

**TOWN OF RYE – PLANNING BOARD  
MEETING**

**Tuesday, January 3, 2023 – 6:00 p.m.  
Rye Town Hall**

***Members Present:*** Attorney Eric Maher, Kevin Brandon, Rob Wright, Chair Patricia Losik, Steve Carter, Jim Finn

***Also Present on behalf of the Town:*** Planning/Zoning Administrator Kim Reed

**I. Call to Order**

The board made their introductions and Chair Losik summarized the agenda for the public hearing of the proposed zoning amendments. Each article will be introduced, discussed by the Planning Board and counsel, and opened for public comment. Planning Board members will deliberate and vote. Another proposed amendment to the building code will also be discussed amongst the board, but will not be open for public hearing.

**II. Public Hearing on Proposed Zoning Amendments**

**Article II**

Chair Losik noted new language within §190-2.3(B), section B regarding uses permitted by special exception which reads as follows:

“In the SR District the following uses are permitted by special exception provided that (1) the criterion for the grant of a special exception set forth in §190-7.1(A)(3) and (2) there is no disturbance to the local environment visually or from noise, noxious fumes, nighttime lighting, excessive traffic, or any other actions beyond what is customary in the neighborhood.”

The board also discussed language within section A3, which was a small enough textual change that it was not needed to be submitted again.

Member Carter noted that a small “t” is needed after (2).

Hearing no comments from the board regarding Article II, Chair Losik opened to the public. Hearing no comment from the public, Chair Losik closed the public hearing at 6:07 p.m.

**Motion by Rob Wright to move Article II as amended to the warrant. Seconded by Jim Finn. All in favor.**

**Article III - 3.1**

Chair Losik noted the following changes to Article III - 3.1:

- §190-3.1A(1a) – the addition of “Isolated, non-bordering wetlands,” and “all other”.
- §190-3.1A(2a) – the addition of “NH Coastal Viewer”
- §190-3.1A(2) – “a” and “b” became “b” and “c”
- §190-3.1B(3) – 10 years is changed to 5 years
- §190-3.1E(1) – Restoration of “measured 4 ½ feet above ground level” and elimination of the dash prior to “within”
- §190-3.1H(1b) – correction made to “streams”
- §190-3.1H(1f) – edited to read “Within 75 feet of edges of all other wetlands that are not named in §190-3.1H(1)(a)-(e) or identified as isolated, non-bordering wetlands” and the elimination of a comma after “wetlands”
- §190-3.1H(1g) –the addition of “Within 25 feet of edges of isolated, non-bordering wetlands.”

Chair Losik opened to the public. Hearing no comments, the public hearing was closed at 6:13 p.m.

**Motion by Steve Carter to move Article III - 3.1 as amended to the warrant. Seconded by Rob Wright. All in favor.**

### Article III

Chair Losik noted the following changes to Article III – Overlay Districts, §190-3.0, §190-3.2 through §190-3.8:

- §190-3.3D(4) – the addition of “Applicants are advised to consult the Town of Rye Historic District Commission Design Guidelines dated December 2021, as these guidelines may be amended.”
- §190-3.3E(1) – addition of the same language stated above; reference numbers 1, 2, and 3 become 2, 3, and 4.

Hearing no comments from the board, Chair Losik opened for public comment on Article III, §190-3.0, §190-3.2 through §190-3.8. Hearing no comments, Chair Losik closed to the public.

**Motion by Jim Finn to move Article III and the Overlay Districts §190-3.0, §190-3.2 through §190-3.8 to the warrant. Seconded by Rob Wright. All in favor.**

### Article IV

Chair Losik noted the following changes to Article IV Planned Developments:

- §190-4.1D(9) – addition of “public walking trails”

- §190-4.3D(9) - addition of “public walking trails”

Chair Losik opened to the public for comment; hearing none, the public hearing was closed at 6:17 p.m.

**Motion by Rob Wright to move Article IV - Planned Developments to the warrant as amended. Seconded by Steve Carter. All in favor.**

### **Article VIII**

Referring to page four, Chair Losik explained that the board needed to pick up a reference to §190-8.4 in section C. The same change is needed for §190-8.4D on page five. She also noted the addition of paragraph F on page five.

Chair Losik opened to the public; hearing no comment, the public hearing was closed at 6:19 p.m.

**Motion by Rob Wright to move Article VIII to the warrant as amended. Seconded by Jim Finn. All in favor.**

### **Article XI**

Chair Losik noted minor changes to page 10, where the definition of “Isolated, Non-Bordering Wetlands” was added and defined as “Those areas of 3,000 square feet or less which satisfy the definition of “wetlands” but which (1) are not within 100 feet of any other wetland and do not abut tidal lands, ponds, 1st-4th order streams or rivers, vernal pools, and freshwater marshes, (2) do not contribute to flood storage or the proper conveyance of surface water runoff, and (3) are not identified as a vernal pool. (See also “WETLANDS”).

Chair Losik noted the addition of Principal Dwelling on page 15, defined as “The primary or predominant structure to which a property is or may be devoted to a residential use and to which all other uses and structures on the premises are subordinate or accessory.”

Also noted was a minor change to the reference on page 21, which reads, “See also ‘ISOLATED, NON-BORDERING WETLANDS’)”.

Hearing no questions from the board, Chair Losik opened to the public hearing. The public hearing was closed at 6:21 p.m.

**Motion by Rob Wright to move Article XI definitions as amended to the warrant. Seconded by Jim Finn. All in favor.**

**III. For Discussion and if approved move for a public hearing on 1-17-23**

The board discussed Attorney Maher's preparation in advance of the deliberative session.

- **Building Code Amendment 2023-01: RE: Irrigation Permits**

Chair Losik explained that the board would discuss a proposal to amend section 35-5A of the Building Code.

Planning/Zoning Administrator Reed explained that Art Ditto emailed draft RWD requirements for irrigation and watering systems as well as their proposed changes to the building code dated 12/23/22. The town administrator spoke with Phil Winslow, who would also like to make changes. Planning/Zoning Administrator Reed explained that this email correspondence is complete and includes work by Attorney Maher and the Rye Water District with changes by Mr. Winslow under 35-5.

Chair Losik suggested that the board review the language from the last non-public hearing and compare it with the most recent information. She summarized the previously proposed language regarding building permits for irrigation systems and compared it with the new proposal which focused on language requiring backflow preventers.

Chair Losik consulted Attorney Maher as to how to make this language work within the building code.

Attorney Maher explained the town has the ability and authority to do this; but the question remains, what are the criteria that Mr. Marsden will apply when assessing whether or not to issue or deny an application for a building permit for an entire irrigation system versus a backflow preventer?

Member Wright explained his concerns. He noted that the New Hampshire code doesn't site the specifics of backflow preventers. He asked if the RWD is looking for the board to make stronger language in the Rye code than in the New Hampshire code. If that is the case, then this language may not be specific enough to make it enforceable.

Member Brandon pointed out that it's atypical for an irrigation system to be installed without a backflow preventer.

Attorney Maher and the board discussed the matters of irrigation systems, backflow preventers, and the intention behind the RWD's proposed amendment. The board also discussed the grandfathering system for pre-existing, non-conforming systems.

Mr. Ditto explained the objective of the RWD's amendment, which is primarily to manage the installation of irrigation systems and encourage the use of the most effective irrigation technology, which promotes water conservation.

Attorney Maher asked how the town, through the building code process, can assist in achieving the RWD's goal.

Mr. Ditto requested the board include the proposed sentence, "Building permits are also required for new and replacement irrigation systems for all properties that fall within the boundaries of the Rye Water District" within the building code.

Member Wright, speaking to Mr. Ditto, asked what would keep the RWD, in the absence of a requirement for a building code, from adopting this requirement.

Mr. Ditto responded that nothing is keeping them from adopting the requirement, but it's a question of how to enforce such a requirement.

Member Wright and Mr. Ditto discussed the possibility of increasing the cost of water for users whose consumption surpasses a certain limit. Mr. Ditto explained that that is something the RWD already does. Member Wright suggested that the goal of decreased usage could be solved by increasing that rate. Mr. Ditto expressed his goal to track irrigation systems within the town, which he hopes would be met with the requirement of an issued building permit.

Chair Losik and Mr. Ditto discussed the language of the proposed amendment.

Member Brandon discussed possible methods to incentivize the conservation of water, particularly for those existing water irrigation systems.

In response, Mr. Ditto asked how LDR regulations will be enforced. Chair Losik explained that LDR regulations are enforced through the audit reports, the same mechanism used for the reporting of septic systems, boundary edges, etc.

Chair Losik asked who the RWD is speaking to within their proposed amendment. Chair Ditto clarified that it addresses anyone within the boundaries of the service area of the RWD.

Speaking to Mr. Ditto, Attorney Maher clarified that the RWD wants to make sure new irrigation systems are compliant with the design criteria and that there is a mechanism for inspecting and ensuring that those systems are being used responsibly. Mr. Ditto agreed.

Member Wright asked if Mr. Ditto had any data to show excess use due to old irrigation systems, versus a large property being irrigated.

Mr. Ditto explained that the RWD has the ability to track user water consumption. He noted that 81% of RWD customers use 42% of the water and 19% of customers use 58% of the water.

Member Wright pointed out that the RWD has the ability to resolve the matter without the addition of a building code ordinance.

The board, Attorney Maher, and Mr. Ditto discussed the logistics of the proposed amendment, usage fees, and proposed language for the amendment.

Attorney Maher presented a draft of the proposed language for the amendment.

“An irrigation system permit shall be required for new, expanded, and replaced irrigation systems for all properties that are connected to the distribution system of the Rye Water District. Such irrigation systems shall be designed in accordance with the Rye Water District’s requirements for irrigation watering systems and the building inspector shall seek the certification from the Rye Water District as to the compliance of the system with the Rye Water District’s requirements prior to the issuance of an irrigation permit”.

The board discussed this language with Mr. Ditto. Attorney Maher pointed out that this would shift the burden of administration and enforcement onto the town and specifically onto Mr. Marsden.

The board discussed a variety of potential challenges with the proposed amendment. Members expressed concern over the increased burden of administration, regulation, and enforcement upon the town. Chair Losik noted that Mr. Marsden should be included in this conversation, particularly since he’d expressed opinions on the language as it was initially presented.

The topic of economic incentives was briefly discussed as well as concern over the potential for disparate treatment of citizens.

It was also noted that the logistics of the amendment remain unclear and the question remains as to whether this would resolve the RWD’s presented aim to manage irrigation systems and ultimately conserve water.

The board continued to discuss the logistics of the proposed amendment and its ultimate impact on the town’s overall water use.

Attorney Maher presented a revised draft of the proposed language for the amendment:

“A building permit shall also be required for new, expanded, and replaced irrigation systems for all properties that are connected to the distribution system of the Rye Water District. Such irrigation systems shall be designed in accordance with the Rye Water District’s requirements for irrigation and watering systems. The building inspector shall seek certification from the Rye Water District as to the compliance of the system with those requirements prior to the issuance of a building permit. Upon completion, the installer of the irrigation system shall certify that the system was installed in accordance with the Rye Water District’s requirements and the building inspector shall seek confirmation from the Rye Water District as to the compliance with the Rye Water District’s requirements on the completion of the installation.”

The board discussed the potential for complications as a result of tying the permit to compliance with the Rye Water District’s proposed regulations.

The board continued to discuss irrigation system tracking and mechanisms to encourage the conservation of water in Rye.

Tom King expressed that the RWD is trying to bite off too much since water conservation won't be helped by this mechanism. He suggested that what can be done to protect the water supply is the requirement of properly installed backflow preventers.

Attorney Maher suggested a blending of language between the initial proposal presented and discussed at the board's previous meeting, which targeted backflow preventers, and Mr. Ditto's most recent proposal.

Member Brandon discussed the topic of water conservation and expressed that the best way to discourage excessive water use is through water pricing.

Chair Losik discussed backflow prevention plans in other communities and the high hazard posed by not having proper backflow. She invited Mr. Ditto to elaborate on Rye's backflow prevention plan, which he described.

The board discussed language from the Rye Planning Board's proposed building code amendment 2023-01 dated December 2, 2022, revised December 7, which was discussed last month and reads as follows:

"A backflow preventer shall be required for all new, expanded, replaced, and/or altered irrigation systems which shall be installed by a licensed New Hampshire plumber. The licensed New Hampshire plumber shall apply for a permit from the building inspector who shall ensure that such backflow preventer is appropriate for the proposed irrigation system and will be installed in accordance with the New Hampshire building code and established best practices"

Considering the board's discussion, Attorney Maher suggested the following changes:

- Strike "altered"
- Add, "any requirements of the local water utility and established best practices" after "New Hampshire building code"

The board discussed their positions regarding the proposed amendment. Chair Losik consulted Attorney Maher, who explained that if the board does not move this to the warrant, then the change must be noticed and another public hearing shall be held on January 17, 2023.

**Motion by Jim Finn to hold a public hearing with regard to the proposed amendment discussed regarding irrigation systems on January 17, 2023. Seconded by Kevin Brandon. Vote: 4-1**

**Motion by Jim Finn to adjourn at 8:16 p.m. Seconded by Kevin Brandon. All in favor.**

Respectfully Submitted,  
Emilie Durgin