart unfortunately, was driven largely by the understanding that if the Town or the Library doesn't hang on to that property, the Library will become landlocked. There might be room for one expansion perhaps that is staked out, but the Library can never go anywhere else. It cannot go in the other direction because there is a road and a ravine. That was the reason the Library was interested in that property. The other reason was to create an open space for the Library's use for all the patrons and create a public space, as opposed to private. He commented that the statement that the Library did not want the Parsonage is not accurate. The Library has said, or has tried to say, that the Parsonage building because of its configuration, age and disrepair, would not be appropriate for its expansion. Plus, it is too far away from the existing structure already. The Library would be very interested in the land, so that distinction needs to be made. "No" to the building. It should be demolished or moved. He noted that it is absolutely essential for the Library's future and the Library is very interested in the Parsonage land, but not the Parsonage building.

**Attorney Derek Durbin, representing the Library Trustees**, stated that the Trustees submitted a letter on November 6<sup>th</sup> to the Board that he drafted. The letter itself contains his legal opinion and the Trustees' concerns about the proposed subdivision the Board is being asked to approve. He asked that the letter be included as part of the record. He noted that a lot of the issues raised in the letter are larger legal issues that pertain to the Select Board's lack of legal authority to advance the subdivision plan. However, he does not want to get into that and knows the Board is focused more on the technical aspects of the plan. The more important issue to raise is that if the plan is approved and objected to by the Trustees, it will force them to appeal it. Attorney Durbin stated that one issue he would like to highlight, as it directly ties into the merits of the application and the Town's subdivision regulations, is the spirit and intent of the regulations and what they

are designed to promote. All subdivision regulations in any town are designed to promote orderly growth and development. If approved, it's the Trustees' opinion that the plan before the Board tonight would convey rights in the land, which is currently under the custody and control of the Library and has been for over twenty years, and transfer it to a private developer. This would effectively foreclose on the Library's ability to grow and expand upon the property, as contemplated by the warrant articles that placed the land under the Library Trustees' control and custody in the first place, which was in the mid 90's. It is the Library Trustees' opinion that the plan before the Board does not promote orderly growth and development and does not protect the public welfare. For this reason and the other reasons set forth in the letter sent on the Trustees' behalf, the Trustees respectfully ask the Board to deny the application.

Attorney Durbin stated that he knows a new agreement was entered into between the Town and Mr. Philbrick as recently as today and was sent around to the Board late in the afternoon. The Library Trustees have not had an opportunity to review that agreement. As a matter of fairness, he wanted to point that out. He reiterated that if the Board is to approve this, he would ask it be conditioned on no site work being commenced, or the property being conveyed before a certain time, to allow the Library Trustees the opportunity to put some of the legal questions that have been raised before the court. If the plan is approved, the intent is to file an appeal within thirty days.

Attorney Donovan stated that he just heard the Library Trustees threaten to appeal this to court if the Planning Board approves this. It would probably not be appropriate for him to comment on that. As he said in one of the recent communications to the Board, it's not within the purview of the Planning Board to make a decision as to whether the Library Trustees' assertion that the library control statute precludes a subdivision from going forward. It is not the Board's jurisdiction to decide. He noted that he provided the Board with a summary of his legal opinion on that. He does not think the case would have much merit, for the reasons specified in the frequently asked questions document submitted to the Planning Board.

**Attorney Eric Maher, representing the Planning Board,** stated that they heard this assertion that the Planning Board is unable to rule on this matter because of the nature of the Town Meeting approval and whether the Select Board has authority. He does not believe that issue is within the jurisdiction of the Planning Board. It is fairly axiomatic that planning boards don't resolve matters of title. Whether the Board of Selectmen has the requisite legal authority to convey that 0.4 acres to Mr. Philbrick, is an issue for the Board of Selectmen, not the Planning Board. The Planning Board's charge in this case is to review the application for minor subdivision approval, review the Town's land development regulations and zoning ordinance, and determine whether or not the application conforms to those regulations in the zoning ordinance. He does not believe that is a matter for this Board's consideration at this point in time.

Mr. Ross stated that the warrant articles passed in 1997 at special town meetings specifically addressed the Parsonage parcel. The Town voted to retain and not sell and divest the Town of that parcel, in order to provide for future library expansion and other town facilities. Whether or not Article 7 is valid or not, is obviously not before the Planning Board, but those 1997 warrant

articles have to clearly be overridden by Warrant Article 7. The Town's intention after the Library expanded was for the Parsonage parcel to be used for future library expansion.

Attorney Donovan stated that he provided the Planning Board a brief summary of his responses to each of these allegations that Mr. Ross and Attorney Durbin have separately made, which is a public document. He continued that with respect to what Attorney Durbin said, there is a statute that gives the Library Trustees control over the Town property related to the Library, real and personal property. However, that is only property the Town has allocated to the Library. He used a preposterous example that the town voters could vote to close the Library and sell off the library building. The Trustees would not be able to use the control statute to prevent that because the Town has the control over town property. That is the situation here. The town meeting voted to swap the 0.4 acres for the TD Bank building; therefore, that takes care of the issue of whether there is any control here or not. The town meeting giveth and the town meeting taketh away with respect to the library property. In this case, the town meeting has taken away whatever claim the Trustees have under that statute.

Attorney Donovan stated that with respect to the 1997 warrant articles, he also addressed that in his communication to the Planning Board and attached the articles. The articles were clearly related to retaining the Parsonage because folks wanted it for housing. Notwithstanding that, it's fundamental municipal law that one town meeting vote cannot bind a future town meeting vote, unless it's a matter of contract. In terms of matters of policy, the vote to retain the entire 1.96 acres was for town use. That has already been superseded by the subsequent vote a few years later to lease it to The Housing Partnership for twenty years to be used for affordable housing. Affordable housing is clearly not a town use and was contrary to the warrant article these folks are citing. The vote last March to divest of 0.4 acres was contrary. Simply put, the town meeting in 2020 was not bound by whatever the intent of that 1997 warrant article was.

Chair Losik commented that she would like to remind the participants in the public hearing of the Board's instructions at the outset of this meeting. The discussion is about Plan C. The charge of the Planning Board tonight is to determine whether the application for minor subdivision approval meets all of the Town's LDR's and zoning ordinance as it relates to a small subdivision plan, which is shown on three sheets. She knows there are other issues. They may be issues that may be solved in other arenas, but certainly not before the Planning Board. She reiterated that comments should speak to Plan C. If the comment is not to Plan C, the discussion will move on.

**Karen Stewart, 546 Washington Road**, stated that the Rye Town Center Committee, of which she was chair, has been discussed a lot in recent weeks and on this meeting tonight. It is important to say that the Rye Town Center Committee is not doing anything right now. The Committee sunsetted at the end of September and they have been waiting to be extended by the Board of Selectmen, which may happen by the end of this month. There has been discussion at this meeting about the sidewalk improvement and streetscape plan that was before the voters. Approval was received from the town voters to go to the State for funding through the TAP Grant; however, that grant did not take place this year. She has been told that they may not even be able to apply without going back before the Town with a new warrant article. For all intents and purposes, the sidewalk plan is not going anywhere right now.

Ms. Stewart explained that the Town Center Committee was created by the Select Board to create a comprehensive plan for the center of town and was only one year in operation. During that year, the swap came up. She noted that the Town Center Committee was never involved in any conversations that had anything to do with the swap or the fate of the Parsonage. She commented that she will not speak for the whole committee, but there were definitely members who felt that was not just. However, when the Town voted it seemed very clear and that there might be a way forward from there. She continued that it is increasingly evident in the months since the initial agreement with Mr. Philbrick fell apart that this issue has become very murky. Personally, she would appeal to the Planning Board to potentially pause or hold on their approval of this subdivision. It seems there has been a fundamental shift from what the Town voted on. She is concerned frankly that the Select Board is going to lose the confidence of the Town's people by pursuing this in this manner.

**Michael Moody, Library Trustee, 963 Ocean Blvd,** commented that he would like to focus on just a couple of things. The first concern is about the three parking spaces that are being given to Mr. Philbrick. He thinks Attorney Donovan described them as being leased; however, that is not the case. The agreement the Trustees received at 4:00 this afternoon, actually provided some additional information about these three spots that no one has had a chance to review closely. It calls for Mr. Philbrick to have access to these three spots 365 days per year, 24 hours a day and 7 days a week, presumably in perpetuity. He believes the agreement describes it as a license, but it is not. It is a permanent easement. It is an easement that isn't being disclosed fully to the Planning Board. It's a property transfer that wasn't requested or authorized by the town voters last March. He continued that either Attorney Donovan or Mr. Winslow described the 75' area as a park. He wants to be sure that people understand it is not a park. It's Mr. Philbrick's private garden that no one has access to unless Mr. Philbrick allows it. People need to understand it is not space that is going to be open for use by anyone without Mr. Philbrick's, or his successors, permission. While he suspects, based on other work Mr. Philbrick has done, that he will do a nice job of landscaping that area, but Mr. Philbrick is not going to live forever. Also, there is no prohibition from him transferring it to someone else who may not keep it from becoming an eyesore in the middle of town. This is not a park that the Town has any control over whatsoever. It is private property that is being transferred.

Speaking to Mr. Moody, Attorney Donovan stated that if he said "lease" he misspoke. He noted that he and Mr. Moody have talked about those three parking spaces more than either of them wants to remember. He reiterated that he misspoke when he said "lease". It was clearly a "license". He commented that Mr. Philbrick clearly understands the legal distinction between a license and an easement. There is a legal difference between an easement and a license. A license is revocable and Mr. Philbrick understands that.

Chair Losik asked Attorney Donovan if he would like to comment on the deed restriction language on the 75' park and landscaped area.

Attorney Donovan commented that Mr. Moody is right. It will be a privately owned landscaped area. It is not a public park. He noted that Mr. Philbrick has also indicated the willingness to

allow the Library to use it from time to time for some of their functions; although, that is not going to be in the legal document.

**John Loftus, Town Center Committee Member, 108 Straw's Point**, stated that from his perspective, the Town Center Committee should be able to come up with some type of comprehensive plan for the Town before moving in different directions. A representative for the Library spoke to the Town Center Committee about everyone working together on a comprehensive plan, so one entity wasn't doing one thing and one doing another. He thinks this is something that should be taken into account. He has tried to get the Committee to talk about the different buildings in town and how they interrelate. When there is discussion, it opens people's minds to other possibilities. He continued that the Library is probably the most used public building in town. Some ideas of the future should be taken into account. Something that happens tonight, tomorrow or next year, may impact the future development of that piece of property. In regards to the road cut on Olde Parish Road, Mr. Loftus commented that the concern he would have is if two cars pull out of the Parsonage parking lot onto Olde Parish Road, and they can't turn, and a car turns onto Olde Parish and wants to get into the new parking lot that has been created, there could be a problem. He thinks the curb cuts are really close together. He is basing this on his experience as a builder.

**Steve Borne, 431 Wallis Road**, commented that when looking at lot lines, he requests that they talk about the whole entire property. It is shortsighted to just look at a section of a property. The most important thing on that property is the Library and that needs to be discussed first. What does the Library want to do, what are their plans and what are their needs for expansion? The Library is the most important building in town. If there is anything in this town that should be a priority, it should be what happens with the Library, their plans, what do they need for space and what needs to be done? The first thing the Planning Board should do is look at the whole lot, what does the Library need and then start to consider lot line adjustments. Last August, the Library with a consultant met with the Select Board and asked if they could plan together. That did not happen. He pointed out that he sent that recording to the Planning Board. He hopes that the Board looked at that PowerPoint and listened to the presentation about how important it is for the Town to plan and work together. He implores the Planning Board to try to work together as one unit and plan together to do what's best for all of the Town. He continued that Attorney Donovan said that he is working for the vote of the Town. It can't be left out that the Town did not know the lot lines and where they were going to be when that was voted for. The Town voted for the remodeling of the Parsonage. It is directly tied to that contract, which said "remodeling" and that is not true anymore. It was highly pushed that it was free and at no cost. It has cost the Town a lot of money and continues to cost a lot of money. That is not what people voted for. They voted for a free no cost swap and that is not what it is anymore. That is another reason to stop this, take a step back and plan together. Also, the attorney said that if the Town voted to close the Library and sold it, the Town would get the property back, which is incorrect. If the Town were to get rid of the Library the property would go back to the Rands. It does not go back to the Town if that building ceases to be a library. He hopes the Planning Board looks at the whole property and really understand the needs of the Library before boxing them into a corner they may never recover from.

Chair Losik stated she takes exception to the comment that the Planning Board is not involved in planning. She and the rest of the Board spend an enormous number of hours on zoning ordinances, Land Development Regulations and the Master Plan. The Planning Board went through an exhaustive rewrite of the Land Development Regulations, under the direction of Steve Carter, last year and they were approved. The Master Plan has been updated recently; again, that was a year plus of work. She continued that every year that she has been on the Planning Board, they have spent from June/July to the following January working to amend, rewrite and bring changes through the ordinances. To say that there is not planning is absolutely not correct.

Mr. Borne explained that when he says "planning" he means town facility and building planning. That is what he is referring to. He would also love to see the Town invest in planning leadership because the board's do too much. The Town needs to invest in professional planning year-round. There is too much going on for the zoning, planning board and town employees to address. The Town really desperately needs to invest in more planning support.

Chair Losik stated that she agrees the Town has significant complexities. She knows that people want the Board to be more than they are tonight. Right now, this is a Board that is driven to look and look and look again at Plan C; the three pages and the attended attributes of Plan C. It is merely the Board's job to allow the Town to subdivide the town property. That is what has been before the Board on this parcel. There is nothing else the Board can do, other than to consider the +/- 0.4 acres subdivided off Lot 1.

Chair Losik pointed out that Mr. Ross made a comment that the Library can never go in another direction because of the ravine and the road. When the Board was on the site walk, they observed the back area. She would like to have Mr. Verra to comment.

Mr. Verra noted that he will comment as a non-civil engineer. The land area is available for expansion, but it does drop-off which adds cost to the expansion. Area wise, there is land in the back to the rear of the most recent addition.

**John Mitchell, 562 Washington Road**, pointed out that his home is across the street from the property being discussed tonight. He commented that he fully understands the intent of the Planning Board's review this evening. It is difficult for him to accept that a decision as big as this would try to be made within a "vacuum". Regardless of everything going on around this issue, he really feels that the Board needs to take all this opposition, discussion and debate into consideration when making a decision. As an abutter, he and his wife feel like they have had a complete lack of any kind of information. There have been last minute decisions and things keep popping up out of nowhere. He stated that they are not opposed to Dan Philbrick developing that piece of property. In fact, they are very excited about what is happening and how dynamic the discussions have been about the town center. It is really building the heart of the Town and building a community. However, he has a problem with handing over so much of the heart of the town to a private citizen. A line was crossed when the discussions started about giving over parking spots. If it is decided that this property requires permanently giving over parking spaces from the town parking lot, what does that do to the future of the center of town? This is not just talking about right now, but about ten, twenty and fifty years from now. He feels that the



Planning Board really needs to do more than just say “we are operating in a vacuum this evening and only looking at the subdivision of this piece of property”. There are way too many other issues swirling around this thing. As an abutter, he feels he needs to say something about what is going on.

Speaking to Mr. Mitchell, Chair Losik reiterated that the Planning Board has one request before it. She is not going to comment as to whether the discussion about the application of municipal resources is important. This is not the forum.

Mr. Mitchell commented that he is not against the development. He does not feel like the Planning Board should be making decisions in a vacuum.

**Keriann Roman, former selectman, 33 Locke Road**, stated a lot of this is rehashing the vote itself. She pointed out that there were quite a few voters who were against it; however, the vote did pass. She continued that she was one of the selectmen, and for a while “the selectman”, who was directly working with the Library and Mr. Philbrick to try and work this out. She thinks it is important, given what has been said and for the Planning Board to understand, that it was very clear for the vote itself, and afterwards, that this was a 0.4-acre lot. At the listening session held in March at the TD Bank, the Library rightfully expressed concern about their landscape buffer; particularly, the one along the parking lot. During that listening session, either Mr. Philbrick or herself suggested that an easement could be worked out to protect the landscape buffer. There was no discussion of land for the Library. There was no discussion of an expansion onto the Parsonage parcel or a public park. After the vote, she walked that boundary with Jeff Ross and Victor Azzi. Quite a bit of time was spent out there on the Parsonage parcel walking the boundary and looking at the trees. The point was to discuss the landscape easement. At the time, she thinks the three of them were hoping and working towards a larger easement. For reasons Mr. Philbrick could not get behind, that was not aggregable to him and that is when things started to breakdown. She thinks it is important for the Planning Board and the public to understand that is where this all started. It was never an issue about giving the Library property to expand upon or to have a public park. It was to preserve that easement. As she understands the new plan tonight is very similar, if not identical, to what was proposed initially. It is just that there is a 3’ easement and a 75’ no-build buffer, which is actually more than what was ever discussed initially. She is offering this background because it is important for the Planning Board to know.

**Victor Azzi, Library Trustee, 1100 Old Ocean Blvd** *(because of internet issues Mr. Azzi could not be heard).*

Selectwoman Bradshaw stated that at some point in this whole process, the parking spaces available in the immediate area were counted. There are 250 parking spaces in that immediate area; counting the ones in front of the church owned by the Town, the ones at the safety building, and the ones at the library and museum.

**David Choate, Chair of the Demolition Committee, Member of the Heritage Commission and the Historic District Commission, 108 Washington Road**, commented that he has a question. Whatever the Planning Board decision is tonight, whether it is to approve or deny the

plan, if the decision is appealed, does that stay Mr. Philbrick's agreement or can it move forward? The agreement stipulates that the Selectmen are going to demolish the Parsonage by November 25<sup>th</sup>.

Attorney Donovan explained the filing of an appeal on any decision made tonight does not per se stay anything.

Attorney Durbin stated that he would like to respond to one comment made by Attorney Donovan related to the warrant article that was approved in March (Article 7), essentially, removing the property that has been under the Library custody and control from the Library Trustee's jurisdiction. He would strongly disagree with that opinion. He would also say there is no legal precedence for that. The property has been historically, at the very least a portion of the property that is part of this subdivision and conveyance to the private party, under the control and custody of the Library Trustees. This is a statutory grant of authority that the Library Trustees have. He does not find there is much merit in the argument that a warrant article can simply be put together and divest the Library Trustees of that statutory grant. If it is a property that has been historically used for library purposes, the bottom line is any transfer of that requires the consent of the Library Trustees.

Mr. Azzi returned to the meeting by phone. He stated that he would like to speak to the land overall. He noted that the land that was acquired through the warrant articles that were passed was for the express use of the expansion of the library and other town uses. He continued that the two stakes, which he personally planted into the ground, shows the extent to which the Library can expand today. It would be right up against the edge of the sidewalk. With regard to Mr. Verra and his survey, the depth of the ravine, as he has measured it, is some 30' to 40' deep. He does not think the Rye Citizens would want the Library to consider expanding into a ravine. As far as he knows, most citizens consider the public library to be the cultural heart of the Town. He would like to make sure it remains so. The charge of the Town Center Committee was to consider all of the buildings that are owned and available by the Town, which included the TD Bank building. The Committee was to consider the condition, locations, character and likely contributions they could make to having a coherent Rye Town Center. A few weeks into the work of the Committee that charge changed somehow and they were told to focus on the traffic calming activities on Washington Road. The Committee really never considered the row of all those buildings; which included, the Parsonage, Library, TD Bank building, Town Hall and all the rest. *(Most of Mr. Azzi's comments could not be heard due to a poor phone connection.)*

**Tom King, Historic District Commission, 535 Wallis Road,** stated the he is against the demolition of the Parsonage, as a member of the Historic District Commission. Notwithstanding that, the lot lines seem to be favoring Mr. Philbrick's financial interests over the Town's with those parking spaces. There is no reason that the Town should give up library parking. There is a lot of parking in town and people could walk to the facility that Mr. Philbrick would build. He pointed out that one of the reasons for the expedited nature of this is because of the fact that this is a vacant, deteriorating building, apparently. The Selectmen seem to have some sense of financial or fiduciary responsibility to deal with it. The voters voted at the town meeting several years ago to sell a deteriorating, vacant building called the Trolley Barn. There does not seem to

be much haste in that. He thinks giving more time to get more public input on this would be helpful.

Mr. Moody pointed out that under N.H. Law, if a library is discontinued, the Library Trustees have the right to decide where the library assets get distributed. He thinks the fact that the Library would have rights even if it stops operating as a library, indicates they have property rights. If the Library has control over property, only the Library Trustees have the right to transfer that property. He would strongly take the position that the buffer area has been in the custody and control of the Library and the town's people were not made aware that portion of the property was going to be transferred. If this application is being brought forward by the people of Rye, not the Board of Selectmen, this is not what Rye voted for. Moreover, interest in three parking spaces, which was certainly not put before the voters, is now being transferred for no additional consideration approved by the town voters.

Mr. Loftus asked if the Town has hired a land planner to take a look at what would be best for the Town for this particular lot and how it would affect the Library now or in the future.

**Karen Oliver, Library Trustee, 1159 Washington Road**, asked if the Planning Board has the contract in front of them that the Select Board approved last night, which the Trustees received just a few minutes before this meeting started. There are things in that agreement that nobody has had a chance to review, even though the agreement is dated November 6<sup>th</sup>. Clearly, the Select Board had this information about the timing of the proposed demolition of the Parsonage building. It is supposed to be done by Mr. Philbrick by November 25<sup>th</sup>. If this agreement falls apart, the Select Board is responsible to reimburse him, up to \$32,000. The agreement also says that if those parking places at the Library are ever revoked, the 75' no-build restriction goes away and is extinguished. She does not know how much of this is relative to Plan C. If this is granted, will Mr. Philbrick get out there with his forklift and start?

Chair Losik pointed out the Planning Board is not party to that contract. The fact the Board has a copy of that contract is not impactful to Plan C. She reiterated that the only thing the Planning Board can vote on tonight is whether to approve the separation of land, the +/- 0.4-acres and the easements that are recorded, which are reflected on page 1 of 3. These are questions that might be answered by others but are not in the purview of what the Planning Board can do.

Ms. Oliver commented that what is on the plans that have been submitted to the Planning Board does not include a number of privy material provisions with regard to this land. The no-build space can go away if the parking spaces are revoked.

Chair Losik replied the no-build space is subject to restrictive deed language, which is not part of the Board's review.

Ms. Oliver asked how the public would get a voice in all of this. Things are done behind closed doors and they cannot get information.

Chair Losik commented she appreciates the frustration and wishes the Planning Board could answer more questions, but they cannot.

**Sam Winebaum, 52 Cable Road,** stated that approving this subdivision is not in the public's interest in the big sense of the word. This is the most important piece of property in the center of town. The subdivision that should be considered is on the one that was proposed which would have separated the lot in two parts. The private space with no public access would have been a more public space. That would be a more appropriate subdivision. He continued that if this is going to be done, without a buffer that is really under the control of the Library Trustees is just plain wrong. They have been great stewards of this public land and have maintained it well. To turn over an inadequate easement where a private developer has control over what lights are put in, does not make sense at all. He is not in favor of the subdivision as proposed because of the unnecessary restrictions. At a minimum, they should provide an appropriate buffer for the Library. In general, he is not in favor of this subdivision because it puts into private hands public land that is central to the Town and has been the vitality of the Town over the years. He would suggest that this be tabled and continued, so a more complete analysis of the big picture can be done.

Attorney Maher stated he wants to add some clarity to the Board as to the scope of their inquiry. There has been a comment to "look at the entire lot". The Board should of course look at the entire lot and the impact of the subdivision on both the new lot and the retaining. However, the scope is what is reflected in the Land Development Regulations and how the approval of the subdivision stacks up compared to the criterion reflected in those regulations. There are certain issues that have been raised, thus far, which he would caution the Board against considering in the context of this application. It is the zoning ordinance and land development regulations that are controlling here. How the Board looks at that entire lot needs to be tethered to the considerations in the Land Development Regulations.

Attorney Donovan stated that he would like to rebut some misinformation that was presented by a couple of the Trustees about the potential to expand to the rear. It was stated that it was a 40' to 50' deep ravine. (Sheet 2 of the plan set was presented on the screen.) He explained that in looking at the contours, the elevation in the back of the Library is 78' and 80' out it drops to 68'. This is a 10' drop and is not something difficult to engineer. It was also stated in one of the chats that the leachfield was 50' out, but in fact, it is 80' out. He continued that at the site walk someone observed that there is an awful lot of land used up for a turnaround that really only functions to service a book return. The turnaround is not needed to get in and out of the parking lot. The parking lot is designed of adequate width to back in and back out to exit. There is at least a third of an acre behind the Library angling out to the loop and down towards the back. Leachfields can be relocated. There is a lot of room there and it is not wetlands. He commented that it would probably be more expensive than going forward on a flat piece of land, but it doesn't appear to be unbuildable land. Attorney Donovan stated that the Board of Selectmen would ask that the Planning Board first approve the requested waiver and secondly approve the subdivision. These other issues may or may not play out in other forums.

Selectwoman Bradshaw explained Mr. Philbrick has parking obligations for the plan that has been contracted for. If he loses the parking spaces by loss of the license, he would clearly need to use at least part of the rest of the lot to replace that parking. So, that is the rationale as to why that open space would have to be revoked. If the parking is revoked, he will need to meet the zoning ordinance and more space would be needed to do that.

Selectman Winslow stated that at the recent select board meeting he went through a lineage of responsibilities and fiduciary responsibilities as Selectmen. This application is consistent with those expressed at that meeting.

Mrs. Roman pointed out that this 0.4 acres is exactly what was voted on. The Board is not being asked to do something the vote did not authorize the Town or Selectmen to do. Article 7 authorized 0.4 acres in exchange for the TD Bank property. This is not giving 0.4 acres to a private party for no reason. It is an exchange for 3.7 acres. That is what the vote said. In terms of looking at the whole lot, tabling and revisiting, she sees that as not necessary because the plan before the Board is what was authorized. The differences are dealing with the parking spaces, which is a minimal issue given the exchange on the other side.

Ms. Oliver stated the question is how the 0.4 got to be in the warrant article. It was either a "back of the envelope" calculation or was the result of a survey and an existing condition plan that the voters should have known about before they voted.

Speaking to Ms. Oliver, Attorney Donovan noted that he met with her, Keriann Roman and a couple of the Trustees to explain how that came about. He commented that she continues to ignore this and continues to raise a conspiracy theory. It's really unbecoming of a library trustee to get into that kind of a conspiracy theory. He reiterated that this was explained by him on at least two occasions in a meeting.

Mrs. Roman commented that is correct, as she was part of those meetings. She remembers that it was explained that it was based on reviewing the boundaries and it was an estimate. That was explained numerous times.

Ms. Oliver commented this was after the election.

Mr. Azzi stated that they asked in writing and in meetings several times "where does the 0.406 acres cause the property line to be established?" Each time it was heard that some variation of "well we don't know where the property lines are going to be. We will know that after the survey". *(Most of Mr. Azzi's comments could not be heard due to internet issues.)*

**Bonnie Monahan, 14 Forest Green Road,** commented that Plan C includes easements and those are conditional. If the parking agreement terminates, the easement on the buffer can go away. She asked if this is correct.

Attorney Donovan explained that neither the parking, nor the buffer, are easements. The only easements that are involved are the leachfield easement and the lighting and sidewalk maintenance easement.

Ms. Monahan stated that she knows the Board is not taking into account the agreement that is in place. However, the Board is making a decision about subdividing a piece of land that could change in use, depending upon this other agreement. The Planning Board does not take this into account when making this decision?

Chair Losik replied they are not a party to that agreement.

Ms. Monahan stated that even though the Board is not a party to that agreement, they are making a decision as it relates to subdividing a piece of land that could change in nature of what the Planning Board should be thinking about.

Attorney Maher explained that to the extent that there is a change in use on that site, it might trigger additional permits and approvals that would be necessary. Right now, all that has been presented is not a proposal to change the use. All that has been presented is to carve out a piece of this lot. To the extent there is a change of use or an intensification of the existing use, or one of the other triggers for site plan review, it would then require an additional application to come before the Board. It would be a site plan review application. It would be on the Board to review that application against the land use development regulations applicable to site plan review.

Ms. Monahan asked if it is known that the usage could change, does the Planning Board take that potential change into consideration? Once the subdivision is made and those potential changes are out there, there is no way to unsubdivide.

Attorney Maher replied it depends on the application. If it was a piece of vacant land and the proposal was to subdivide it into multiple lots for single family homes on each lot, it would then have to be considered as part of the subdivision. In this case, it is a developed lot. If there were to be further changes, there is a process in the town where the owner would have to get a building permit if he wanted to change the structure. If the building inspector or planning/zoning administrator review that permit and determine that there are additional land use permits that are necessary to make the building permit legal, the owner would have to go and get it at that time. Right now, with the proposals that have been presented, it is his understanding that there is no present building application to change the structures on the site. It seems very conceptual, at this point in time. So, it has not triggered the Planning Board's jurisdiction.

Ms. Oliver pointed out the Town has entered into a contractual obligation to demolish the Parsonage. Is that not a change in use? Is that not something the Planning Board needs to be cognizant of?

Attorney Maher explained it depends upon what is going to be constructed in its place. The present use is used as a residential dwelling with seven units in the Parsonage and one unit in the carriage house. If the proposal was to construct a McDonald's, of course that is a change in use. However, if the structure that is going to replace it is going to be a residential home or some sort of apartment building that is not going to result in intensification, it is not going to trigger the Planning Board's review. It depends on what is going to replace that demolished home.

Ms. Oliver asked if the Town can do a demolition without approval.

Attorney Maher replied he cannot speak to what the Town's building code might say. Ultimately, if something is going to be constructed in its place, it would certainly require a building permit.

Ms. Oliver commented that the Town has the power to demolish the Parsonage, which is what the plan is pursuant to this contract.

Attorney Maher explained if they replaced it with nothing and demolished it such that it was a vacant lot, that would not be a commercial or industrial use, nor would it be a multi-family residential use, so it wouldn't trigger the Planning Board's review and approval.

**Frank Drake, 221 South Road**, commented that anyone can get a demo permit. It might have to walk through the Demolition Committee for review; however, no one can be denied the right to demolish a building. There is no one that can stop someone from demolishing a building. It is a constitutional right, whether it is a town or a private owner.

Chair Losik closed the public hearing at 8:49 p.m. and opened to the Board for deliberation. She asked the Board to be thinking about the driveway waiver 202-6.2.B(7). She also noted that if the application is going in the direction of approval, the Board will need to talk about conditions of approval.

Referring to the driveway, Member Sherman stated she would prefer having the sidewalk going straight down Washington Road and having the outlet onto Olde Parish Road. This makes sense to her from a town center perspective and from a child safety perspective. She pointed out that the children are constantly walking that way from the junior high. She would grant the waiver for the driveway. Her thought is that the Board is supposed to be voting on this subdivision and this lot line. From everything that she has seen, it is clearly consistent with how the Town voted in March. To her, it is clear this is what the 960 people voted "yes" for.

Member Carter stated that he worries about what the driver is for this. This is a choice piece of property and once it is sold or traded to a private entity, the Town will no longer have this property in the middle of town. That is a serious concern, but he is not sure it's the Board's concern. He agrees with Member Sherman that the Town voted to divest of this 0.4 acres. He wishes the Trustees of the Library had been much more onboard at the start. He continued he is concerned about the driveway. He agrees with Alternate Quinn. The driveway is going to be a tough spot to get in and out of. There is a lot going on in that short space and that worries him. He reiterated that he agrees with Member Sherman. The plan as presented looks like that is what the Town voted for. He is not sure he likes the plan itself. However, he thinks the Planning Board is probably obligated to accept and approve it.

Member Finn stated they have to remind themselves of the big picture. The Library Trustees made a lot of very good points, along with the other people who spoke. At the end of the day, this piece of property is not being given to the developer for free. It's a fair exchange. His understanding is the value of the TD Bank property is higher than the Parsonage property, with or without the Parsonage building still being there. It is not like this is a charity thing being given to a developer. He thinks the 75' easement is good. It will give open space and will be good to have that clause. In terms of the driveway situation, he thinks it is a good idea to eliminate the driveway on Washington Road and have a sidewalk. Largely, he is supportive of this at this stage.

Chair Losik clarified there is not going to be a 75' easement.

Member Finn replied that was his mistake. He meant the 75' no-build area.

Chair Losik pointed out that is subject to a restrictive deed.

Member Paul stated that her understanding, as a board member, is that she is not here to discuss whether it is a good plan or a bad plan going forward. She is just here to evaluate the application before her. She understands that the only request they are making is for a waiver in order to move the driveway to the side off Olde Parish Road. She thinks that is a much better entrance than where it is now, so she is okay with that. She reiterated that her understanding is that this is the only thing before them. She feels they have met all the requirements of the application. Her understanding is that the only thing she should be worried about is whether to grant a waiver to move the driveway.

Alternate Quinn stated he would like to encourage people to understand that this proposal is not happening in a vacuum. This has ultimately been driven by the issues surrounding the Town Hall and the need for space and the additional needs the Town has. He thinks an extraordinary proposal was made in good faith by Mr. Philbrick. It answered the needs of an existing problem of the Town. He was not cognizant at the time of the town vote that there was this much pushback by the Library Trustees and other citizens. With that being said, it passed. The Town voted to make this change. He thinks this change is certainly in keeping with that vote. He thinks they have to honor that vote. He does not see any deviation from this plan that would jeopardize the intent of the Town, understanding that another need is being answered by making this swap. He sees no reason to vote against this and thinks it is entirely appropriate.

Alternate Macleod commented that as he sees it, there are really two things before the Board tonight. One is the waiver on the driveway and the other is the subdivision of the land. As far as the driveway is concerned, it is his professional opinion that the driveway access on Olde Parish Road is the better of any alternative. Someone mentioned coming in through the parking lot. He thinks that would pose a more dangerous situation than going on to Olde Parish Road. Certainly, getting the curb cut off Washington Road is an improvement from a safety point of view. He would strongly support granting the waiver on the driveway. The only other issue is the subdivision of land. There are a lot of issues here tonight that show there is a lot of diversity in town. However, those are not the issues before the Planning Board. Its only whether this subdivision of land meets the Land Development Regulations and zoning. In that regard, he would support the approval of the subdivision.

Selectmen's Rep Epperson stated they have been at this for ten years and have spent hundreds of thousands of dollars to try to make this happen. What has really fallen by the wayside here is the personnel that have to work in the Town Hall. He noted that just last week, when there was a cold snap, he walked into the Town Hall. Planning Administrator Reed was up on a chair putting a blanket up over the door so she could block out the cold air. He guarantees that if the Library Trustees had that kind of an issue with their environment, they would fix it instantaneously. This swap of 0.4 acres of land for 4-acres, which is going to be developed at



some point, is absolutely something that is essential that they do. He is in favor of that and also the waiver for the driveway.

Vice-Chair Lord commented that he can agree with most everything that has been said. There are two things before the Board. One is the waiver and one is the subdivision. He would like to touch on a couple of things. He pointed out that there is going to be a no-build zone. Right now, walking through the center of town, the Library is almost buried. Looking at the frontage of the Parsonage, the no-build zone is about 40% of that space. There will be a great view going back towards the Library. Keeping the existing landscaping over in the location of the no-build zone, is probably going to be blocked by new buildings anyway. He does not think it is really critical that it be maintained because probably very few people will see it. Any sort of development that goes here is probably not going to have bad landscaping around the place anyways. He thinks the whole place will be "dressed up", so he does not have too much of an issue with that. As far as the curb cuts are concerned, he does not believe there is going to be much of an issue going out onto Olde Parish Road. There may be an issue if there is a big event at the Library and people are coming in and out. However, for the most part, he does not see that as being a conflict. He thinks it is much better coming in that way rather than trying to go through the Library lot. Putting the driveway there is on the lesser road. Putting the sidewalk through and "dressing up" all of that frontage is very important. In regards to the expansion of the Library, there is an entire area where the turnaround is that is basically at the same level of the Library that is just a curve for a book drop. That could be taken out without losing a single parking space. To say that there is absolutely no other place to go on this property is totally being disingenuous. He thinks it can easily go there. There may be a maximum of 10' of fill needed. He pointed out that there are house lots that have needed more fill, so that is not really a big deal. He thinks this is a great swap and there are a lot of possibilities down the road, if this goes through. He is in favor of both the waiver and subdivision.

Chair Losik stated she appreciates all the passion that has been expressed on both sides. It is clear that support runs solidly in two very different directions. Everyone has their personal opinions but the Planning Board really can't come from that place. The Board has to look at what is before them. As a subdivision plan, is it in keeping with zoning and Land Development Regulations? She finds that it is. In regards to the waiver, she thinks that is consistent with some of the goals that were expressed in the tremendous work that was done in the charette process over a year ago. She thinks it provides a good measure of safety for the children walking from the junior high to the Library. She also thinks once that landscaped area, which now exists on the side of the Library between the parking lot and Washington Road, is opened up and relandscaped, it is going to make an attractive approach to the Library. Right now, it is relatively overgrown and gives a crowded, shaded effect. To the point of opportunity for expansion, she has been to the site, taken a lot of pictures and walked down to the back area. She pointed out that people forget that the topo is similar on the other side to the south. She is not saying it is less expensive to do it. She is saying there are possibilities. The existing addition from the 90's, suggests that the existing slope was taken into account and then there was some flattening of the book/drive area. She commented that this is out of her purview but is just a thought. She feels badly that they cannot help people in some of the ways that were raised tonight. The Planning Board really fits a pretty limited role and is just part of the cog for the Town. When the Board

has the conditions that they have tonight, she thinks the applicant has met the requirements. She noted that she would like to approach the waiver first.

**JM Lord made a motion to grant the waiver requested by the applicant from Article 4, Section 202-6.2.B(7)(d,) for a driveway on Olde Parish Road within 100' of an intersection road, from the Rye Land Development Regulations, as strict conformity would pose an unnecessary hardship and the waiver would not be contrary to the spirit and intent of the regulations because the lot would have the access on the lesser travelled street, is on a corner lot close to a main road; since the Town is the applicant, it is an unnecessary burden. Seconded by Katy Sherman.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes  
Motion passed.**

Chair Losik noted that Member Paul had stated “the application requirements have been met” when there was discussion about the application. She asked Member Paul if she is in support of the application.

Member Paul stated that her understanding is the application is to carve out that 0.4 acres and subdivide it into two lots. She is in support of that application.

Chair Losik commented to the Board that they need to talk about some conditions. She asked Attorney Donovan if he has some thoughts.

Attorney Donovan replied there were two conditions attached to his November 3<sup>rd</sup> memo. The long one puts the language on the lighting easement in place. The second condition is for the applicant to prepare a plan set for recording purposes, which meets the recording standards. He would add to that the chair’s request that page 1 of 2 of this plot plan show the boundary of the 3’ easement. He commented the third condition the chair wanted had to do with reserving the deciduous trees. The condition would be that the owner will preserve all of the healthy deciduous trees along the westerly property boundary and the two trees along Olde Parish Road, provided they are healthy. There will be a total of four trees along Olde Parish Road; two on each side of the driveway.

Member Finn asked about the 75’ setback.

Attorney Donovan explained this would be a deed restriction. Normally, as with all land development approvals, the Board leaves the wording of easements and restrictions for him to work out with the applicant. He thinks the Board could put in a condition that the deed restriction on the 75’ to be included in the deed with language to be approved by town counsel.

Chair Losik noted that they also had adding the Aquifer and Wellhead Protection District language to Plan C page 1 of 3.

Attorney Donovan agreed.

**Chair Losik summarized the conditions;**

- 1. Add Aquifer and Wellhead Protection District to Plan C, page 1 of 3.**
- 2. On Plan C, page 1 of 2, of the plot plan will show the boundary of the 3' sidewalk maintenance and lighting easement.**
- 3. Language of sidewalk maintenance and lighting easement to be reserved in deed shall be approved by town counsel and be substantially the same as the following;**
  - a. Grantor reserves a sidewalk maintenance and lighting easement over that area:**
    - (1) within 3' of the easterly edge of the sidewalk, which is the westerly boundary of the parcel herein conveyed;**
    - (2) within 3' of the sidewalk to Washington Road, which is the southerly boundary herein conveyed.**
  - b. Within said easement, Grantor shall have the following rights:**
    - To enter the land for the purpose of maintaining and repairing the sidewalk.**
    - To place snow removed from the sidewalk, provided green snow removal substances are used on the sidewalk.**
    - To operate, maintain, and repair the lighting existing as of the date of this conveyance.**
  - c. Grantee shall have the right, but not the obligation, to replace the existing sidewalk lighting and to install additional sidewalk lighting. If Grantee exercises this right, Grantee shall thereafter own, operate, maintain, and repair said new lighting and pay the utility cost thereof. Grantee shall operate the lights during such time as Grantor, acting through the Board of Library Trustees, may require.**
- 4. Applicant shall prepare a plan sheet for recording purposes which meets the recording standards of the Rockingham County Registry of Deeds to be signed by the Planning Board Chair, and then recorded.**
- 5. Owner will preserve all healthy deciduous trees along the westerly boundary and the two trees along Olde Parish Road as long as they are healthy. A total of four (4) deciduous trees along Olde Parish Road will be maintained, two on each side of the driveway.**
- 6. The deed restriction wording preserving the southerly 75' open space shall be reviewed and approved by town counsel.**

**Motion by JM Lord to the minor subdivision by the Town of Rye for property owned and located at 575 Washington Road, Tax Map 12, Lot 43, to subdivide the 1.96-acre parcel into two lots of 0.407 acres and 1.56 acres in size, respectively. The proposal is shown on a plan titled "Minor Subdivision, Tax Map 12, Lots 43 and 12, 575 Washington Rd, Rye, NH, Plan C" date of October 2, 2020 by James Verra and Associates, Inc. Property is in the Business District, Historic District and Aquifer/Wellhead District, Case #09-2020. Approval is conditioned upon the conditions as discussed and agreed upon at this meeting. Seconded by Jim Finn.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**  
**Motion passed**

Chair Losik called for a recess at 9:35 p.m.

Meeting reconvened at 9:41 p.m.

At 9:42 p.m., Bill Epperson made a motion to adjourn the Select Board's portion of this meeting. Seconded by Mae Bradshaw.

Roll Call: Mae Bradshaw – Yes; Bill Epperson – Yes (*Phil Winslow was present at the time of vote.*)

Motion passed

- b. **Minor 3-lot subdivision by Jak Nadeau Revocable Trust for property owned and located at 711 Long John Road, Tax Map 16, Lot 136, to subdivide the existing lot into three single family residential lots with access via a 50'-wide right of way. Property is in the Single Residence District. Case #07-2020,**

- *Continued to the December meeting (please see motion above).*

#### IV. New Business:

- A. **Proposed Zoning Amendments for Board discussion/review and schedule public hearing:**

*\*It was noted that this is not the public hearing for the proposed amendments. The Planning Board should review for any material changes and then schedule a public hearing.*

- a. **Z Amendment 2021-01 HDC**

#### RYE PLANNING BOARD PROPOSED ZONING ORDINANCE AMENDMENT 2021-01

Amend Section 190-3.3 (5) Historic District as follows (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

190-3.3(5); "Before a building or other structure, *monument, statue or memorial* is demolished or moved out of the district, the applicant shall in good faith prepare a detailed plan for the reuse of the site which the Commission determines will meet the requirements for a certificate of approval. Such certificate of approval for demolition and reuse shall only be granted upon a showing by the applicant that to deny such certificate would result in an unnecessary hardship unique to the property in question and that such unnecessary hardship is not common to neighboring properties within the district. [Amended 3-10-2020 by Art. 3]"

#### Explanation

*To be consistent with the language in the Demolition Review Ordinance contained in Section 190-5.9 (C)(1)(b).*

Selectwoman Bradshaw asked why this change is being made.

Mr. Choate, Demolition Review Committee Chair, explained the intent is to make it consistent with the demolition review changes that were made last year by adding in "monuments, statues or memorials" to the definitions as to what is subject to review.

Selectwoman Bradshaw noted that she is concerned that it came before the Planning Board before going before the Historic District Commission. It would seem that there should be input from the Commission before making changes to rules and regulations that impact procedures for that commission.

Mr. Choate pointed out that this change came from the Committee, as they noticed there was an inconsistency from last year. These have been discussed at the HDC meeting.

Chair Losik explained there was a consistency issue with the language. The language was changed for demolition review. The same language was in the Historic District. For consistency, the three words were suggested to be added.

Selectwoman Bradshaw commented that she thinks they are really different. Right now, there is not an overlay district over the whole town that is a Historic District Overlay where that would be set forth. The Town has a very distinct district. Demolition in that district is different from demolition in other parts of town. It seems that before a public hearing is scheduled, the Historic District Commission should be consulted in some way as to their thoughts. The HDC is in the beginning of creating design guidelines and this would be an important question to them to consider.

Mr. Choate stated that he thinks this has to be done in conjunction with Amendment 2021-02, which removes the Historic District from purview of the Demolition Review Committee because it is already the purview of the HDC. The two really go hand-in-hand.

Selectwoman Bradshaw replied the HDC might have different thoughts about how monuments should be treated that might be different from how they are treated overall throughout the town.

Planning Administrator Reed noted that this is the second year in a row that Rules and Regulations has received requests from Mr. Choate for changes. When they get to a public hearing, it becomes a battle. She continued that Rules and Regs has honored those requests two years in a row, only to find out it had not been flushed out with the committees that might be impacted. She recommended that they hold off on the public hearing.

Mr. Choate noted that 2021-01 came from the committee.

There was some discussion on whether the amendment should be tabled, in order for it to be brought before the HDC.

Mr. Choate agreed to follow up with Historic District Chair Alex Herlihy and get back to the Board.

**b. Z Amendment 2021-02 Demo Review**

RYE PLANNING BOARD  
PROPOSED ZONING ORDINANCE AMENDMENT 2021-02

Amend Section 190-5.9 (C) Demolition Review as follows (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

190-5.9 C Demolition subject to review. Any demolition within the Town of Rye, ***excluding the Historic District***, shall be subject to the requirements of this section where:

- (1) The demolition is:
  - (a) A building or part of a building greater than 500 square feet of gross floor area; or
  - (b) A monument, statue, or memorial; or
  - (c) An accessory building less than 500 square feet of historical or architectural interest; and

**Explanation**

To be consistent with the Demolition review language as contained in the Historic District, Section 190-3.3 (5).

The Board did not have any questions in regards to Amendment 2021-02.

**Motion by Steve Carter to move Proposed Zoning Ordinance Amendment 2021-02 to the December 8<sup>th</sup> meeting for a public hearing. Seconded by Jeffrey Quinn.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Fian – Yes; Nicole Paul – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed**

**c. Z Amendment 2021-03 Demo Review abutter mailings**

RYE PLANNING BOARD  
PROPOSED ZONING ORDINANCE AMENDMENT 2021-03

Amend Section 190-5.9 (E)(2)(b) Demolition Review as follows (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

190-5.9 (E)(2)(b) If the Demolition Review Committee determines that the building is potentially significant, it shall schedule a public hearing within 12 business days of making that determination, and within three days of making that determination notify the Building Inspector of it. Notice of the public hearing shall be posted in two public places and published at least five days prior to the hearing, not including the day of the hearing or the day of posting. ***Notice to***

***abutters shall be made by certificate of mailing to all abutters not less than five calendar days before the date of the hearing.***

**Explanation**

To allow abutter notice when the Demolition Committee deems a building to be potentially significant and its demolition is subject to a public hearing.

Chair Losik noted that Rules and Regs worked on this over several sessions. This is in regards to notice to abutters of public hearings that occur in regards to the demolition of an asset. Mr. Choate made the point that abutters wouldn't necessarily be in the know. This does not come up very frequently, but he articulated it's important that people know of their opportunity when something is going to happen on the property next door.

Mr. Choate explained that a demolition application is received by the Building Department and it is then emailed to him. He mails it to the Committee members and a meeting is scheduled to discuss it, which is proceeded by people driving by and making observations. Ninety-nine percent of the time, the building is deemed not to be historically or architecturally significant. In the absence of a town-wide Historic District protection, when an application comes in to tear down a historic building, the abutters would need to be notified. The way the ordinance is written now, the only notification abutters have is if someone puts up a sign in front of the property. A lot of abutters, especially in the Rye Beach area, don't live there year-round and may never see the sign. He noted that this has happened twice in the four years that he has been involved with the Demolition Review Committee.

Vice-Chair Lord asked if the certified mail is sent out by the Town or the applicant.

Chair Losik replied the Town.

Mr. Choate noted this was discussed and it was determined that the Building Department would be responsible for coordinating the mailing.

Chair Losik stated that they had discussed whether this would be an added burden to code enforcement. Mr. Choate's perspective was that these occurrences are few and far between and there would be help from the Committee.

Alternate Quinn commented that he is a member of the Rules and Regs Committee. He was not in favor of bringing this forward. The reason is because he thinks it puts unreasonable burden on somebody, (to be identified), in the Town Hall on a level that does not warrant expense, which would be passed on to the applicant. It seems to be an unreasonable burden. Someone is going to have to do the work and follow up. This is a change in the regulation and that has to be paid attention to. Since it is so infrequent, it is even more compelling to not support this.

Mr. Choate pointed out that this is really designed to draw attention and raise the flag, as widely as possible, when it is a signature building. This is a way to bring attention to something and get the public involved in the discussion. He reiterated that a lot of people who live in Rye are not

year-round residents in some of the areas where demolition is seen. He would be surprised if this comes up once per year.

Alternate Quinn stated it may happen once per year, but it only happens once in the frame of reference of the property owner. The owner is the one who has to find the notices going out and someone from the Town will have to take time licking stamps and posting envelopes. He does not think it warrant a place in the zoning regulations.

Chair Losik stated she looks at it from the perspective of it is a little bit of insurance against something that is going down. If the abutters know about it, maybe their neighbor knows about it. This is a way to alert people and spur some conversations.

Alternate Macleod commented that the only change to this is the requirement of notification by certified mail return receipt. Everything else is already in place. If it is five or six abutters it is really not an issue. If it becomes thirty or forty abutters, it becomes an added expense. His experience with some other towns is that they replace certified mail return receipt with certificate of mailing. This is far less expensive and it does not force somebody, who is not at home, to have to go to the post office to get a letter certified mail. A certificate of mailing is a notice that the post office has processed the mail and it is going to their home. This is something to consider.

Chair Losik suggested that the Rules and Regs discuss this further at their meeting on November 16<sup>th</sup>.

**d. Z Amendment 2021-05 rezoning**

RYE PLANNING BOARD  
PROPOSED ZONING ORDINANCE AMENDMENT 2021-05

Re: Zoning Map Changes: Business Districts in Rye Harbor Area

Amend the ZONING MAP TOWN OF RYE to change the following parcels from Business (B) District to Single Residence (SR) District: Tax Map 9.2/Parcels 22, 22-1; Tax Map 8/Parcel 56; Tax Map 8/Parcels 73, 73-1.

**Explanation**

These parcels, which are all in the vicinity of Rye Harbor, were once the sites of businesses: Saunders Restaurant; Pilot House (later Hemmingway's) Restaurant; Rye Beach Motel. The parcels have been redeveloped for residential use in recent years. Thus, the planning board believes residential zoning more appropriately represents the current uses and the goals of the Master Plan.



**e. Z Amendment 2021-06 The Breakers**

RYE PLANNING BOARD  
PROPOSED ZONING ORDINANCE AMENDMENT 2021-06

Re: Zoning Map Changes: "Breakers" Development

Amend the ZONING MAP TOWN OF RYE to change Tax Map 23.1/Parcel 29 from Business (B) District to General Residence (GR) District.

**Explanation**

The "Breakers" is a residential condominium development of several dwellings. It is not a business land use. The planning board believes residential zoning more appropriately represents the current use and the goals of the Master Plan.

Chair Losik noted that these were suggested by Attorney Donovan based on changes in use in the Saunders Restaurant, Pilot House, Rye Beach Motel and also in the case of the Breakers. She believes Attorney Donovan's view was that it would be smart for the zoning to reflect what is known the actual use.

Referring to the Pilot House (Hemingway's), Member Carter pointed out that those are condos, not a single residence. He would think that piece would be General Residence.

Planning Administrator Reed noted that the area around the Pilot House is the Single Residence District. The use of condos does not reflect the zoning. The General Zoning is a denser population.

**Motion by JM Lord to move Proposed Zoning Ordinance Amendments 2021-05 and 2021-06 to a public hearing at the December 8<sup>th</sup> meeting. Seconded by Katy Sherman.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed**

**f. Z Amendment 2021-07 Pervious**

RYE PLANNING BOARD  
PROPOSED ZONING ORDINANCE AMENDMENT 2021-07

Re: Pervious

Add to Section §190-11.1 Definitions Review as follows (Note: New language ***unboldened and italicized***. Deleted language struck through).

***PERVIOUS COVERAGE OR PERVIOUS***

*Any surface, whether natural, man-made, or modified, that can effectively absorb or infiltrate water including, but not limited to, vegetated surface, such as woodlands, planted beds, and lawns, and those pavements specifically designed and maintained to effectively absorb and infiltrate water. (From NH RSA 483-B:4, Shoreland Water Quality Protection Act.)*

**Explanation**

Add the definition of pervious coverage or pervious which is consistent with NH RSA 483-B:4, Shoreland Water Quality Protection Act.

Chair Losik noted there is a definition of pervious in the Land Development Regulations. The zoning does not have pervious, but has impervious. Increasingly, it is found that in conditions of approval on various projects the concept is used of pervious. This is to add in accordance with the language that is provided in Shoreland Water Quality Protection Act in NH RSA 483-B:4. That is where the impervious language comes from in Rye's zoning language. She continued that 483-B:4 is important to the Town because the Wetlands Overlay District does not cover shoreland. Rye relies on the state law for jurisdiction on those issues.

**Motion by JM Lord to move Proposed Zoning Ordinance Amendment 2021-07 to the December 8<sup>th</sup> meeting for a public hearing. Seconded by Jim Finn.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed**

**g. LDR Amendment 2021-01**

Rye Planning Board LDR Amendment 2021-01

**PROPOSED LAND DEVELOPMENT REGULATIONS AMENDMENT 2020-01**

Amend Section 202-6.11. *Special provisions for flood hazard areas* as follows (Note: New language ***emboldened and italicized***. Deleted language ~~struck-through~~).

**§ 202-6.11 Special provisions for flood hazard areas**

Land developments located in flood hazard areas shall comply with all requirements in the Town of Rye Floodplain Development and Building Ordinance *as well as the following requirements*:

- A. The Planning Board shall review the proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.***
- B. The Planning Board shall require that all proposals for development greater than 50 lots or 5 acres, whichever is the lesser, include Base Flood Elevation (BFE) data which such proposals (i.e. floodplain boundary and 100-year flood elevation).***

- C. ***The Planning Board shall require the applicant to submit sufficient evidence (construction drawings, grading and land treatment plans) so as to allow a determination that:***
- (i) all such proposals are consistent with the need to minimize flood damage;***
  - (ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage; and,***
  - (iii) adequate drainage is provided so as to reduce exposure to flood hazards.***

**Explanation**

*(To be written by Town Administrator Reed and Chair Losik.)*

Planning Administrator Reed note that she provided the Board with correspondence from Jennifer Gilbert from the Office of Energy Initiatives stating the reasons why LDR Amendment 2021-01 is being proposed. The new floodplain maps are going to be effective on January 29<sup>th</sup>. Before they can become effective, there are some changes that need to be made in the Land Development Regulations and in the Building Code to reflect the new maps. The Town will be getting a VE Zone. Under the current 2005 maps, there were no properties under the VE Zone. There will now be a lot of properties within the VE (Velocity) Zone. This language needs to be stated in the LDR and the Building Code in order for the Town to be covered. She further explained that this will need to be sent to a public hearing. However, the difference between a building code and a zoning amendment, the LDR amendment becomes effective with the vote. It does not need to go on to the March ballot to be approved. The Planning Board has the authority to approve changes in the LDR with the public hearing.

**Motion by Nicole Paul to move LDR Amendment 2021-01 to the December 8<sup>th</sup> meeting for a public hearing. Seconded by JM Lord.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed**

**h. LDR Amendment 2021-02**

Rye Planning Board LDR Amendment 2021-02

Re: Subdivision Design Standards

Amend the Subdivision Design Standards of § 202-6.2 (A) (1) as follows: ***(New Language emboldened and italicized.)***

§ 202-6.2 Subdivision Design Standards.

A. Lots. Lot configurations, the layout of lot lines and the arrangement of lots in a subdivision shall be orderly and harmonious and shall not be contrary to established principles of subdivision design.

(1) Lot configuration. Except on cul-de-sacs, rectangularly shaped lots having all lot lines perpendicular to straight streets or radial to curved streets are preferred for residential lots less than three acres in size.

(a) Lot lines intersecting the street shall not vary more than 30° from the perpendicular or radial. Intersecting property lines at street intersections shall be joined by a curve of at least twenty-foot radius.

***(b) Lot shapes shall not be grossly irregular.***

~~(b)~~ (c) Lot shapes shall not have grossly irregular angles or narrow portions.

~~(c)~~ ***(d) Lot lines shall not be gerrymandered to obtain required frontage, width, yard space or lot area.***

***(e) All front setback measurements shall begin at the right-of-way line of the street.***

**Explanation**

*The amendment adds two standards for subdivision design which were part of the Land Development Regulations (LDR's) which the board adopted in 1988 and used for +30 years. However, they were not included in the revised LDR's adopted in January 2020. These standards are important to good subdivision design. The board overlooked their omission in its review of the new LDR's.*

Planning Administrator Reed explained that the Long Range Planning Committee worked with Julie LaBranche, from Rockingham Planning Commission, on redoing the LDR's. Attorney Donovan pointed out some specific language that was needed. Unfortunately, it was missed and it was taken out when the LDR's were approved. This amendment is to put back into the new LDR's something that was in the old LDR, which was somehow cut out. She pointed out that the language was written by Attorney Donovan. This is very important language that unfortunately got taken out of the new LDR's.

**Motion by JM Lord to move LDR Amendment 2021-02 to the December 8<sup>th</sup> meeting for a public hearing. Seconded by Jim Finn.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed**

i. LDR Amendment 2021-03

Rye Planning Board LDR Amendment 2021-03  
Re: Typical Street Cross Section

Amend the Subdivision Design Standards of § 202-6.2 (B) to replace the Typical Street Cross Section Diagram with the attached diagram.

Explanation

*The publisher of the new Town Code was erroneously provided the wrong Typical Street Cross Section, which conflicts with the Street Construction Standards of LDR § 202-6.4. The amendment corrects this error by replacing the Typical Street Cross Section Diagram with the correct diagram.*

Attached: Typical Street Cross Section Diagram

**Motion by JM Lord to move LDR Amendment 2021-03 to the December 28th meeting for a public hearing. Seconded by Jim Finn.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Andy Paul – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed**

j. LDR Amendment 2021-04

RYE PLANNING BOARD  
PROPOSED LAND DEVELOPMENT REGULATIONS 2021-04

Re: Pervious and Impervious

Add to Section §202—1.13 Definitions as follows (Note: New language *emboldened and italicized*. Deleted language ~~struck through~~).

**IMPERVOUS COVER, *IMPERVIOUS COVERAGE, OR IMPERVIOUS*** Any modified surface that cannot effectively absorb or infiltrate water and from which water runs off. Examples of impervious surfaces include, but are not limited to, roofs and, unless designed to effectively absorb or infiltrate water, decks, patios, and paved, gravel, or crushed stone driveways, parking areas, and walkways, storage areas, compacted gravel, including drives and parking areas, ~~and~~ **or compacted earthen materials, stone, concrete or composite pavers and wood.** (From NH RSA 430-B:4, Shoreland Water Quality Protection Act.)

***PERVIOUS COVERAGE OR PERVIOUS***

*Any surface, whether natural, man-made, or modified, that can effectively absorb or infiltrate water including, but not limited to, vegetated surface, such as woodlands, planted beds, and lawns, and those*

*pavements specifically designed and maintained to effectively absorb and infiltrate water. (From NH RSA 483-B:4, Shoreland Water Quality Protection Act.)*

Explanation

Add the definition of pervious coverage or pervious which is consistent with NH RSA 483-B:4, Shoreland Water Quality Protection Act.

Chair Losik pointed out that the LDR has a definition for impervious, which is not consistent with RSA 483-b:4. Speaking to Planning Administrator Reed, she asked if Mr. Cuomo has looked at this.

Planning Administrator Reed replied “yes”. She noted that Mr. Cuomo will be at the Rules and Regs meeting on the 16<sup>th</sup>. She explained that Mr. Cuomo is the soil scientist that the Planning Board hired to review the Land Development Regulations and the zoning ordinance to look at its deficiencies to soils and wetlands.

Member Paul pointed out some errors in the amendment draft.

The Board agreed the amendment should go back to the Rules and Regs Committee to address the errors.

**Motion by Nicole Paul to move LDR Amendment 2021-01 to the December 8<sup>th</sup> meeting for a public hearing, subject to the cleaning up “impervious cover”. Seconded by JM Lord.**  
**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**  
**Motion passed**

**k. Building Code Amendment 2021-01**

*\*Original BC Amendment not available for minutes.*

Planning Administrator Reed explained that these changes to the building code were recommended by Jennifer Gilbert.

Chair Losik noted this will not receive town vote until March. So, one might ask how the Town can be compliant with the January 29, 2021 date. She explained that once it is legally noticed, it is considered to be compliant from FEMA’s perspective. The Town would be compliant if this is done any time before January 29<sup>th</sup>.

Planning Administrator Reed pointed out that she has to certify to Jennifer Gilbert that the legal notice was posted.

Alternate Macleod pointed out some confusion in the wording.

Planning Administrator Reed suggested that if the Board moves this to the December meeting, her and Chair Losik can properly cleanup the language. If there are any other additional changes

at the December 8<sup>th</sup> meeting, it will be legally noticed and there will be enough time to before the January 29<sup>th</sup> effective date to get this done correctly.

After some discussion, the Board agreed that Rules and Regs should do further work on this amendment.

## **V. Old Business**

### **a. Goss Farm Lane**

Planning Administrator Reed noted that Mike Garrepy approached Attorney Donovan saying he wanted to turn the road over to the Town. However, it is clear that it is definitely not ready. Attorney Donovan said that funds could be put in escrow and when all the lots are built-out the Town could pave it. She, Steve Harding, Dennis McCarthy met Mike Garrepy on site. Both she and Dennis McCarthy agree that it is not a good idea for the Town to take in escrow. It is uncertain when the development is going to be finished. Dennis McCarthy suggested to Mike Garrepy that he have his attorney write a warrant article that the Selectmen have to approve a road if all the conditions are met, so it does not have to go back again to a public hearing. Mike Garrepy agreed to write that language. Mr. Garrepy is going to bring two proposed amendments to the Select Board. One for approving Goss Farm Lane with an escrow. If that doesn't work, he is going to propose that the Selectmen have the authority to approve a road, with the approval of DPW and the town engineer. She noted that the construction on site was sloppy. Steve Harding gave Mr. Garrepy a checklist of things that need to be done.

### **b. Stoneleigh Subdivision**

Vice-Chair Lord reported that a site walk was held with the developer's team, Dennis McCarthy, Steve Harding, Kim Reed, Pat Losik and himself. The group looked at the driveway between Lots 4 and 5. They were going to grade out the road, loam and seed, and terminate the roadway. Everyone discussed at the site walk what should be done and the developer is working on that now. He summarized that the group agreed on the plantings and mitigation for the haul road.

He noted that the group also reviewed Lots 11 and 12. The group talked about the RCC access way and came up with a proposed resolution, which is going to be changing the culvert into a culvert and dropping it in to the pipe that is there. Dennis McCarthy is fine with that proposal. The group also reviewed Lots 9 and 10. They agreed on what trees need to be cut out and what areas need to be dressed up. The developer is going to do something similar to what is between Lots 8 and 9. The group also looked at Lots 7 and 6, as to what is going to be done there. He noted that it was a good meeting and everyone came to a conclusion on what needs to be done.

## **VI. Escrows**

The Board reviewed the escrows provided by Planning Administrator Reed.

**Motion by JM Lord to pay the escrows. Seconded by Jim Finn.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Bill Epperson – Yes; Paul – Yes;**

**Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed.**

## **Adjournment**

**At 10:52 p.m., JM Lord made a motion to adjourn. Seconded by Jim Finn.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Bill Epperson – Yes; Paul – Yes;**

**Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed.**

Respectfully Submitted,  
Dyana F. Ledger



# RYE PLANNING BOARD

*10 Central Road Rye, NH 03870 (603) 964-9800*

## Notice of Decision

**Applicant/Owner:** The Parsonage, The Town of Rye

**Property:** 575 Washington Road and 8 Olde Parish road, Tax Map 12, Lot 43 and Tax Map 12, Lot 43  
Property is in the Commercial, Business, Aquifer/Wellhead and Historic District

**Case:** Cases #09-2020

**Application:** Minor subdivision by the Town of Rye for property owned and located at 575 Washington Road, Tax Map 12, Lot 43 to subdivide the 1.96-acre parcel into two lots of 0.407 acres and 1.56 acres in size, respectively. The proposal is shown on a plan titled "Minor Subdivision, Tax Map 12 Lota 43 and 12, 575 Washington Rd, Rye, NH, Plan C" date of October 2, 2020 by James Verra and Associates, Inc. Property is in the Business District, Historic District and Aquifer/Wellhead District. Case #09-2020.

**Date of Decision:** Tuesday November 10, 2020

**Decision:** The Board voted unanimously to grant the following waiver:

1. A waiver from Section 202-6.2 B(7)(d) for a driveway on Olde Parish Road within 100 feet of an intersecting road. Strict conformity would pose an unnecessary hardship and waiver would not be contrary to the spirit and intent of the regulations because for the reason the access would be on the lesser traveled street, it is a corner lot close to a main road, since the town is the applicant it is an unnecessary burden.

**Decision:** The Planning Board voted unanimously to approve the Minor subdivision by the Town of Rye for property owned and located at 575 Washington Road, Tax Map 12, Lot 43 to subdivide the 1.96-acre parcel into two lots of 0.407 acres and 1.56 acres in size, respectively. The proposal is shown on a plan titled "Minor Subdivision, Tax Map 12 Lota 43 and 12, 575 Washington Rd, Rye, NH, Plan C" date of October 2, 2020 by James Verra and Associates, Inc. Property is in the Business District, Historic District and Aquifer/Wellhead District. Case #09-2020with conditions.

## CONDITIONS OF APPROVAL

1. Add Aquifer and Wellhead Protection District to Plan C p 1 of 3.
2. Reflect the 3' Sidewalk Maintenance and Lighting Easement area on Sheet 1 of 2 of the Plot Plan to be recorded. (See # 5 below).
3. The healthy deciduous trees planted along Lot 1's western boundary will be retained and maintained. Along Olde Parish Road there will be a total of 4 trees, 2 on each side of driveway.
4. Language of Sidewalk Maintenance and Lighting Easement to be reserved in deed shall be approved by town counsel and be substantially the same as the following:

Grantor reserves a Sidewalk Maintenance and Lighting Easement over that area: (1) within 3 feet of the easterly edge of the sidewalk which is the westerly boundary of the parcel herein conveyed; and (2) within 3 feet of the sidewalk to Washington Road which is the southerly boundary of the parcel herein conveyed.

Within said easement grantor shall have the following rights:

- a. To enter the land for purpose of maintaining and repairing the sidewalk.
- b. To place snow removed from the sidewalk provided green snow removal substances are used on the sidewalk.
- c. To operate, maintain and repair the lighting existing as of the date of this conveyance.

Grantee shall have the right, but not the obligation, to replace the existing sidewalk lighting and to install additional sidewalk lighting. If grantee exercises this right, grantee shall thereafter own, operate, maintain and repair said new lighting and pay the utility costs thereof. Grantee shall operate the lights during such time as grantor, acting through the Board of Library Trustees, may require.

5. Applicant shall prepare a plan sheet for recording purposes which meets the recording standards of the Rockingham County Registry of Deeds to be signed by planning board chair and then recorded.
6. Deed restriction on the preservation of the 75' open space on the southeasterly side of Lot 1 to be reviewed and approved by Town counsel.

11/12/20  
Date

  
Patricia Losik, Chairman  
Rye Planning Board

# RYE PLANNING BOARD

*10 Central Road Rye, NH 03870 (603) 964-9800*

## Notice of Decision

**Applicant/Owner:** Jak Nadeau Revocable Trust, Jay and Karen Nadeau Trustees

**Property:** 711 Long John Road, Tax Map 16, Lot 136  
Property is in the Single Residence District

**Case:** Case #07-2020

**Application:** Minor 3-lot subdivision by Jak Nadeau Revocable Trust for property owned and located at 711 Long John Road, Tax Map 16, Lot 136 to subdivide the existing lot into three single family residential lots with access via a 50'-wide right of way. Property is in the Single Residence District. Case #07-2020

**Date of Decision:** Tuesday November 10, 2020

**Decision:** The Board voted to continue the application to the December 8, 2020 meeting.

11/12/20  
Date



Patricia Losik, Chairman  
Rye Planning Board