

**TOWN OF RYE – PLANNING BOARD
WORK SESSION**

**Tuesday, November 30, 2021
6:00 p.m. – Rye Town Hall**

Members Present: Chair Patricia Losik, Steve Carter, Katy Sherman, Jim Finn, Kevin Brandon, Selectmen's Rep Bill Epperson, and Alternates Bill McLeod and Kathryn Garcia

Present on behalf of the Town: Planning/Zoning Administrator Kimberly Reed and Attorney Michael Donovan (via Zoom)

Present on behalf of the applicant: Joe Coronati, Jones & Beach Engineering, Mike Garrepy and Attorney Kevin Baum

1. Call to Order

Chair Losik called the work session to order at 6:03 p.m. and led the Pledge of Allegiance. Alternate Kathryn Garcia was seated for JM Lord.

2. Major Site Development Plan and Special Use Permit Application by Jones & Beach, Engineers, Inc. for property owned by Malcolm E. Smith, III and located at Tax Map 10, Lot 1 to construct 30 2-bedroom residential condominium tri-plex units. Property is in the Commercial, Multi-Family Overlay District and Aquifer & Wellhead District. Case #11-2021.

Chair Losik noted that she attended a meeting with the Select Board and Rye Water on Monday. She understands that there was a meeting last week with Rye Water and the developer. Speaking to Mike Garrepy, she asked him to bring the Board up to speed in regards to water connection.

Mike Garrepy explained that they are meeting with the Water District Commissioners at their meeting tomorrow morning. There have been preliminary meetings with RWD Superintendent Arik Jones and they think they have a plan. He will certainly provide the Board with an update after the meeting with the Commissioners.

Chair Losik commented that it sounded like fire suppression might be in one place and domestic another.

Joe Coronati, Jones & Beach Engineering, explained there are two water lines in the area. Rye Water District has a water main that runs up Dow Lane, goes to Route 1 and runs along the southern side of Route 1. Aquarion Water was in this area well before Rye Water District. Aquarion has a water main in the Town of Rye that only used to service the Hector's Restaurant and the hotel that was next to it. There's another water line on the other side of the street that's a

12" water main. Aquarion's line basically ends at the Evolve site. They used to service that site, but no longer provide water to that site. The service for Evolve was connected to Rye Water District's line coming off the tower that is just north of the site. He pointed out there is a section of line that Aquarion owns; however, they do not provide service to any sites in Rye, as they don't have an obligation or right to service anyone in Rye. There's been some discussions about connecting Rye Water District with Aquarion in that location. The connection would happen right in front of the site. There would be a 12" water main installed by directional drill under Route 1 to connect the Aquarion line to the Rye Water District line. This would then allow for inadmissible use of water systems. The one thing that is needed is an easement at the corner of the property for a valving station to meter how much water is being pulled from each water system.

Selectmen's Rep Epperson asked if the domestic water will be supplied by both Rye and Aquarion.

Mr. Coronati replied it will only be by Rye.

Selectmen's Rep Epperson stated that his understanding is that Rye will provide water; however, the interconnect with Aquarion would be used for emergency purposes only and fire suppression.

Mr. Coronati confirmed. He continued that one of the concerns was the size of the Benchmark building, fire flow and connecting the valving. He pointed out that at the end of the water main, a hydrant would be installed as a blow off, so that 12" section of water line could be cleaned and flushed as needed. He reiterated an easement would be provided for the valving station. There's a very similar station to this at the water tower itself for the units in Greenland and the Bethany Church. It's a small 10 x 10 building.

Member Carter asked how far up the northbound side of Route 1 the Rye main is located.

Mr. Coronati replied that it goes all the way to Washington Road.

Selectmen's Rep Epperson noted there was also a lot of discussion about the availability of water during peak months (June, July and August) because of irrigation systems. He asked about the plans for irrigation.

Mr. Garrepy stated that they will need to put some notes on the plans and documents about responsible irrigation. He pointed out that this is all subject to the Water District Commissioners' decision. However, the plan is to directional drill under Route 1 to tie into the District's water main and bring that line across the street to tie into the Aquarion Water line, which would then be acquired by the District. The Aquarion water line would be purchased by the Rye Water District.

Chair Losik asked if it was ever discussed whether Aquarion could supply the water.

Mr. Garrepy stated that when he spoke with Arik Jones, originally, his thought was that Benchmark would continue to use Rye Water District water and the development on the Hector's site would tie into the Aquarion line. As this progressed, that changed.

Alternate MacLeod asked if Aquarion is supplying the fire suppression water and Rye Water the domestic service. He also asked if there are going to be two water systems installed.

Mr. Coronati explained that if they had to pull for fire protection, Rye may not have enough water in their lines to do that, so the pull would start coming from Aquarion. The interconnecting valving station would monitor that water.

Alternate MacLeod asked if the units are sprinkled.

Mr. Coronati confirmed.

Attorney Donovan asked if the Fire Chief is onboard with this solution. He asked how opening the valve would work.

Selectmen's Rep Epperson explained that the system can be remotely controlled.

Mr. Garrepy noted that he will ask who will be responsible for controlling the valve.

Member Carter asked if the sprinklers are fed by the domestic water system.

Mr. Coronati noted there will be one large line coming in to the site and it will branch out for domestic and fire near the building.

Selectmen's Rep Epperson commented that according to the fire chief those sprinklers don't use much water.

Member Sherman commented that it's concerning to hear that Rye may not have enough water for an emergency.

Selectmen's Rep Epperson explained that Rye has plenty of water. The issue comes in May, June and July, during the heat of summer, when everyone is turning on their irrigation systems and they draw down the wells. If a big fire in July were to happen, there could be a problem.

Chair Losik stated there is also concern about future buildout on Route 1, in terms of the impact on population.

Mr. Garrepy pointed out that Arik Jones has already submitted a commitment to serve letter for both projects. The water is there. It's really just a matter of the design of getting the water to the sites. If that involves some kind of interconnect with Aquarion, they're happy to help facilitate that process.

Chair Losik pointed out that Rye Water is looking for another well. They are also looking at treatment options for Cedar Run Well to deal with the iron and manganese. Also, the mandatory ordinance, defined by State drought, was enacted by the Select Board in June of this year. She pointed out that there wasn't such an issue this year; however, there was an issue in 2020. In June of 2020, a day with the highest draw showed over a million gallons. Chair Losik noted that in the Land Development Regs in the areas of natural environment features, stormwater and landscape, they should look for areas that will help make the town ready for drought tolerance.

Attorney Donovan asked if there are plans for an irrigation system for this development.

Mr. Garrepy confirmed.

Attorney Donovan pointed out it's not shown on any of the plans. He suggested a substantially revised Sheet C-4 to show the cross connections, valving station and easement. There should also be several notes on Sheet C-4 to explain how this operates.

Mr. Garrepy agreed.

Attorney Donovan noted that a formal written certification from the Fire Chief is needed and is a condition of approval (#3).

Mr. Garrepy agreed.

Chair Losik asked Attorney Donovan to give an overview of the Workforce Housing Subsidy Lien and Restrictive Covenant document.

Attorney Donovan explained that this document is identical to the one that was approved for the Washington Green condominium project. It had its origins in The Housing Partnership proposal. He pointed out that Ben Frost is an expert in workforce housing in New Hampshire. Attorney Donovan stated that Ben Frost, Attorney Brown and he worked on this document. To summarize, the six units have to be sold to families that qualify under the income standards that the State uses to define workforce housing eligibility. An appraisal is done on the fair market value of the unit and a calculation is made, based on the formulas established by the State, as to what the affordable price is for that family to have the unit affordable to them. The difference is what becomes a subsidy lien which is placed on that unit. The lien is recorded. If that family sells down the road, they have to follow the same process in terms of finding another qualified buyer and appraisals. The administrative paperwork is handled by a designated agent. In this case, The Housing Partnership will handle all the administrative work. They will be responsible for the appraisals and qualifying the buyers. The Housing Partnership will be paid a fee upon closing for that work. He pointed out that this is the third one the town has done and the document is pretty much the same as the others.

Attorney Donovan stated that there is a lien that gets signed prior to the Board's chair signing site plan approval. This is signed by the developer and planning board chair and is then

recorded. It's recorded for each individual unit as they are sold. He continued that at some point before final approval, the Board will vote to approve this instrument and to approve the designated agent agreement.

Speaking to the Board, Chair Losik commented that the goal for tonight is to go over any questions, so they can take a vote on December 14th.

Member Brandon stated that the buyers are acquiring a piece of property with a restrictive deed. In practice, it sounds like this is an occurrence test as to whether they meet the workforce housing income standard. There doesn't appear to be a maintenance test involved. He doesn't know if the lien is an asset or a liability, or if it's just a notional sum. He asked if the town expects the liens are going to grow over time for these specific units because of the rising underlying home values. For instance, interest rates could triple and that would affect the 30% availability service rate, which would balloon the size of the lien. It would make it very difficult for the people buying these units to see any appreciation in what they are purchasing. That's one side that he finds concerning.

Chair Losik asked Attorney Donovan to talk about the language in 3.5. She recalls several conversations about the mechanisms for the subsidy lien to change over time and to be modified. With The Housing Partnership there were quite a few discussions about what happens when the first owner sells and there are changes in the market and income for the next buyer. She thinks 3.5 is attempting to give that flexibility to the transaction.

Member Brandon stated he is thinking about just the owner. If they want to stay but their income drops, is the town going to force them to sell. Does the town want to be in a position to say "your circumstances have changed and you no longer meet the criteria and we want to force a sale"? Adversely, people are aspirational. People may come in, get a raise and no longer meet the workforce requirements, but have no intention to sell.

Mr. Garrepy explained that with a purchase, they can't be forced to sell if their income increases. With a rental, they can phase out of income eligibility and have to leave the rental unit. In this case, people buy them who are income qualified. If their income goes up or down, they may have to sell if they can't pay their mortgage anymore. The lien is in place to make sure the next buyer is income qualified.

Member Brandon commented he is thinking of the changes in circumstances for the people who buy them. In theory, if someone is buying something that is 30% below market, there's not a particularly powerful incentive to sell.

Alternate MacLeod stated that they are buying the unit and getting the deal at the beginning. Because they are buying it at a reduce price, probably barely the cost of construction, they can't make a big profit ten years down the road when they sell. When they sell, they're subject to the market conditions at that time with the same formula on the subsidy basis. If they don't have a proper income to meet the mortgage obligation, they would have to do what everyone else has to

do and sell the unit. When they sell the unit there may be some appreciation. It may be somewhere close to the CPI and the formula at that time.

Member Carter commented that they probably wouldn't get much appreciation because it's all controlled by the acceptable value at the point they sell.

Member Finn stated that whole purpose is for someone with less income who wants to stay for a long term. Those are the people who are intended for these kinds of homes, not for someone who wants to flip a home.

Alternate Garcia pointed out that it puts people into housing who couldn't otherwise get into housing.

Attorney Donovan stated that in regards to the question of whether they are forced to sell if their income drops, the answer is "yes". The mortgagee has the right to foreclose, as in any situation if someone didn't pay their mortgage.

Alternate MacLeod pointed out that in 3.8 it says that the administrative fee is paid "at time of resale or refinance". He asked if the fee has to be paid on a refinance.

Chair Losik asked Attorney Donovan if that's the intent.

Attorney Donovan replied that he believes it is.

Alternate MacLeod commented that he didn't think they would be going through any administrative work just to refinance the loan. He can see the administrative work in buying the unit.

Mr. Garrepy noted that it probably needs to be reviewed to make sure the final mortgage docs with the new lender are consistent with the new mortgage.

Chair Losik asked Attorney Donovan to look at paragraph 3.8 for the 1244 Washington Road project. The language is expanded.

After some review of the language, Attorney Donovan stated that Marty Chapman (The Housing Partnership) would know why that would be required, as his agency is going to be handling the administrative work. He will get an answer for the Board before the next meeting.

Alternate Garcia asked if the Planning Board is the local oversight for the administration.

Planning Administrator Kim Reed explained that an agreement is being signed with The Housing Partnership who is going to be the designated oversight manager, not the municipality.

Attorney Donovan pointed out that The Housing Partnership is acting as the agent of the Planning Board. Ultimately, if problems arise, it's going to fall back on the Planning Board.

Attorney Kevin Baum noted that The Housing Partnership is a local non-profit. Their mission is providing affordable housing. They do their own projects. This is their third oversight as a designated agent. They've been around for decades and they have experience in dealing with these particular agreements and regulations.

Member Brandon stated that asking The Housing Partnership questions is part of the Planning Board's due diligence. They should be asked how they manage and provide fail safes to make sure the individuals moving into these households qualify.

Member Sherman stated that they have to put a certain amount of trust into The Housing Partnership. Marty Chapman has been at hours of meetings in the past and he answered every single question thoroughly.

Attorney Baum commented that he's sure Marty would be happy to come to the Board and present. He pointed out that this is the third project in town. He's concerned about delays and availability. He noted that the documents, formulas and approach has not been changed. These are identical to the last two projects that were approved by this Board.

Chair Losik stated it might be helpful to have Marty at the December 14th meeting. This is steeped in NH Statute 674:58, Workforce Housing. That's why Attorney Donovan was the drafter of this particular section of the ordinance to meld the multi-family with workforce housing. The statutory requirements are set by the State. She noted that Ben Frost has done a lot of writing and there's a good amount of information out there. Marty and Attorney David Brown were in communication with Ben Frost when The Housing Partnership agreements were done.

It was agreed to ask Marty Chapman to attend the Planning Board meeting on the 14th.

Note: *Bill Epperson left the meeting at 7:04 p.m.*

Chair Losik noted that if Marty cannot attend the meeting, it would be helpful for the Planning Board to understand the reality of dealing with the mechanics of the retirement or modification of the subsidy lien. She also noted that there are two chapters in the Master Plan. There's the language in Chapter 5 and an entire Chapter 5A addressing workforce housing. At this point, the Planning Board is working with the intention of the community to be responsive. They are working with complying with the State regulation, which was passed by the town. This project would give the community an inventory of 18 workforce housing units. This is an important action. It's a small resolution. She thinks it's important to get more information, so there will be more comfort.

Chair Losik asked the Board if there are any questions or concerns about the Workforce Housing Monitoring Services Agreement.

Member Sherman asked if this is a replica of what was done at Airfield Drive and 1244 Washington.

Chair Losik confirmed.

Member Sherman asked what would happen if The Housing Partnership dissolved.

Attorney Baum replied that they're a charitable organization. Their assets would have to go somewhere.

Chair Losik stated that any successor designated agent would be appointed by the Planning Board.

Attorney Donovan pointed out that Section 5 states that if The Housing Partnership is no longer able to, or willing to, be the designated agent, it's up to the developer to find another designated agent. If not, it's up to the Planning Board to find an agent.

The Board did not have any further questions. The group moved on to review the conditions of approval.

Conditions of Approval, Hector's Site Multi-Family Development, Major Land Development/S.U.P Approvals:

1.
 - a) Notes should be added to both Sht. C2 and Sht. C3 regarding ownership of infiltration basins and other drainage.
 - b) Add a note to Sht. C4 (utility plan) regarding the Rye Water District Easement and other water details. Update RWD contact.
 - c) C2 and C4 should show the proposed locations for the monitoring wells. (GO #'s 2, 3, 4, 5, 7 and 8)
 - d) Approved plans should have the correct landscape plans. (Applicant confirmed these will be included in the next set of submissions to the Board for the Dec. 14th meeting.)
2. No changes.
3. Expand the language to specifically address: emergency access adequacy and water supply for fire suppression.
4. No changes.
5. No changes.
6. Change to Sht. 2 (currently listed as Sht. 3). Change the wording: "in order to be conveyed to the town storm drainage system" to "in order to be conveyed to the existing storm drainage system".

7. New #7 - Add easement to Rye Water District (Sht. C2).

Note: *Numbering of conditions change by one.*

8. It was noted by Attorney Donovan that if the Benchmark expansion does not happen, the emergency access would have to be extended 150' further into the Benchmark property to get to the existing perimeter drive. There was discussion at the last meeting about the location of the gate. There were no issues with the gate being on the BSL property. Attorney Donovan pointed out that the gate provides access to the Tuck Realty project. He feels the gate should be a part of the condo project. Regardless, there has to be an easement. The easement might address the possibility of the Benchmark expansion not going through. Attorney Baum explained that Benchmark requested to have the gate on their property, as it would be easier for them to maintain long term. They prefer to take on that obligation. Attorney Donovan agreed to work on this condition with Attorney Baum for a revision for December 14th.
9. No changes.
10. Amount of surety to be noted in conditions.

Note: *There were no changes in the conditions for #'s 11 – 22.*

23. Change the wording: “and recorded with the plan sheets and Certification of Approval” to “and recorded with the first declaration”.
24. Mike Garrepy asked for clarification about “of the same quality” for workforce housing. He noted that his understanding is that the inside finishes could be of a different quality than the market units, in order to create the ability to build affordable units. Planning Administrator Reed noted that the workforce housing units at 1244 Washington Road have the same finishes as the market units.

Chair Losik pointed out that 1244 Washington has a differentiation on workforce housing based on square footage, as those units were all moved to non-end units. It is true that they all look alike and they all have the same finishes, it's just a square footage factor.

Mr. Garrepy stated that with the last iteration of plans, all the workforce housing units were middle units. All the middle units are smaller. There were ten middle units and six were workforce housing. Now, the units have all been made the same size. In order to provide the housing that this town wants and the State has dictated, the developer has to be able to build it at a certain price.

Alternate MacLeod stated that he has done a lot of workforce housing in Massachusetts. The standard was that someone would not be able to tell from the outside which was the affordable unit; however, the finishes inside were not luxury, as were the market units. That

is what made the project viable. With workforce housing units, the developer is lucky if they break even. He doesn't think the Board should be dictating the finishes. If the town wants to encourage workforce housing, they shouldn't be putting in little roadblocks so it gets the point where it starts to disincentivize people from doing it.

After discussion, Attorney Donovan stated that his initial thought is to just eliminate the second sentence. The architectural drawings are going to assure that the outside of the units are the same.

The Board agreed the second sentence should be struck; ~~The workforce housing units shall be of the same quality as market units.~~

25. Member Brandon stated that the intention of the developer is to sell the units. There are developers with captive finance subsidiaries that will then acquire the homes and rent them out. It accrues to the benefit of the workforce individuals who are trying to come in because they don't have to go through the mortgage process. He asked if the Board cares if the developer has units that become rental units. The purpose is to allow people to come in who can afford the unit, whether they own or rent the unit.

Attorney Donovan explained that this condition is a carryover from The Housing Partnership, where they are more likely to be in a position to rent out the units. It's unlikely that Mr. Garrepy is going to want to stay in the rental management business. He wouldn't think that any developer would want to stay and become a rental management company.

Member Finn commented it has to be left in the conditions. If some economic event happens and the market has crashed, the developer has the right to produce a cash flow by renting out the units.

Mr. Garrepy asked why this condition is included at all. While it's his intention to sell, there may be an intent to rent all the units or some of the units at some point. As the project builds out, the market conditions may change and it may be a stronger rental product.

Planning Administrator Reed asked if the rental would still have to go through the designated agency to make sure they are renting to someone who qualifies for workforce housing.

Attorney Donovan confirmed. The units would have to be rented to people who meet the workforce housing requirements, so someone has to make that determination.

Mr. Garrepy noted that this condition limits the ability to consider renting. It's saying that if there are great sales, they have to be sold and they can be rented only if they don't sell. This disallows the developer from renting the units, as they have to be on the market for six months.

Attorney Donovan noted that the application was for condos. The Board may have looked at some of the review criteria a little differently if it was known that it was going to be a rental project. Mr. Garrepy didn't say he may want to go either way with these.

Planning Administrator Reed stated that Attorney Donovan is correct. The application is for a condo project for sale purposes.

Mr. Garrepy stated that he came in with a townhouse project. He never specifically said "for sale".

Speaking to Mr. Garrepy, Administrator Reed asked if he had ever considered renting versus selling, before Member Brandon brought this up.

Mr. Garrepy stated that his intent has been to sell these units. However, this eliminates the possibility of having a rental product in town, especially workforce units.

Member Carter noted that the intent of this condition is to allow the developer to rent the units, if he was not able to sell them. This was meant as an "out" for the builder, so there were not a bunch of empty units.

Chair Losik agreed.

Mr. Garrepy commented that this makes more sense.

The Board and Mr. Garrepy agreed to leave the condition as it is worded.

26. Attorney Baum noted that the multi-family ordinance says that multi-families are exempt from the equitable distribution provision. He understands that is a limit to four building permits per year.
- Mr. Garrepy stated that the multi-family ordinance allows for all building permits to be pulled. He believes it's saying that they may not get all the COs, but all the permits can be pulled to get most of the construction done. He asked if there is a way to tie in subsection E. (190-4.2.E)

It was agreed to revise the condition to state: "The build out of the development shall comply with the Growth Management Ordinance as amended by the provisions of Rye Zoning Ordinance Section 190-4.2.E."

27. This condition will be modified at the planning board meeting when there is more clarity.
28. No changes.
29. No changes.

30. Mr. Garrepy asked for the wording to be changed to “may be connected at the option of the association”. He doesn’t want there to be any confusion as to who’s deciding when it may be connected. There may be difficulties connecting this project to the sewer in the future, given how the lines are run and where the septs are located. Also, it’s a fairly expensive undertaking to install the pre-treatment systems.

Attorney Donovan stated that he wouldn’t get into changing the wording and opening the possibility of the association arguing that they aren’t required to connect to public sewer if it becomes available. If sewer becomes available, there is a law that governs when a property can be ordered to connect. He doesn’t think the Board wants to go down the road of suggesting that if they were ordered to connect, somehow this condition of approval could block that. What it says right now is that it may be connected to sewer if it becomes available without further review. It basically says that the Planning Board doesn’t have to review it again, if it happens to be connected.

It was agreed to leave the wording as is.

31. No changes.
32. Joe Coronati noted that the GPS Disk 10 was located. It’s right in the middle of the driveway across from Dow Lane. He suggested giving the data for the pins at the corners.

Alternate MacLeod commented that he doesn’t think that’s sufficient because the boundary is definitely going to get obliterated. This is a control point. It’s more than a pin. It’s a disk. Another one should be reset on the site.

Attorney Donovan explained that this says the applicant is responsible for the relocation of the disk in a manner approved by the Planning Board. He suggested they do more work on what approvals are needed to relocate the disk and who set these disks.

Mr. Coronati asked if anyone knows why these were set.

Alternate MacLeod explained that the ones he has used in Rye were set in a granite bound off the edge of the road. These were set about 25 years ago.

Attorney Donovan stated that these are basically scientific reference points for surveyors to tie into when doing their survey work. Some surveyors are required to certify that they’ve tied into these benchmarks. He reiterated that they need to look into the process for relocation.

Alternate MacLeod noted that the way the condition is worded is fine. At some point, they’ll be told where and how to do it.

Attorney Donovan noted that he is going to seek more information for the December 14th meeting.

Note: *There were no changes in the conditions for #'s 33 – 36.*

There was some discussion about adding a condition about the time of construction (7am to 5pm, Monday through Friday). It was the condition of the Board to not add that condition.

The Board moved on to review conditions of approval for the conditional use permit. Attorney Baum requested to reserve the right to make further comments once Geo-Insight reviews. Chair Losik agreed.

Conditions of Approval, Conditional Use Permit Approval:

1. No changes.
2. Attorney Donovan noted the plan sheets that show the septic systems. Condition needs to be more specific. Mr. Coronati noted there's going to be revised plans that have to go to the State for approval. There may be additional revisions.
It was agreed to add revise the condition to state:
Ten Septi-Tech Model STAAR 1.0 DENITE wastewater systems and associated leach fields shall be installed as portrayed on the approved plans, OBS, S1 through S10 (date TBD) and as approved by N.H. DES.
3. Editorial change: ten (10) systems (currently worded as five (5)).

Note: *There were no changes to conditions #s 4 – 7.*

8. New condition #8 - The most current septi-tech operation maintenance manual shall be provided to each unit owner.

Note: *Numbering of conditions change by one.*

9. Attorney Donovan suggested adding "Porous asphalt pavement shall be swept quarterly with a vacuum assisted dry sweep".

At 8:59 p.m., the live-streamed was disconnected and the remainder of the meeting was not available. The Board continued to review the rest of the proposed conditions for the Conditional Use Permit, which will be available for further discussion and review at their meeting on December 14th.

Respectfully Submitted,
Dyana F. Ledger