

TOWN OF RYE – PLANNING BOARD MEETING

**Tuesday, January 7, 2020
6:00 p.m. – Rye Public Library**

Members Present: Chair Patricia Losik, Vice-Chair J.M. Lord, Steve Carter, Jeffrey Quinn, Jerry Gittlein, Tim Durkin, Selectmen’s Rep Bill Epperson, and Alternates Katy Sherman and Jim Finn

Others Present: Town Attorney Michael Donovan and Planning Administrator Kim Reed

I. Call to Order

Chair Losik called the meeting to order at 6:00 p.m. Chair Losik asked for a motion to take RZO Amendment 2020-08, under Old Business, out of posted agenda order and move it to the first item on the agenda.

So Moved by JM Lord. Seconded by Jerry Gittlein. All in favor.

II. Old Business:

RZO Amendment 2020-08 would amend Section 303.5.G Solar Collectors in Historic District to delete “visibility from adjacent public streets and adjoining properties” from the list of factors to be considered by the Historic District Commission in evaluating a solar panel installation. Public hearing on this has been closed.

Chair Losik stated the Board had a good amount of discussion on this amendment at the December 3rd meeting. Since that time, additional letters have been received. She thanked the citizens that expressed concerns personally or on behalf of organizations; including Historic District Commission, Energy Committee and Rye School Board. A letter was received recently from a member of the Historic District Commission (HDC), Karen Stewart, and alternate from the HDC, Katherine Brown. Letters have also been received from residents of the Historic District; Madeline Chichester, Kaitlyn Coffey, Bob Cronin, Dr. Mark Josephs, Charles Hoyt (who is also a member of the HDC) and Ronnie and Randy Werner. Chair Losik stated that she is going to recommend that the Board withdraw this proposed amendment for the following reasons;

- In a close review of the December 3, 2019 Planning Board minutes;
 - Mae Bradshaw, on behalf of the HDC, made clear (page 2 of the minutes) that the HDC is working on comprehensive design guidelines for the District. Further, they are pursuing a Centralized Local Government (CLG) Grant regarding the same. Mae Bradshaw sites concerns that the grant would not be available under federal government standards. Visibility of the panels would not be permitted, under the Department of the Interior of National Park Service Guidelines.
 - On page 3 and 4 of the minutes, it was noted that there was some language in the Master Plan regarding the historic nature of the town center. Another cite was support and preservation of Rye’s semi-rural character, which in the energy section of the Master Plan encourages embracing of 21st Century Technology. Solar technology is being developed. Perhaps, the Town will see some additional opportunities.

- On page 5 of the minutes, the Energy Committee asked the Board to look at wording from ordinances from Durham and Exeter. There is an email in the file from the Durham planner in regards, visa vie, to what Durham is doing.

Chair Losik continued that her recommendation for the Board is to consider withdrawing 2020-08, see where the design guidelines go for the District and work in concert with the HDC, which would be done through the Rules and Regulations Committee. In 2016, there was a lot of work on wetland. That came out of concern that was expressed in December of 2015 about some wetland proposed ordinances. That summer, the Rules and Regs Committee and various parties of interest, did a fair amount of work on the wetlands. That is what she sees for this. There are various groups; HDC, Energy, school committees and interested citizens. Once it is the right time, that might be the right format.

Member Quinn stated that with all due respect, he has to own up to probably spearheading this effort. He continued that at least two of the members on the committee (Rules & Regs), thought that the rule for solar panels was arbitrary and discriminatory. He feels that generally a person ought to be able to do what they need to do to live the most economically and environmentally friendly as they wish and not be hampered by neighbors. To him, it makes no sense for a town to have zoning laws that they can overlook. It is part of State law that the town is not burdened by zoning laws. In the attempt to make it possible for people to make logical decisions about their property, and or the town government to make decisions about how they can most economically and most responsibly provide services to the town, he thought it was prudent to remove that item from the requirements. He continued this is probably not worth studying. He would suggest a subcommittee, instead of wasting the time of the Rules and Regulations Committee, given the attitude of the Town. There does not seem to be a balance on the way this is perceived by homeowners. He does not think it is worth the time. He would agree with the proposal to withdraw but that is as far as he would go.

Chair Losik asked if he is saying he would not vote to commit time resources.

Member Quinn confirmed.

Speaking to Attorney Donovan, Member Durkin asked if the middle school wanted to proceed with evaluating alternatives for solar panels, would they be able to do that independent of whatever the Historic District Commission may have on that process?

Attorney Donovan stated at the last public hearing on this, he was asked by Selectperson Roman to prepare an opinion as to whether the exemption that is normally provided to political subdivisions from zoning, which includes the school district, water district and the Town, would apply to these circumstances, since the solar rays would be owned by a private investor under a lease-purchase agreement. He has submitted a confidential memo to the Board regarding his thoughts. He continued that his opinion is basically that the exemption would still apply to the panels that are proposed under the Power Purchase Agreement for the school and the Public Safety Building. There is a process by which the School District could be asked to go to the Historic District Commission for non-binding input.

Member Durkin clarified that the HDC can say that they don't like the idea of the solar panels but the school can decide to still proceed.

Attorney Donovan replied that in his opinion they can.

Member Durkin stated he agrees with Member Quinn. He does not see historic structures and solar power as mutually exclusive items. He agrees with withdrawing but he cannot see spending any more time on it.

Member Quinn stated that in identifying “historical”, in a sense, everything in town is historical to a certain degree. Therefore, the things that are built today, in ten years, are going to be “historical”. There have been uproars over cell phone towers. There have been uproars over Seabrook siren poles. He would venture to say that everyone has learned to live with the electrical wires that line the public streets. That is not the way this town looked back in the 1700’s. Technology and life advances.

In regards to additional work on this, Chair Losik stated that she has looked at N.H.’s enabling statutes and the work that has been done by other towns for an entire solar ordinance, while this is specific to solar and historic as it relates to the HDC. She thinks if they pull back from the discussion of solar, they are remiss. She is looking at it more broadly.

Selectman Epperson pointed out this is one part of a discussion they have been having about power and solar. Right now, the Town spends about \$160,000 per year for electric. Part of this visibility issue with the municipal buildings, would save the Town about \$7,800 per year if they were to go with the Purchase Power Agreement in its entirety; the first six or seven years. After that, the Town would have the opportunity to buy out the contract for approximately \$930,000., which would be paid through a bond over the next twenty years. He agrees with Chair Losik that this discussion should continue. For the Town to turn its back on this, is not a good idea. He noted that solar panels can go in the Historic District right now. They just cannot be visible from the road. He stated it would be foolish not to have this discussion ongoing so the Town is prepared to do something progressive in the future when it comes to renewable energy.

Member Quinn commented that is the long view. This is dealing with an issue of solar panels. The way the homes up through the center of town are configured, it doesn’t even lend itself; except, the Town Hall and the Church. He does not see anything that is worth the amount of time that is going to be put on this that is going to balance the scale in the short term.

Alternate Sherman stated she agrees with Member Quinn and Member Durkin. She is afraid that a subcommittee is going to be a waste of time, but it should not be completely tabled. If the best option at the Junior High, is to lay them on top of the gymnasium, she does not have a problem with that. It is teaching the children in that school and the community, that it is important to be environmentally responsible. At the last meeting, someone said that Rye couldn’t make a difference and she couldn’t disagree more. She thinks Rye can make a difference.

Chair Losik stated she thinks there is more work, not just with the HDC but also with solar. The Town does not have a solar ordinance. Having another subcommittee of the Rules and Regs is not too appealing. But, is it okay to say a superstructure that is not in the same plain as a roof on a building is not allowed? She does not know the answer to that. She knows it substantially changes what the building looks like. She thinks there is more work to be done.

Selectmen Epperson stated that he thinks it would be irresponsible for them to turn their back on it and not do the work. This is the future.

Vice-Chair Lord asked if they are speaking just about the Historic District or town wide.

Chair Losik stated the ordinances she has looked at are town-wide. She is looking more at the bigger picture. She does not think they can opine on the Historic District until the HDC's work with the design guidelines is done.

Member Carter stated he is in favor of withdrawing it, but there is more work to be done. He thinks the discussion should continue and not dropped.

Vice-Chair Lord stated he has no problem withdrawing this. He agrees with Member Quinn and Member Durkin, also. Part of the language that he sees is a little onerous in the Historic District. If a neighbor doesn't like it, it will get shot down and that is not really fair. He thinks solar panels and the Historic District can go together pretty well. In looking at the bigger picture, it would be nice to have a solar ordinance outside of just the Historic District. He agrees there is more work to be done and does not have a problem with withdrawing the amendment.

Alternate Finn stated that he agrees the Town needs some type of ordinance addressing renewable energy and solar panels, so some study is needed.

Member Gittlein stated he thinks it is worth the extra work it is going to take because it is an issue that can't necessarily be dealt with in one or two meetings. It may be two or three years before something appropriate is come up with. In the meantime, there are going to be things that evolve that will impact requirements, restrictions or whatever they want to decide as a land use committee. He thinks it is worth the effort to continue the study.

Chair Losik stated that it sounds like there is general agreement to withdrawn the amendment. There is some equivocation as to how much energy and resources should go into the work short term. However, she does not want Rules and Regs to reconvene next year and not talk about this.

Member Quinn asked if this could be given to Rules and Regulations to take under advisement. He cannot imagine this coming before the Board next year with a solution.

Chair Losik agreed. This reminds her of the wetlands work. In 2015, there was a proposal for substantive and significant changes to the ordinance and it didn't move smoothly. Rules and Regs took it up and formed a subcommittee. If the Board decides to withdraw, she thinks that is a good decision. She would prefer a motion that says that Rules and Regs be asked to consider the relevant matters, with maybe a long-term view being a solar ordinance.

Motion by Jeffrey Quinn to remove Rye Zoning Ordinance Amendment 2020-08 from consideration at the next town election and this issue, in its broader sense, be delegated to the Rules and Regulations Committee, for perhaps long-term planning, to consider some of the larger issues as to how advances in technology are going to alter the look of the Town. Seconded by JM Lord. All in favor.

Alternate Sherman asked if Attorney Donovan's memo to the Board is going to be made public.

Attorney Donovan noted this would be up to the Board.

Motion by Tim Durkin to make available to the public the memorandum to the Board from Attorney Donovan dated December 24, 2019 relating to solar panels on town buildings in the Historic District. Seconded by JM Lord. All in favor.

III. Public Hearing: Proposed Zoning Amendments

Chair Losik asked for a motion to take RZO Amendment 2020-03 before 2020-001.

So moved by JM Lord. Seconded by Steve Carter. All in favor.

RZO Amendment 2020-03: Amends Section 304 Coastal Area District to require a Special Use Permit from the planning board for new dwellings and substantial renovations of existing dwellings within the district. The amendment has changed from the one presented at the 12/3/2019 hearing. The definition of “substantial renovation” has changed, and language addressing floodplain freeboard has been added.

Chair Losik noted that at the December 3rd meeting there was a lot of discussion on this. Attorney Phoenix brought some considerations to the Board on his own accord with the matter of a SUP resting with the Planning Board and removing the ability for owners to seek variance through the Zoning Board. The Board also heard from Keriann Roman in regards to looking at some small modifications with respect to coastal area properties that were not in the flood hazard zone being subject to SUP. The Board also received correspondence from Patricia Weathersby. In looking at the matters that were raised at the last meeting and through recent correspondence, there is a possible overlap between this proposed ordinance and the Floodplain Development and Building Ordinance that was passed last March. The Floodplain Development and Building Ordinance includes permitting and review language for development, including improvements in special flood hazard areas. Section 16 of the flood development ordinance includes a process of variance and appeals via the ZBA. At this time, there is not enough time to explore and discuss the correlation of what is proposed and what exists in the Floodplain Ordinance. She recommends the withdrawal of 2020-03. She does not look at this from the concern of the SUP. She looks at it from the concern of the overlap of the Floodplain Development and Building Ordinance that deals with just those properties in the special flood hazard areas. The flood maps the Town is under right now are the 2005 maps. The Floodplain Development and Building Ordinance only works with the 2005 flood maps. Under the 2014 flood maps, the area under water will be quite expanded. This is an area that is moving and changing. There should probably be more time to study.

Motion by Bill Epperson to withdraw Rye Zoning Ordinance Amendment 2020-03. Seconded by JM Lord. All in favor.

Chair Losik opened discussion to the public at 6:42 p.m.

Shawn Crapo, 676 Central Road, Zoning Board Member, commented this is written prematurely. This does not address “shall”, a term they wrestle with all the time in Sections 603 and 201. This states; “shall not grant a SUP”. Potentially, there could be an existing structure that is 37ft tall in the Coastal Overlay. The renovation of that would potentially fall over the 25%. The Board would be precluded, by the language, from issuing a SUP which would trigger a lawsuit. In being on the Zoning Board, he can see that it might make sense in some cases to not make someone come in for a foot or two that is only driven by FEMA. He questions whether only specifying 2ft would further cause a handicap. He wonders whether there can be some sort index that only refers to FEMA. If 2ft is given but the new maps require

homes to be raised 3ft, they are right back to a bunch of extra hearings that don't need to be. He continued the he read Patricia Weathersby's letter and there is nothing that he would dispute. He does not know the driver but it seems that it takes some of the control and puts it under the Planning Board versus people coming in to get a variance. As written, someone could come in and get a variance to go to a certain height and because they are over 28ft, the Planning Board "shall" not grant the SUP. He thinks the amendment needs to be flushed out.

Attorney Donovan explained he was asked to draft this to address a certain situation. The feeling was that perhaps too many variances are being granted from the height restrictions of the Coastal District. Since 2011, there have been 26 height variances granted in the Coastal District. One of the ideas was to comprehensively revise the Coastal District to make this a Special Use Permit process. He prepared a confidential memorandum to the Rules and Regulations Committee and they said to go ahead and put an amendment together. He is sensitive to some of the concerns that have been articulated by Shawn Crapo and Patricia Weathersby. Without getting into the details of the confidential advice to the Rules and Regulations Committee, withdrawing this at this time and seeing how things go with 2020-01, which allows the 2ft, may be a good course of action. He continued the Planning Board and Board of Selectmen have not taken positions on applications before the ZBA, in his recollection. However, there is a concern on the part of the Board of Selectmen and Planning Board Members that there really isn't a hardship that is creating a need for some of these variances.

Mr. Crapo stated there has been an erosion of the hardship standards because the judges are now allowing reasonable. It seems that more and more lawsuits are threatened. When the Board is met with looking at that criteria of whether the 29ft is reasonable versus 30ft, the erosion of the standards placates to the money yielding homeowner.

Selectman Epperson asked if the fear of a lawsuit is what is driving the variances being granted.

Mr. Crapo replied in some essence "yes". In looking at the criteria now, the judges have allowed it to erode. It used to be that reasonableness did not become part of it. Hardship had to be proven. Now, in some cases, people's desires let the judge decide on reasonability.

Member Durkin stated that when he was a zoning board member, he did not recall making any decision based on a concern that however the Board voted there would be a risk of litigation. The "beef" that he has had with the height issue in the Coastal Overlay, is that there are folks coming in going beyond the 28ft to 35ft who are constantly making reference that "FEMA is going to require this. We need to get ahead of FEMA and the only way to do that is to make sure we have a height that might address what may or may not be imposed in the future."

Selectman Epperson pointed out that they also want 9.5ft ceilings but that does not work under the ordinances. The boards have a responsibility to the citizens and the Town of Rye to uphold it to the best of their ability.

Chair Losik stated that UConn School of Law published a brief that studied the Connecticut shoreline communities. It is surprising how "stingy" the raises for buildings are above base flood elevation. What is interesting is they are not going to see this continued creep. The question is how do we get our arms around this? Hopefully, 2020-01 will be a start in the right direction.

Member Carter stated that he is more in align with Shawn Crapo that there should be some sort of index. Say a house is at 28ft and is required to be raised 4ft for FEMA, now a variance is needed. If all these are going for variances and they are all being granted, then maybe it is not really believed that 28ft is the right number. Is 28ft the right number?

Vice-Chair Lord asked if they are talking new buildings or substantial renovation. He thinks the problem is when someone buys a small place and suddenly it goes from 7ft ceilings to 10ft ceilings causing vertical creep.

Alternate Sherman pointed out there have been so many variances that now people are saying “well my neighbors did it and I should be able to do it too”.

Member Quinn asked if it is too arbitrary to tie in to the existing FEMA requirement for freeboard.

Planning/Zoning Administrator Reed explained it is not FEMA, it is the Town of Rye’s Floodplain Ordinance. To be part of the National Flood Insurance Program, the Town of Rye has written a floodplain ordinance. It’s not FEMA’s ordinance. It is Rye’s ordinance.

Member Durkin stated this is a good point. There is not a specified number or height that FEMA is saying has to be complied with.

Planning/Zoning Administrator Reed continued that right now, the Town of Rye has adopted the 2005 berms and it is based on elevation. When someone goes to build a house, it is at the base elevation of the grade. The base elevation has to be looked at, what the house is built on now, the existing grade and what the ceiling height is going to be. She reiterated it is the Town of Rye Floodplain Ordinance and that is where it needs to be clear. In order to be a part of the National Flood Insurance Program, the Town of Rye has to adopt floodplain ordinances.

Mr. Crapo stated that his comment on reasonableness is perhaps some appropriate amendments could be made to other sections. Maybe there needs to be a comprehensive look at some of the factors that drive height.

Hearing no further comments from the public, Chair Losik closed the public hearing at 7:00 p.m.

Rye Zoning Ordinance (RZO) Amendment 2020-001: Amends the 28 ft. height restriction of the Coastal Overlay District to allow a 30 ft. height if a building is required to be elevated by the Floodplain Ordinance. The amendment has changed from the one presented at the 11/12/2019 hearing. Language incorporating the provisions of the proposed Amendment 2020-03 has been added.

Attorney Donovan stated that language is now moot because the Board decided not to go forward with 2020-03. The Board can vote to move the version of 2020-01 that was heard on December 3rd to the ballot.

Motion by Tim Durkin to remove the underlying language in 2020-01 and move to the ballot. Seconded by JM Lord.

Member Durkin suspended his motion. Chair Losik opened the public hearing at 7:02 p.m.

Mr. Crapo stated that obviously withdrawing 2020-03 takes out the proposed sentence. His only comment would be whether the 2ft encompasses any possible elevation issues. FEMA references the maps and the Town votes to adopt the maps, which converts into the ordinance.

Planning/Zoning Administrator Reed explained this ordinance takes into consideration the preliminary maps, as well as the existing maps.

Chair Losik commented that she would think the Board would be responsive if there are any changes. This is a good starting ordinance.

Planning/Zoning Administrator Reed stated that currently the way the floodplain ordinance is written, it says 2ft freeboard above and beyond base flood elevation.

Hearing no further comments, Chair Losik closed the public hearing at 7:05 p.m.

Member Durkin unsuspended his motion to remove the underlying language in 2020-01 and move to the ballot. Seconded by Jerry Gittlein. All in favor.

The motion forwards the original version of 2020-01 to the Town Clerk.

RZO Amendment 2020-12: Adopts Chapter 190 of the new town code as a replacement of the present Rye Zoning Ordinance. The amendment has changed from the one presented at the 12/3/2019 hearing. Three additional housekeeping changes have been added to Schedule B C of the ordinance adopting Chapter 190.

Chair Losik explained that Attorney Donovan has suggested for years that the Town needs to have all town ordinances and codes consolidated into one code book that is well organized and in one place. The Selectmen have put this into the budget and a company was hired to prepare a new town code. The information is well organized and includes corrections of outdated references and typos. She noted the Board has already moved the codification of the floodplain ordinance to the warrant.

Attorney Donovan noted it was Schedule B when the public hearing notice was published. What has been submitted to the Board is an edited version dated January 7, 2020. It contains a couple of editorial changes, not of substance. The editor who is in charge of the new general code does not use the same language style that he does. Attorney Donovan has made a couple of changes to the editor's style and changed Schedule B to Schedule C. Those are the only two changes.

Chair Losik opened to the public at 7:08 p.m.

Mr. Crapo commented that he does not really understand how this process works. He asked if all the ordinance numbers will change.

Attorney Donovan confirmed.

Mr. Crapo asked if all the items on this agenda that are going to be on the ballot need to reflect the change.

Attorney Donovan replied no. The new amendments that are passed will be wrapped into the new code in the appropriate sections. The new code sections do not have to be referred to in these amendments. When the amendments pass, they will automatically be codified into the proper format. He further explained it is a fairly simple concept. There will be one town code in one book. Every year after new ordinances are passed, supplemental pages are put in. It is a very efficient way to have the Town's ordinances organized.

Mr. Crapo stated the message needs to be clear that it is just a renumbering and the zoning is not changing, other than the proposed amendments.

Attorney Donovan stated the wording of the ballot question itself is what's going to be key. That does not have to be the same wording that is here. The key will be how this is worded on the ballot.

Alternate Sherman commented that the explanation could say something about being more user friendly because it is.

Hearing no further comments, Chair Losik closed the public hearing at 7:13 p.m.

Motion by Steve Carter to move the January 7, 2020 version of 2020-12 to the ballot. Seconded by Tim Durkin. All in favor.

BC Amendment 2020-03: Adopts Chapter 35 of the new town code as a replacement of the present Rye Building Code. The amendment has changed from the one presented at the 12/3/2019 hearing. An additional housekeeping change has been added to Schedule B D of the ordinance adopting Chapter 35.

Attorney Donovan stated the other 15 to 20 ordinances of the Town are going to be dealt with in one warrant article; adopting the new town code. The reason these have to be separated out is because they are all land use ordinances. Technically, putting them into the codified form is an amendment of the zoning ordinance, which requires public hearings and a separate warrant article. These three ordinances had to be pulled out of the basic town code to be voted and are subject to a second vote because they are land use ordinances.

Mr. Crapo stated the way these are written it looks like the Town is getting a new State driven zoning code, so why would they even be talking about amending the existing one? The challenge is going to be the old numbers. Somewhere there needs to be a permanent map that shows what got changed to what.

Chair Losik clarified a pre-codification, including all amendments.

Mr. Crapo agreed.

Hearing no further comments, the public hearing was closed at 7:16 p.m.

Motion by Tim Durkin to move 2020-03 to the ballot. Seconded by JM Lord. All in favor.

RZO Amendment 2020-13: Comprehensively amends Section 505 Wireless Telecommunications Facilities. The amendment includes but is not limited to several new and revised definitions; new designs performance requirements; revised setback and separation requirements; new plan and

other submittal new requirements; new requirements for issuance of a special use permit; and new standards for waivers.

Chair Losik reviewed editorial changes to the proposed ordinance dated December 11, 2019. She opened to the public at 7:20 p.m.

Howard Kalet, Telecommunications Committee Chair, stated this was part of the Telecommunication Committee's effort. There are quite a few things in the ordinance that have been clarified and updated. The committee thinks this is appropriate and Attorney Donovan has spent a great deal of time reviewing this with the committee's consultant.

Chair Losik thanked Mr. Kalet and his committee for their noble effort.

Attorney Donovan noted it is a much stronger ordinance than what the Town has now.

Hearing no further comments, Chair Losik closed the public hearing at 7:22 p.m.

Motion by Tim Durkin to move RZO Amendment 2020-13 to the ballot. Seconded by JM Lord. All in favor.

RZO Amendment 2020-14: Amends Section 505.3 to add Tax Map 12/Lot 79 at 55 Recreation Road (Rye Recreation Area) to the Wireless Telecommunications Facilities Overlay District.

Chair Losik opened the public hearing at 7:22 p.m.

Planning/Zoning Administrator Reed stated that she heard from Howard Kalet that there was a meeting last night. Selectperson Roman met with the Rye Recreation Committee and they voted that they were not in favor of this proposed amendment. The members of the Rye Conservation Commission are also not in favor of this amendment. There is a request for the Board to remove this from consideration.

Selectman Epperson asked what the overarching resistance was to putting this into the overlay.

Mr. Kalet explained that Rye Recreation had a list of items that were discussed; among them included, a lack of suitable space and the concern of being too close to the Town Forest and being too close to the wetlands. They also had concerns on providing an access road in order to get to the compound. The big issues were about space and where to put the tower. It was not viewed positively by the Recreation Commission.

Speaking to Mrs. Reed, Chair Losik asked if Conservation had a separate meeting.

Planning/Zoning Administrator Reed explained that Susan Shepcaro, a Conservation Commission Member, is also an abutter on Recreation Road. Ms. Shepcaro came to see her and told her that the Conservation Commission also did not approve of this proposed amendment. There was no formal vote of the Commission.

Member Durkin asked the number of Recreation Commission Members who were not in favor of the amendment.

Mr. Kalet noted that not all members were present but the vote was unanimous. There were four members present.

Member Quinn asked what the problem would be with leaving the proposed amendment the way it is. It does not mean that anything is going to be constructed on the site. He thinks they ought to make a “stab” at establishing this site as possible. He would recommend moving this to the town warrant as written.

Mr. Kalet stated that if two or three years down the road a wireless company decides this would be a suitable site, nothing would progress unless Rye Rec, Select Board and the Town are ready. Having it in the Overlay District does not make it an open door for a wireless company to come in and build without any further review.

Selectman Epperson asked why they would put this in the ordinance if there is no issue with a wireless company coming in and saying they want to build there. They would have to go through the same process.

Attorney Donovan explained they would not need a use variance from the ZBA if it were in the Overlay District. Similarly, last year the Town put the 14-acre parcel at 0 Port Way in the Overlay. That parcel requires wetland variances but it does not require use variances because it is in the Overlay. It would eliminate one potential hurdle.

Chair Losik asked if the Recreation Commission meeting was well attended by the public.

Mr. Kalet replied no. There were about 6 to 8 people.

Mr. Crapo asked if rec would have the same custody and control over those lands, as the schools have decision over their land. The Recreation Commission controls what happens there, but can the Town dictate what happens, more so than the regulations over school land?

Attorney Donovan replied that like so many things it is complicated. Part of it comes down to a warrant article on the March 14, 2000 Annual Town Meeting, Article 18, where the Town adopted the recommendations of the Town Forest Citizen Advisory Committee relative to that 14-acres, which is now the town rec area. The warrant article said; “Any future development at the town recreation area, including any cutting of trees in the 5-acre portion of the town rec area, located north and west of the soccer field, must first be approved by the Board of Selectmen and the residents of Rye to a vote at town meeting.” He continued that in his opinion, if the town meeting wanted to vote to put a tower on that 14-acres, it could be done. It would probably take a warrant article amending the warrant article from 2000. He does not believe the Recreation Commission could preempt the town meeting from taking the appropriate vote to allow that to happen.

Mr. Kalet reiterated that this is absolutely the best and least restricted cell phone location for an additional tower beyond Port Way, for the best coverage and to be far enough away from the residents. The nearest resident would be 1,000ft away. He continued there are many places in town with conservation restrictions, county restrictions, or in one case, a federal restriction. With the understanding that town meeting could potentially progress this, he sees no reason not to leave it in.

Attorney Donovan noted that since December 5th he has not had any further communication with Selectperson Roman on this. She is a municipal lawyer and may have a different opinion, which may

have been expressed to others. He continued that his take is that it is more of a political issue than anything else. Does the Board want to proceed with this in the face of the Recreation Commission's opposition?

Mr. Crapo commented that ultimately that is part of their land. Do they want their land being carved off for a non-recreation purpose? He can understand their sentiments in the vote.

Chair Losik closed the public hearing at 7:42 p.m.

Speaking to the Board, Chair Losik stated there may be an opportunity to not make a decision tonight. She thinks that it would be wise to speak with Selectperson Roman to get her input. This could be put on the agenda for the Board's meeting on January 14th.

Motion by Jeffrey Quinn to move Rye Zoning Amendment 2020-14 to the town warrant.

Member Quinn stated this in no way mandates a cell phone tower will go there. It says that the spot is recommended. The Town has been asking for a professional to recommend areas that were apropos for a cell phone tower. He thinks enough work has been done on this and it should be moved to the town warrant.

Vice-Chair Lord asked what information Selectperson Roman would be able to bring to the table.

Attorney Donovan explained that she has been the selectmen's representative on this committee. She has been the lead point on the study that led to this. He reiterated that she is a municipal attorney and may have a different opinion as to whether the Recreation Commission can ultimately veto this or not.

Member Carter stated he agrees with Member Quinn. He is fine with putting it off to next week, but it should go to the warrant. It is a place that has been identified and the Town has been asking for this study. If the Town votes it down, they vote it down. Not everything that goes to the warrant necessarily gets voted in. He commented that he thinks it is a pretty good site and would hate to see four people torpedo it.

Speaking to Member Quinn, Chair Losik asked if he would be willing to amend his motion to move it to next week. It sounds like there is support for it going to the warrant, but there also sounds like there is support for consideration of Selectperson Roman's input.

Member Quinn agreed to amend his motion.

Amended motion: **To move Rye Zoning Ordinance Amendment 2020-14 to the Planning Board Meeting on January 14, 2020. Seconded by Tim Durkin. All in favor.**

Mr. Crapo stated that last year when the Brackett Road proposal was before the boards, the fact was brought up that there are really no areas on the Overlay south of where they are. If this was to die and there were still no southern areas proposed, what is the exposure? Is it a detriment?

Attorney Donovan explained that not having sites in the Overlay makes it more difficult to defend a denial when a carrier comes in on a private property and wants the variances necessary to build. Out of this study process, several additional properties were identified. However, he was told the committee was

just limited to looking at town parcels. In his opinion, the umbrella should be larger and private parcels should be looked at as well.

RZO Amendment 2020-15: Amends Section 402 Multi-Family Dwellings & Multi-Family Developments to change the minimum requirement for inclusion of workforce housing from 20% to 30%.

Member Gittlein asked how the implementation of this would impact a couple of projects that are already underway with workforce housing.

Attorney Donovan replied it would not because those have already been approved.

Alternate Finn asked what is driving the increase from 20% to 30%. Is it a State ordinance?

Attorney Donovan replied no. It is just town policy to encourage workforce housing. His take is on the way this came about is when Mr. Garrepy came before the Board with a conceptual for the old Hector's site, it was noted how this Multi-family Development Overlay District had seemed to be successful in generating projects that had 20% workforce housing. He had made the comment that perhaps it should have been higher. The Board picked up on that and decided to make it 30%.

Selectman Epperson stated that The Housing Partnership development is at 20% and the Falzone development is at 20%. Those are the only two that have been approved at 20%. He is not sure that arbitrarily going to 30%, without seeing what happens with the 20%, makes a lot of sense. It may have unintended consequences.

Chair Losik asked who would have unintended consequences.

Selectman Epperson replied the Town in not being able to approve developments or making it uneconomical for someone to do a development. There are things they do not know about.

Alternate Finn stated that workforce housing is really a misnomer. He finds it kind of silly. He understands the concept; however, in a town like Rye, the cost of property is pretty high. It is a very narrow coastal town and it is very hard to get affordable housing anyways. This is messing with a market.

Member Durkin stated there are young families who are interested in moving here because it is an attractive school district. The starting point makes it very, very difficult to find affordable housing. He continued that he views this as in the interest of the Town to have the ability to have some sort of influence over affordable housing for those who are interested in moving here. He believes this is for the betterment of the community at large.

Chair Losik stated it is also an entry point for young professionals and young married couples who want a starting point. The Legislation has passed a commission to study barriers in the State to increase land development. They are looking at promoting development density, particularly to promote workforce housing. Affordability is an issue. She does not think it is opening the envelope too wide to go from 20% to 30%.

Member Carter stated he is not opposed to 30%. However, he does not want to have it 30% and having to constantly waive that requirement so the projects are affordable for the people who want to build them, which is what seems to be happening a lot in Portsmouth.

Vice-Chair Lord stated this Board has worked very hard on making developers “tow the line” to have really great projects. He asked if they are willing to give up some of that to increase workforce housing. He reiterated the developments the Town is getting now are looking pretty nice and are top-end.

Attorney Donovan suggested that the Board consider increasing the allowed density combined with increasing the minimum for workforce. The density is limited to six units per acre. What if it was increased to eight units per acre with the percentage increased to 30%? He is not sure this would make a difference or not.

Member Durkin commented that is something he would not support. He thought the project that was just approved was too dense.

Member Quinn stated he is reluctant to move this to 30% just simply based on more is better. They must’ve come up with 30% based on some benchmark.

Attorney Donovan replied not really. He explained experience has shown it is not unreasonable.

Member Quinn commented there is no documented stress that more is needed. This is just being done on a whim.

Selectman Epperson noted that this is what he was getting at. Those projects have not been built yet so they really do not know.

Chair Losik opened to the public at 7:55 p.m.

Mike Garrepy, Tuck Realty Corporation, stated he has worked on a number of affordable housing developments over his career. He is a big proponent of entry level housing and affordable senior housing. He thinks that 20% is economical viable. In looking at the ordinance, it is at least 20% but an applicant could choose to go up as high as 51%. There is a density bonus to allow a developer, at the discretion of the Planning Board, to go up to 30% and get the eight units per acre. It is already built into the ordinance. The only way to make these projects more affordable, is to have some kind of tax incentive or economic break in the math. The higher the requirement for workforce housing, the more economically unviable it becomes. He noted that building those units is typically a loss. The profit is made on the market rate units when they sell. Developers do not have the funding that the non-profits typically have access to. Increasing this requirement to be greater than 20% would make a lot of projects not economically viable. There would need to be some kind of incentives, such as density incentives or access to financing, to make the project viable.

Chair Losik asked what the driver is that makes the project not viable over 20%.

Mr. Garrepy explained it is the acquisition and construction costs. Every workforce housing unit that is built is a loss. The price is fixed by the State based on the demographic area. The ability to make up that loss and make a profit on the market units still works, in terms of the math.

Chair Losik asked if there is any flexibility in the design to absorb more workforce housing units.

Mr. Garrepy replied not necessarily, unless a dramatically different unit is built for the workforce units. The project would then lose its consistency.

There was more discussion with Mr. Garrepy on building the workforce housing units versus the market units.

Dave Garvey, Realtor representing Malcolm Smith, stated that in terms of unintended consequences, this could make the project non-viable. The intention is to get more workforce housing; however, by doing this, the Town may lose all workforce housing. There was also discussion about the number of children and declining enrollments. There was a study just completed by UNH and sponsored by the New Hampshire Association of Realtors that very specifically shows a complete decline all the way across the State in all the school districts. He pointed out that workforce housing is very important. Density becomes a barrier. Right now, the Town allows six units per acre. There is an allowance already in the ordinance to go to eight units by going to 30%. This has already been considered previously by the Planning Board. To just change this on a whim does not make sense. If this were to be changed, he would change the density and increase it versus the workforce housing units. There would be more workforce housing units just by increasing the density. It was said that the density was too great on another project; however, people have to start thinking about that because land is scarce and is not plentiful any longer. It is the responsibility of towns to increase density where it can be done, so there is the ability to bring in more people and more workforce housing.

In terms of construction costs, Mr. Harvey stated this year there has been a 17% increase in the cost of construction. The Town would be “shooting themselves in the foot” by trying to raise the bar. He thinks the Town has a good ordinance at 20%. He noted that there was a project proposed in Londonderry. The requirement was 35% and the analysis for the project showed that it would not work. The requirement was brought back down to 20% to make that project work.

Member Gittlein asked for some feedback on the project.

Mr. Harvey noted the project was completely sold out. The project was for 200 units.

Member Gittlein stated the cost of the land is not going to change. It is never going to get cheaper and Rye is dealing with that. He thinks this may be driving some of this discussion that the Board may drop back a little bit on this. He thinks that is a fair thing to do as a land board.

Mr. Crapo pointed out that it seems there will be a conflict from changing from 20% to 30%. There is now an incentive that would need to change also.

Chair Losik closed the public hearing at 8:14 p.m.

Member Durkin stated he supports it as written.

Speaking to Member Gittlein, Chair Losik asked if he supports going to 30%.

Member Gittlein stated he does not think it is necessary.

Vice-Chair Lord stated he does not think it is necessary. He would not be in favor.

Member Quinn commented that after what he has heard at this meeting, he would not be in favor of moving this to the town warrant.

Alternate Sherman stated she would be in favor of moving this to the town warrant.

Alternate Finn stated he supports affordable housing; however, he is not convinced this is the right approach.

Member Carter stated at this time, he would not be in favor of this. He would like more information.

Selectman Epperson stated he has always made it clear that he would like to see more children in town. That is why he was enthusiastic about the project on Airfield Drive. He is hoping there will be some additional opportunities for children at Falzone's project. However, to change this arbitrarily to 30%, without even knowing what the 20% means, is a mistake. He would not be in favor of moving this to the warrant.

Chair Losik stated she is actually in favor of the 30%. She thinks there was intent to move from 20% to 30%, but the density bonus sits there. It is not enticing anybody to jump over there. She also believes that there is always an opportunity for creativity in finance and ways to make a project happen. She would not let one set of facts, based on one project, influence her. She reiterated that she supports the 30%.

Motion by Jeffrey Quinn to remove Rye Zoning Ordinance Amendment 2020-15 from consideration on the town warrant. Seconded by Bill Epperson.

Vote: 5-2 Opposed: Tim Durkin and Patricia Losik

IV. Old Business:

- **Floodplain Codification**

Attorney Donovan noted the floodplain codification was voted to send to the Town Clerk at the December 3rd meeting. There is one correction; Schedule B has to be changed Schedule E.

Motion by Jeffrey Quinn to move the corrected version of Chapter 60 to the Town Clerk. Seconded by Tim Durkin. All in favor.

Adjournment

Motion by JM Lord to adjourn at 8:22 p.m. Seconded by Bill Epperson. All in favor.

Respectfully Submitted,
Dyana F. Ledger

RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2020-08

Re: Solar in the Historic District

Amend Section 303.5 G: **Solar Collectors** as follows (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

- G. **Solar Collectors:** The Rye Historic District Commission has jurisdiction over solar collectors as appurtenant exterior fixtures of buildings in the Rye Historic District. Solar panels require the Historic District Commission’s review and approval. The Historic District Commission shall evaluate applications on a case-by-case/property-by-property basis. (Adopted March 12, 2013)

The Commission takes into consideration five factors in evaluating solar panel installation, including:

1. The structure’s historic character and architectural importance,
2. The purpose of the installation,
3. Alternative means to conserve energy,
4. ~~Visibility from adjacent public streets and adjoining properties and~~
5. The project’s design and compatibility with the structure.

Explanation

To allow for solar collectors within the Historic District

RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2020-03

Re: Special Use Permits for New Dwellings and Substantial Renovations
in Coastal Area District

(Note: Changes from amendment heard on 12/3/19 are indicated as ~~strike-throughs~~ for deleted language and ***emboldened and italicized text*** for new language.)

Amend Section 304 COASTAL AREA DISTRICT by adopting the following new § 304.6 and re-indexing present § 304.6 to § 304.7.

§ 304.6 Special Use Permit for New Dwellings and Substantial Renovations.

- A. Within the Coastal Area District a new dwelling or the substantial renovation of an existing dwelling shall require a Special Use Permit (SUP) from the Rye Planning Board.
 - 1) For the purposes of this requirement the term “new dwelling” includes a dwelling which replaces an older dwelling.
 - 2) For the purposes of this requirement the term “substantial renovation” is the renovation of an existing dwelling which:
 - a. Increases the dwelling’s coverage by more than 25%; or
 - b. Increases the ~~interior living space floor area~~ ***bulk*** of the dwelling ***resulting in an increase of interior living space*** by more than 20%.
- B. The planning board shall not grant a SUP for a new dwelling or for the substantial renovation of an existing dwelling which exceeds 28 feet in height ***as measured from existing grade***. Exceeding 28 feet in height is prohibited. Heights in excess of 28 feet for dwellings which require an SUP or substantial renovations of existing dwellings which require an SUP are contrary to the spirit and intent of the Coastal Area District. The board ~~may~~ ***shall*** grant an exception to this prohibition if a building or structure is required to be elevated in accordance with the Floodplain Development and Building Ordinance, but the overall height of the building or structure shall not exceed 30 feet measured from existing grade.
- C. Prior to approving a Special Use Permit, the planning board shall determine, by a vote on the record, that the proposal meets each of the following standards.
 - 1. All other requirements of the zoning ordinance.
 - 2. The granting of the SUP is not be detrimental to adjacent property or the neighborhood.

3. The granting of the SUP is not be detrimental to the public safety, health or welfare.
4. The granting of the SUP is not be contrary to the public interest.
5. The architecture of the proposed new dwelling or the proposed substantial renovation is compatible with the architecture of abutting dwellings.

D. Conditions. In approving a Special Use Permit, the planning board may attach such conditions to its approval as it deems necessary to further the objectives of this section, the zoning ordinance and the public health, safety and general welfare.

E. Fees. The planning board shall charge an application fee for a Special Use Permit in addition to its fee for site plan approval and any fees for investigation and review allowed by RSA 676:4, I. (g).

F. Conflicts. Where the provisions of this section conflict directly with another requirement of the zoning ordinance the provisions of this section shall govern.

G. Authority. This subsection is adopted as an Innovative Land Use Control, pursuant to RSA 674:21.

H. Appeal. Pursuant to RSA 676:5, III., appeals of any planning board decisions made pursuant to this section shall be taken to the superior court, not to the board of adjustment.

Explanation

The amendment tightens the 28 ft. height limitation of the Coastal Area District by requiring a Special Use Permit from the planning board for new dwellings and substantial renovations of existing dwellings within the Coastal Area District.

RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2020-01

Amend Section 304.4 Height as follows (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

Height: Within the Coastal Area District, no building or structure shall exceed 28 feet in height *as measured from existing grade. For any new dwelling or substantial renovation, as defined in § 304.6A.1 and § 304.6A.2 respectively, the height of the dwelling shall be governed by § 304.6B.* If the building or structure is required to be elevated in accordance with the Floodplain Development & Building Ordinance, the overall height of the building or structure shall not exceed 30 feet as measured from the existing grade.* Wireless telecommunication towers are exempt from this limitation.

Explanation

The amendment allows for construction in the Coastal Overlay District and Special Flood Hazard Zones which must comply with the two-foot freeboard to get the required height.

*The change from amendment heard on 12/3/19 has been underlined.

RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2020-12

Re: Adoption of Chapter 190 of Code of the Town of Rye

§ 1-23. Adoption of codified Zoning Ordinance.

The Rye Zoning Ordinance adopted March 10, 1987, as amended through March 12, 2019, as renumbered, revised and codified as Chapter 190 Zoning of the Code of the Town of Rye, is hereby approved and adopted. This ordinance and Chapter 190 shall supersede all other Zoning Ordinances enacted prior to the enactment of this ordinance.

§ 1-24. Continuation of existing provisions.

The provisions of Chapter 190, insofar as they are substantively the same as those of the ordinances in force immediately prior to the enactment of Chapter 190 by this ordinance, are intended as a continuation of such ordinances and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior ordinances.

§ 1-25. Severability of Code provisions.

Each section of Chapter 190 and every part of each section is an independent section or part of a section, and the holding of any section or a part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other sections or parts thereof. If any provision of Chapter 190 or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

§ 1-26. Severability of ordinance provisions.

Each section of this ordinance is an independent section, and the holding of any section or part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other sections or parts thereof.

§ 1-27. Changes in previously adopted ordinances.

A. In compiling and preparing the ordinances for publication as Chapter 190 of the Code of the Town of Rye, no changes in the meaning or intent of such ordinances have been made, except as provided for in Subsection B hereof. Certain other minor nonsubstantive changes were made to correct spelling and grammatical errors. It is the intention that all such changes be adopted as part of Chapter 190 as if the ordinances had been previously formally amended to read as such

B. The amendments and/or additions as set forth in Schedule C attached hereto and made a part hereof are made herewith, to become effective upon the effective date of this ordinance. (Chapter

and section number references are to the ordinances as they have been renumbered and appear in the Code.)

§ 1-28. When effective.

This ordinance shall take effect upon passage, provided the March 10, 2020 Town Meeting adopts the Code of the Town of Rye.

§ 1-29. Incorporation of provisions into Code.

The provisions of this ordinance are hereby made part of Chapter 1 of the Code of the Town of Rye, to be titled "General Provisions, Adoption of Chapter 190 of the Code of the Town of Rye."

Schedule C (As Referenced in § 1-27B)

(Note. Added text is underlined. Deleted text is struck out or in brackets).

Section 190-2.1A(2) is amended as follows:

The Zoning Map was amended March 9, 2010, to enlarge the Commercial District by moving the boundary between the Commercial District and the Single Residence District ~~this that~~ is located west of Lafayette Road and north of Breakfast Hill Road a distance of 800 feet further to the west so that the new boundary is 1,300 feet from Lafayette Road and to add a new Multifamily Dwelling Overlay District, per § 190-3.7 of this chapter.

Sections 190-2.2J(7), 190-4.2E(3) and 190-4.3G(3) are amended to change "occupancy permit" to "certificate of occupancy."

Sections 190-3.1C and G(1) and (2), 190-3.6I, 190-4.0B, 190-5.2A(3) and 190-5.5L(2) are amended to change "Zoning Board of Adjustment" to "Board of Adjustment."

Section 190-3.1C is amended to change the term "an independent NH certified wetlands scientist" to "a certified wetlands scientist" and to delete the last sentence.

Section 190-3.1D(2) is amended to change the reference to "Wetlands Conservation District (Appendix A) and Low Impact Development techniques (Appendix A)" to "Wetlands Best Management Practice Techniques: For Avoidance and Minimization, as amended."

Section 190-3.1E(1) is amended as follows: "There shall be no cutting of live trees with a diameter of 4 1/2 inches or more, measured 4 1/2 feet above ground level, within the ~~fifty-foot~~ one-hundred-foot border zone of the tidal marshes and the ponds of § ~~301.7 A.2~~ 190-3.1H(1)(a)."

Section 190-3.1F(6) is amended as follows: "Where there are existing streams and drainageways, swales, rain gardens, infiltration systems, functioning detention ponds or man-made water conveyance systems[,] whose flow of water has become impeded by excessive vegetation of any kind or by fallen trees, logs, silt, natural detritus, or by any other means, the owner may have this condition corrected."

Section 190-3.1G(6) is amended to change the references to "NH certified wetland scientist" to "certified wetlands scientist."

Section 190-3.1I(2) is amended to delete a duplicate reference as follows:

Exempt work shall be accomplished in accordance with Best Management Practices (BMPs) as described in "Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials," NH DES, January 2004, as amended[;] , and "Innovative Stormwater Treatment Technologies Best Management Practices Manual," NH DES, 2002, as amended; and ~~"Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials", NH DES, January 2004, as amended.~~

Section 190-3.6E(1)(o) is amended to change "at the time of this ordinance" to "at the time of adoption of this section."

Section 190-3.6G(2)(d) is amended to change "Env-Wq, Best Management Practices for Groundwater Protection" to "New Hampshire Administrative Rules Part Env-Wq 401, Required Best Management Practices for Groundwater Protection."

Section 190-3.6G(6)(g) is amended to update the Administrative Rules reference from "Env-Wm" to "Env-Hw."

Section 190-4.0C is amended in the first sentence to change "Zoning Board of Adjustment" to "Board of Adjustment" and in Subsection C(5)(a) to update the Administrative Rules reference from "WS 1004:03" to "Chapter Env-Wq 1000."

Section 190-4.2C(6)(c) is amended as follows: "The Planning Board shall impose conditions on the approval of multifamily dwellings and multifamily ~~dwellings~~ developments which shall assure that the approved number of workforce housing units remain permanently available for workforce housing as defined by RSA 674:58."

Section 190-5.1F(1)(a) is amended to delete the reference to "N.H. Admin. Rules TRA 602."

Section 190-5.4E is amended to change "both the Town and State Ordinances" to "both Town ordinances and state laws."

Section 190-5.5E(1)(a) is amended as follows: "The application for a special use permit shall include the certification of a professional engineer ~~registered~~ licensed in the State of New Hampshire that the tower is capable of structurally supporting four antenna locations."

Section 190-5.5E(1)(d) and (3)(a) are amended to change "Electronic Industry Association" and "Electronic Industries Association" to "Electronic Industries Alliance."

Section 190-5.5G(1) is amended as follows: "All ~~applications~~ applicants under this section shall apply to the Planning Board for site plan review, in accordance with the requirements and

procedures in the Rye Planning Board Land Development Regulations. In addition, ~~applications~~ applicants under this section shall also be required to submit the information provided for in Subsection G(2) and (3) below."

Section 190-5.5G(3)(b) is amended as follows: "If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, ~~submission of the EA or EIS~~ shall be submitted to the Board prior to the beginning of the federal thirty-day comment period, and the Town process shall become part of the application requirements."

Section 190-5.8A is amended to change the reference to RSA 674:39 to RSA 674:62 et seq.

Section 190-5.8G(4) is amended as follows: "The small wind energy system shall not exceed limits specified by rules of the State Site Evaluation Committee, 55 decibels using the A scale (dBA), as measured at the property line, except during short-term events such as severe wind storms and utility outages.

Section 190-5.8G(8) is amended as follows: "The small wind energy system shall be built to comply with all applicable Federal Aviation Administration requirements, including but not limited to 14 CFR Part 77, Subpart B, regarding installations close to airports, and the New Hampshire aviation regulations, including but not limited to RSA 422-B and RSA 424."

Section 190-5.10 is amended to delete the following sentence from the opening paragraph: "All fences or enclosures surrounding an outdoor swimming pool shall also comply with Sections 7.12.1 and 7.12.2 of the Building Code."

Section 190-6.1B is amended as follows: "The following lots are considered buildable lots which are exempt from the variance requirements of this section ~~and the merger requirements of Section 601.1~~, provided all other requirements are met:"

Section 190-7.0 is amended to change "Chairman" to "Chair."

Section 190-7.1A(1) is amended as follows: "To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by any administrative official in the enforcement ~~thereof or of any ordinance adopted pursuant thereto~~ of this chapter."

Section 190-7.2A is amended as follows: "The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken, ~~and on due cause shown~~."

Section 190-7.2D(1) the first sentence is amended as follows: "The Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as in its opinion ought to be made ~~on the premises~~, and to that end shall have all the power of the officer from whom the appeal is taken."

Section 190-11.1A is amended as follows:

Unless otherwise expressly stated, the following words and phrases shall be construed throughout this chapter to have the meaning indicated in this section. The present tense includes the future; the singular number includes the plural, and the plural the singular; the word "used" or "occupied" includes the words "designed, arranged, or intended to be used or occupied"; the word "person" includes an individual, partnership, firm, association, corporation, or organization; and the word "building" includes the word "structure"; ~~the word "occupied" and the word "shall" are always mandatory and not merely directory.~~ Subject to the foregoing rules of construction, the following definitions apply.

In the definition of "Best Management Practices – Forestry" in § 190-11.1B, Subsection (1) is amended to read as follows: "New Hampshire Best Management Practices for Erosion Control on Timber Harvesting Operations 2016" as amended (https://extension.unh.edu/resources/files/Resource000247_Rep266.pdf)."

The definition of "Best Management Practices – Wetlands" is added to read as follows: "See Best Management Practice Techniques: For Avoidance and Minimization, as amended (<https://neiwpcc.org/wp-content/uploads/2019/05/Wetlands-BMP-Manual-2019.pdf>)."

The definition of "NH certified wetland scientist" is amended to "certified wetlands scientist" and to read as follows:

A person who, by reason of his or her special knowledge of hydric soils, hydrophytic vegetation, and wetland hydrology acquired by course work and experience, as specified by RSA 310-A:84, II-a and II-b, is qualified to delineate wetland boundaries and to prepare wetland maps; to classify wetlands; to prepare wetland function and value assessments; to design wetland mitigation; to implement wetland mitigation; to monitor wetlands functions and values; and to prepare associated reports, all in accordance with standards for identification of wetlands adopted by the New Hampshire Department of Environmental Services or the United States Army Corps of Engineers or their successors, and who has been duly certified by the State Board of Natural Scientists.

The definition of "hydric soil" in § 190-11.1B is amended to update the reference to New Hampshire Administrative Rules Section Env-Ws 1002.36 (August 26, 1999) to Section Env-Wq 1002.32.

The definition of "hydrogeologist" in § 190-11.1B is amended to delete "according to Env-Ws 388.06(b)."

The definition of "solid waste" in § 190-11.1B is amended to update the reference to New Hampshire Administrative Rules "Env-Wm 101-103 and 2100-3700" to "Chapter Env-Hw 100 and Chapters Env-Sw 400 to 2000."

The definition of "stormwater" in § 190-11.1B is amended to correct the reference to RSA 132:1, II, to RSA 149-I:6-a, II.

The definition of "toxic or hazardous materials" in § 190-11.1B is amended to change "Groundwater Management and Groundwater Release Detection Permits, New Hampshire Administrative Rules Env-Wm 1403.05" to "New Hampshire Administrative Rules Chapter Env-Or 700, Groundwater Release Detection Permits."

RYE PLANNING BOARD
PROPOSED BUILDING CODE AMENDMENT 2020-03

Re: Adoption of Chapter 35 of Code of the Town of Rye

§ 1-30. Adoption of codified Building Code.

The Rye Building Code adopted March 14, 2000, as amended through March 12, 2019, as renumbered, revised and codified as Chapter 35 of the Code of the Town of Rye, is hereby approved and adopted. This ordinance and Chapter 35 shall supersede all other Building Codes enacted prior to the enactment of this ordinance.

§ 1-31. Continuation of existing provisions.

The provisions of Chapter 35, insofar as they are substantively the same as those of the ordinances in force immediately prior to the enactment of Chapter 35 by this ordinance, are intended as a continuation of such ordinances and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior ordinances.

§ 1-32. Severability of Code provisions.

Each section of Chapter 35 and every part of each section is an independent section or part of a section, and the holding of any section or a part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other sections or parts thereof. If any provision of Chapter 35 or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

§ 1-33. Severability of ordinance provisions.

Each section of this ordinance is an independent section, and the holding of any section or part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other sections or parts thereof.

§ 1-34. Changes in previously adopted ordinances.

A. In compiling and preparing the ordinances for publication as Chapter 35 of the Code of the Town of Rye, no changes in the meaning or intent of such ordinances have been made, except as provided for in Subsection B hereof. Certain other minor nonsubstantive changes were made to correct spelling and grammatical errors. It is the intention that all such changes be adopted as part of Chapter 35 as if the ordinances had been previously formally amended to read as such

B. The amendments and/or additions as set forth in Schedule D attached hereto and made a part hereof are made herewith, to become effective upon the effective date of this ordinance. (Chapter

and section number references are to the ordinances as they have been renumbered and appear in the Code.)

§ 1-35. When effective.

This ordinance shall take effect upon passage, provided the March 10, 2020 Town Meeting adopts the Code of the Town of Rye.

§ 1-36. Incorporation of provisions into Code.

The provisions of this ordinance are hereby made part of Chapter 1 of the Code of the Town of Rye, to be titled "General Provisions, Adoption of Chapter 35 of the Code of the Town of Rye."

Schedule D (As Referenced in § 1-34B)

(Note. Added text is underlined. Deleted text is struck out or in brackets).

Section 35-2C(3) is amended as follows: "If a proposed building site is in a flood-prone area, all new construction and substantial improvements (including the placement of prefabricated buildings and mobile homes) shall comply with ~~the Floodplain Development and Building Ordinance~~ Chapter 60, Floodplain Management, of the Town Code. ~~This ordinance and~~ The map showing the Flood Hazard District ~~are~~ is available in the Building Inspector's office."

Section 35-2C(4) is amended to update the reference to the Department of Environmental Resources to the Department of Environmental Services.

Section 35-5F, Permits for temporary structures, is amended as follows:

No temporary structures, ~~including platforms, stands, observation or circus seats and tents for assembly purposes,~~ shall be erected unless Fire Department approval has been obtained and a permit therefor has been issued by the Building Inspector. Such structure may be maintained only for the period of time stated on the permit, and in no case for a longer period than one week unless otherwise specified in this code or Chapter 190, Zoning. There is no fee for a temporary structure permit.

Any event tent erected on public or private property shall comply with applicable provisions of the State Building Code and State Fire Code. A building permit is not required for a tent of any size erected as an accessory structure on property that is an owner-occupied one- or two-family dwelling.

Section 35-8 is amended to change "Zoning Board of Adjustment" and "ZBA" to "Board of Adjustment" and to delete the reference to "the State Energy Code (see Section 7.6)."

Section 35-9B is amended to change "State Building Code" to "State Fire Code" in the first sentence and to add the International Existing Building Code and the International Residential Code to the list of codes incorporated by reference into the State Building Code.

Original § 7.6, NH State Energy Code, is repealed.

Section 35-13B(1) is amended to delete the following sentence: "The April 1, 2010 date shall be delayed or indefinitely postponed if the Commissioner of NHDES delays the April 1, 2010 date per RSA 125-R:2, II."

Section 35-13B(2) is amended as follows: ~~"The only permitted fuel for single-fired OWHHs is clean wood (i.e. cordwood or wood pellets) or any other fuel which may be approved by the Commissioner of NHDES. Fuel that is not "clean wood" as defined by RSA 125-R:1 is prohibited. Dual-fired OWHHs may use home heating oil, propane or natural gas as a starter or alternate fuel. Permitted fuels shall be as prescribed in RSA 125-R:4."~~

Sections 35-14E and 35-15F are amended to update the reference to New Hampshire Administrative Rules Chapter Env-Ws 1000 to Chapter Env-

RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2020-13

Re: Section 505: Wireless Telecommunications Facilities District and Map

Amend Section 505: **Wireless Telecommunications Facilities District and Map** as follows
(this will replace in its entirety the current Section 505).

SECTION 505 WIRELESS TELECOMMUNICATIONS FACILITIES (Adopted
3/99, Rev. 3/11/2014)

505.1 Definitions. (Adopted 3/11/2014) For purposes of this Section.

ANTENNA: Apparatus designed to emit and/or receive radio frequency energy.

BASE STATION: A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a Tower as defined herein or any equipment associated with a Tower.

(i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) The term includes, but is not limited to, radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term includes any structure other than a Tower that, at the time the application is filed, already supports or houses equipment described above that has been reviewed and approved under the applicable zoning process, even if the structure was not built for the sole or primary purpose of providing such support. [Note: This part of a Base Station is referred to as a Base Station structure in this ordinance.]

(iv) The term does not include any structure that, at the time the application is filed, does not support or house equipment described in paragraphs (i)-(ii) of this section.

(FCC 14-153, 47 CFR 1.40001)

COLLOCATION: The placement or installation of new PWSFs on existing Towers or Mounts, including electrical transmission towers and water towers, as well as existing buildings and other structures capable of structurally supporting the attachment of PWSFs in compliance with applicable codes. “Collocation” does not include a “Substantial Modification.” (RSA 12-K:2,X)

In the context of an Eligible Facilities Request (for Modification), the following FCC 14-153 definition shall supersede the above: Collocation: The mounting or

installation of Transmission Equipment on an Eligible Facility for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. (FCC 14-153, 47 CFR 1.40001)

COLLOCATION APPLICATION: Shall mean a request submitted by an applicant to an authority for Collocation on a Tower or Mount. (RSA 12-K:2,XI)

DISTRIBUTED ANTENNA SYSTEMS (“DAS”): Also called small-cell networks, are wireless base station systems that typically mount low-profile antennas and related equipment on utility poles, lamp posts and other surfaces relatively close to the ground to provide coverage to relatively small areas. The FCC collectively calls these “Small wireless facilities”.

ELIGIBLE FACILITIES REQUEST: Any request for Modification of an existing Tower or Base Station that is not a Substantial Modification to such Tower or Base Station, and involves:

- (i) Collocation of new Transmission Equipment;
- (ii) removal of Transmission Equipment; or
- (iii) replacement of Transmission Equipment.

(FCC 14-153, 47 CFR 1.40001)

EXISTING: (with respect to Towers and Mounts) A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition. (FCC 14-153, 47 CFR 1.40001)

ELIGIBLE FACILITY. Any Tower or Base Station, provided that it is existing at the time the application is filed.

(FCC 14-153, 47 CFR 1.40001)

EQUIPMENT COMPOUND: An area surrounding or near the base of a Tower or Mount supporting a WTCF, and encompassing all equipment shelters, cabinets, generators, and appurtenances primarily associated with the WTCF.

FAA: The Federal Aviation Administration.

FCC: The Federal Communications Commission.

HEIGHT: The height above ground level from the natural grade of a site to the highest point of a structure. (RSA 12-K:2,XVII)

HEIGHT, OVERALLL: the height above ground level from the natural grade of a site to the highest point above a structure, including any attachments or appurtenances thereon.

MODIFICATION: The replacement or alteration of an existing PWSF within a previously approved Equipment Compound or upon a previously approved Mount. Routine maintenance of an approved PWSF shall not be considered a Modification. (RSA 12-K:2,XVII)

MODIFICATION APPLICATION means a request submitted by an applicant to an authority for Modification of a PWSF. (RSA 12-K:2,XIX) [Certain limitations apply: See definition of Collocation and Substantial Modification, which preclude Substantial Modifications from Collocation and from Modification].

MOUNT: The structure or surface upon which Antennas are mounted and includes roof- mounted, side-mounted, ground-mounted, and structure-mounted Antennas on an existing building, as well as an electrical transmission tower and water tower, and excluding Utility Poles. (RSA 12-K:2,XX)

PERSONAL WIRELESS SERVICE FACILITY (PWSF): Any PWSF as defined in the federal Telecommunications Act of 1996, 47 U.S.C. 332(c) (7) (C) (ii)., including facilities used or to be used by a licensed provider of personal wireless services. A PWSF includes the set of equipment and network components, exclusive of the underlying Tower or Mount, including, but not limited to, Antennas, accessory equipment, transmitters, receivers, Base Stations, power supplies, cabling, and associated equipment necessary to provide personal wireless services. (RSA 12-K:2,XXII)

SITE-SHARING: The use of a Tower or Base Station structure by more than one PWSF.

SUBSTANTIAL MODIFICATION: A substantial change as defined by the FCC: A Modification to an eligible facility that substantially changes the physical dimensions of an Eligible Facility, if it meets any of the following criteria:

(i) for Towers other than Towers in the public rights-of-way, it increases the Height of the Tower by more than 10% or by the height of one additional Antenna array with separation from the nearest existing Antenna not to exceed twenty feet, whichever is greater; for other Eligible Facilities, it increases the Height of the structure by more than 10% or more than ten feet, whichever is greater;

(A) Changes in Height should be measured from the original Facility in cases where deployments are or will be separated horizontally, such as on building rooftops; in other circumstances, changes in Height should be measured from the dimensions of the Tower or Base Station, inclusive of originally approved appurtenances and any Modifications that were approved prior to the passage of the Spectrum Act.

(ii) for Towers other than Towers in the public rights-of-way, it involves adding an appurtenance to the body of the Tower that would protrude from the edge of the Tower more than twenty feet, or more than the width of the Tower structure at the level of the

appurtenance, whichever is greater; for other Eligible Facilities, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(iii) for any Eligible Facility, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for Towers in the public rights-of-way and Base Stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in Height or overall volume than any other ground cabinets associated with the structure;

(iv) it entails any excavation or deployment outside the current site;

(v) it would defeat the concealment elements of the Eligible Facility; or

(vi) it does not comply with conditions associated with the siting approval of the construction or Modification of the Eligible Facility or Base Station equipment, provided however that this limitation does not apply to any Modification that is non-compliant only in a manner that would not exceed the thresholds identified above.

(FCC 14-153, 47 CFR 1.40001)

To the extent a proposed collocation/modification is controlled by the New Hampshire definition, the New Hampshire definition under RSA 12-K shall apply as follows: "Substantial modification" means the mounting of a proposed PWSF on a tower or mount which, as a result of single or successive modification applications:

(a) Increases or results in the increase of the permitted vertical height of a tower, or the existing vertical height of a mount, by either more than 10 percent or the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; or

(b) Involves adding an appurtenance to the body of a tower or mount that protrudes horizontally from the edge of the tower or mount more than 20 feet, or more than the width of the tower or mount at the level of the appurtenance, whichever is greater, except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower or mount via cable; or

(c) Increases or results in the increase of the permitted square footage of the existing equipment compound by more than 2,500 square feet; or

(d) Adds to or modifies a camouflaged PWSF in a way that would defeat the effect of the camouflage.

TRANSMISSION EQUIPMENT: Equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, Antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with

wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. (FCC 14-153, 47 CFR 1.40001)

TOWER: Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized Antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. (FCC 14-153, 47 CFR 1.40001)

UTILITY POLE: A structure owned and/or operated by a public utility, municipality, electric membership corporation, or rural electric cooperative that is designed specifically for and used to carry lines, cables, or wires for telephony, cable television, or electricity, or to provide lighting.

WIRELESS TELECOMMUNICATIONS FACILITY (WTCF): Shall mean any installation that includes an Antenna and related equipment for the transmission or reception of radio frequency communications, including but not limited to PWSFs. See Tower.

505.2 Purpose: These regulations have been enacted in order to establish general guidelines for the siting of Towers and Antennas and to enhance and fulfill the following goals:

- A. Preserve the authority of the Town of Rye to regulate and to provide for reasonable opportunity for the siting of wireless telecommunications facilities, by enhancing the ability of providers of wireless telecommunications services to furnish such services to the community quickly, effectively, and efficiently.
- B. Balance the Town's responsibility to provide reasonable opportunities for wireless telecommunications facilities with the other objectives of this zoning ordinance and with the goals and objectives of the Rye Master Plan.
- C. Reduce adverse impacts such facilities may create, including, but not limited to: impacts on aesthetics, quality of experience, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to persons and property, and prosperity through protection of property values.
- D. Encourage minimal impact siting options, including, when applicable, Collocation and Site Sharing, through an assessment of technology, electronic compatibility, current locational options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town.

- E. Permit the construction of new Towers only when all other reasonable opportunities have been exhausted, and to encourage the users of Towers and Antennas to configure them in a way that minimizes the adverse visual impact of the Towers and Antennas.
- F. Require cooperation and Site Sharing, to the highest extent possible, especially with respect to the use of Towers, between competitors in order to reduce cumulative negative impacts upon Rye.
- G. Provide for the compatible use and safe operation of such facilities.
- H. Provide for the removal of abandoned or inactive facilities to eliminate unnecessary visual blight and remove potential unsecured safety hazards.

505.3 Wireless Telecommunications Facilities District and Map: (Rev. 2003)

The Wireless Telecommunications Facilities District (“WTCF District”) shall be an overlay district as shown on the Zoning Map of the Town of Rye and described as follows :

<u>Map-Lot</u>	<u>Location</u>	<u>Present Use</u>	<u>Controlled By</u>
007-093-000 007-093-00A	0 Grove Road 96 Grove Road	Cell Tower	Town of Rye
007-096-000-PR4 007-096-000-PR3	Off Grove Rd	Town	Town of Rye
007-108-000 007-109-000 007-112-000	Garland Rd	Water Wells & Pumping (see note 1)	Rye Water District
010-004-001	Lafayette Road/Breakfast Hill 271 Lafayette Road	Water Tank	Independent Wireless One Rye Water District
012-052-000	580 Washington Road	See note 2	Rye Congregational Church
018-034-000	555 Sagamore Road Lang’s Corner	School Soccer Field	Rye School District
023-001-000	68 Port Way	Vacant	Town of Rye

Note 1. Towers and other telecommunication facilities are prohibited within the 400 ft. sanitary radius exclusion zone of the Rye Water District water wells. (Revised 2009).

Note 2. Within the Rye Center Historic District, wireless telecommunications facilities may be mounted only upon existing structures, including Bethany Church, provided that such facilities do not exceed 20 feet height above the existing structure. Any structure and/or facility shall require the approval of the Rye Historic District Commission, in accordance with Section 303.

505.4 Permitted Uses.

In addition to uses permitted in the underlying zoning districts under Article II, wireless telecommunication facilities are a permitted use within the Wireless Telecommunications Facilities District only after obtaining a Special Use Permit as provided for in Section 505.7. All such uses must comply with other applicable ordinances and regulations of the Town of Rye (including Site Plan Review Regulations).

505.5 Clarifications:

- A. **Principal or Secondary Use:** WTCFs may be considered either principal or secondary uses. Having an existing permitted use on site shall not preclude the addition of WTCFs as a secondary use, provided all other provisions of this ordinance are met. A different existing use or an existing structure on the same lot shall not preclude the installation of a WTCF Base Station or Tower on such lot. For purposes of determining whether the installation of a WTCF complies with district development regulations, including but not limited to setback requirements, lot coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the WTCF may be located on leased parcels within such lots. WTCFs that are constructed and operated in accordance with the provisions of this ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.
- B. **Height Requirements:** These requirements and limitations shall preempt all other height limitations as required by the Town of Rye Zoning Ordinance and shall apply only to WTCFs. A requested Tower Height must be substantiated by the applicant and must be approved by the Planning Board. No Tower approved after the adoption of this Section shall exceed 150 feet Overall Height.
- C. **Amateur Radio and Receive-Only Antennas:** This ordinance shall not govern any Tower, or the installation of any Antenna, that is under 70 feet in Height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for over-the-air reception devices as regulated by the FCC. This application adopts the provisions and limitations as referenced in RSA 674:16, IV, pertaining to FCC requirements that local regulation of amateur Antenna structures “must constitute the minimum practicable regulation to accomplish the local authority’s legitimate purpose.” (47 CFR 97.15). Amateur Antenna structures greater than 70 feet are subject to Site Plan Review.
- D. **Essential Services & Public Utilities:** Wireless telecommunications facilities shall not be considered infrastructure essential services, public utilities or public utilities buildings, as defined or used elsewhere in the Town’s ordinances and regulations. Siting for WTCFs is a use of land, and is addressed by this article.

505.6 Design Performance Requirements:

The Planning Board may take into account the facts of each application to adjust or waive the requirements of this section by making specific written findings in support of such adjustments or waivers.

A. Tower Design:

1. Towers shall be designed and built to accommodate Site Sharing to the extent required by the Planning Board as a condition of a Special Use Permit. The minimum number of additional WTCFs that a Tower can accommodate will be determined by the Planning Board in consideration of the height, visual impact and other characteristics of the proposed Tower in the context of its proposed location.
2. Applicants for special use permits to construct, modify or Site Share on a Tower shall show designs that are of the realistic dimensions required to satisfy structural codes for such construction. Full structural code compliance analysis need not be provided with an application, as any approved project is subject to code review by the building inspector.
3. Towers greater than 70 feet height shall be of monopole construction, unless waived by the Planning Board based on a finding that the visual impact of the Tower design is not more objectionable in the context of the proposed Tower site.
4. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. It is preferred that Towers not be of such heights as to require FAA lighting, due to the residential nature of the community. If lighting is required, the Planning Board may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
5. Towers shall be a color to reduce visual obtrusiveness or otherwise appear harmonious with the context of its location. Two-tone Towers are discouraged.

B. Visual Aesthetics, Finishes and Workmanship:

1. Towers, exposed Antennas and related apparatus and Antenna concealments shall be finished with durable materials that will not deteriorate and cause visual or safety impacts over time. Elements of Towers, Antennas, Base Stations and Transmission Equipment visible to the public shall be maintained in a neat and workmanlike condition and appearance, subject to terms of the special use permit and enforcement by the building inspector.
2. At all WTCF sites, the design of the equipment shelters, compounds and related structures shall, to the extent possible, use architecture, materials, colors, textures, screening, and landscaping that will blend with or be architecturally compatible with the natural setting and/or built environment around the site.

3. If Antennas and other apparatus are installed on a structure other than a Tower, it is preferred that they be enclosed within architecturally compatible concealments, unless they are not obtrusive to the public view by nature of their surroundings (e.g. on an industrial rooftop, or out of sight from public views).
4. WTCFs shall not display any signs, advertising, writing, symbols, or any graphic representation of any kind visible to the public, other than reasonable notification and safety signage.
5. Base Stations and Towers shall be landscaped with a buffer of plant materials that effectively screens the view of WTCF from adjacent residential property year round. In locations where the visual impact of the Tower would be minimal, the landscaping requirement may be reduced or waived entirely. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as Towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.
6. To the extent practicable, Towers, Mounts and equipment shall be placed on the property in such a way as to minimize the visual impact on neighbors and viewsheds. The Planning Board may consider a setback waiver if it enables the proposed installation to be more harmonious with its surroundings.

505.7 Additional Requirements for Wireless Telecommunications Facilities: These requirements shall supersede any and all other applicable standards found elsewhere in Town ordinances or regulations that are less strict.

A. Setbacks and Separation:

1. Towers must be set back a distance equal to 120% of the Height of the Tower from the edge of the side and front property lines, and 100% to the rear property line on which they are located.
2. Towers, guys, anchor structures, Base Stations and accessory facilities must satisfy the minimum zoning district setback requirements.
3. Towers must be set back a minimum of 120 feet from any structures (except structures that are part of the Facility) and recreational fields. This shall be considered a “fall zone.”

B. Security Fencing: Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing means.

C. Noise: Equipment noise must not be audible to residential neighbors, except emergency generators, which may be audible up to a maximum of 50 dBA at the

property line. Generator exercising (testing) shall be conducted during normal weekday business hours.

505.8 Special Use Permits:

- A. **General:** All Wireless Telecommunications Facilities shall require a Special Use Permit from the Planning Board, subject to the criteria of this Section 505 and all other relevant requirements of the Rye Zoning Ordinance. All applications under this ordinance are also subject to the Planning Board Site Plan Review, in accordance with the requirements and procedures in the *Rye Planning Board Land Development Regulations*. In addition, applications under this ordinance shall also be required to submit the information provided for in paragraphs B and C below.
- B. **Plan Requirements:** Each applicant requesting a Special Use Permit under this ordinance shall submit a scaled plan in accordance with the *Rye Planning Board Land Development Regulations* and further information including:
1. Plans and elevation drawings employing the various scales and details necessary to show:
 - a. The general locus of the proposal, including abutting properties and structures,
 - b. The details of the proposed Antenna mounting structure (e.g. Tower, rooftop) and accompanying Base Station and Transmission Equipment, and utility interfaces,
 - c. The fencing, landscape buffering, screening and/or concealment elements,
 - d. Access way, utility lines and parking,
 - e. Tree and vegetation clearing, slopes, wetlands and other surface characteristics or changes thereto.
 2. Photosimulation of the installation from one or more publicly accessible views. Applicants are encouraged to discuss potential photographic locations with the Town Planner during the preliminary processes outlined in the Rye Planning Board Development Regulations. The Town Planner, in consultation with the Planning Board Chair, may defer the photosimulation requirement if 1) it may not be necessary considering the nature of the application, subject to a Planning Board decision during the hearing, or 2) it may be prudent to set a public announcement for a balloon/crane test of a proposed Tower during the hearing, from which the applicant can prepare a photosimulation report in consultation with the Planning Board.
 3. Such evidence of coverage as is necessary to demonstrate the need for the proposed Tower Height, usually in the form of coverage maps of the participating wireless services.
 4. If the applicant asserts any federal or state preemption is applicable, such as the non-prohibition of the provision of personal wireless services clause under the 1996 Telecommunications Act, or any other relevant federal or state rulings or laws, such

evidence as is necessary to demonstrate how the preemption applies to the application. Such evidence might include an analysis of alternatives pursued, additional coverage or capacity analysis, demonstration of dimensions comporting with such preemption, etc. It is the applicant's responsibility to make the case for such consideration. Upon reviewing the facts, the Planning Board may require the applicant to submit supplemental information.

5. If the applicant asserts it is entitled to consideration under a regulatory shot clock, documentation demonstrating why and how the shot clock is applicable.

6. Analysis of the noise the facility will generate.

7. Analysis of the facility's radio frequency energy emissions demonstrating the design will be in compliance with applicable FCC regulations regarding human exposure to radio frequency energy.

8. Approvals from, or copies of submitted applications to, all necessary state and local boards and agencies regarding crossing of wetlands, or work in wetland buffers, if required.

9. Documentation of the applicant's environmental review, further referenced in applicable FCC rules, satisfying the requirements of the National Environmental Policy Act (NEPA), as well as its historic review and tribal notifications under the National Historic Preservation Act (NHPA) and other laws. If subject to a categorical exclusion, documentation demonstrating applicability.

10. An inventory of the applicant's existing facilities within the jurisdiction of the Town and those outside the border and closest to it, including specific information about the location, height, design of each facility.

11. The applicant for a new Tower shall provide an assessment of existing Towers and structures on which applicant could collocate one or more facilities to materially reduce the coverage or capacity issues that the proposed facility is intended to address. The Planning Board may consider combinations of one or more Collocations and/or reduction or relocation of the proposed new facility to achieve the applicant's stated objectives in a way that may be materially less objectionable to the community.

12. The applicant for a new Tower shall submit an alternatives analysis containing written evidence demonstrating that no existing structure(s), or no existing structures in combination with less impactful new facility site(s), and no alternative new site(s) can be combined to address the applicant's network objectives in a manner more consistent with the ordinance.

C. **Issuance of Special Use Permits:** In granting the Special Use Permit, the Planning Board may impose conditions to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed WTCF on the purpose and intent of this ordinance.

1. **Decisions:** Possible decisions rendered by the Planning Board, include approval, conditional approval, or non-approval of the special use permit. All decisions shall be rendered in writing, in accordance with RSA 676:3. Notice of Decision shall be filed within 72 hours and in the event of denial shall include written reasons for same. In accordance with the National Wireless Telecommunications Siting Policy Section 332(C) (47 U.S.C.332(C)), any non-approval (in the form of a vote to deny or a vote not to approve) shall be based upon substantial evidence contained in the written record.

2. **Factors to be Considered in Reviewing Applications:**

- (a) Height of the proposed WTCF does not exceed that which is essential for its intended use and public safety within the limits of Section 505.5B
- (b) Impact of WTCF (including Tower, when applicable) on the community including such factors as:
 - ii) Noise
 - iii) Vehicular traffic
 - iv) Visual impacts to neighbors
 - v) Visual impacts to the community
 - vi) Proximity of WTCF to residential development or zones.
 - vii) Compatibility with uses on adjacent and nearby properties.
 - viii) Surrounding topography.
 - ix) Surrounding tree coverage and foliage.
 - x) Design characteristics of the WTCF (and Tower, when applicable) that reduce or eliminate visual obtrusiveness.
- (c) Availability of less objectionable alternatives more consistent with the purpose and intent of the ordinance
- (d) Consistency of proposed WTCF with this and other sections of the Rye Zoning Ordinances
- (e) Adequacy of proposed ingress and egress to the site.
- (f) Availability of suitable existing Towers and other structures as discussed in Section 505.8 B.4
- (g) Visual, traffic, noise and other impacts to neighboring residential uses and overall compatibility with surrounding land uses.
- (h) Visual impacts on view sheds, ridge lines, and other impacts caused by Tower location, tree and foliage clearing and placement of incidental structures.
- (i) Impact on view from any public park, public beach, natural scenic vista, historic building or site or major view corridor.
- (j) That the proposed facility is not constructed in such a manner as to result in needless height, mass, visual clutter and bulk.

- (k) That if exposed (unconcealed) Antennas and related apparatus are proposed, the visual impact of such a design would not be materially improved by concealment or that such concealment is impracticable.
- (l) That if a proposed Tower is not a monopole, the reasoning for not using a monopole is consistent with the intent of the ordinance in the context of the proposed site and visibility.
- (m) Consistency with the goals and objectives of the Rye Master Plan.
- (n) The proposed WTCF is in harmony with the various requirements of this ordinance, NEPA, NHPA and other applicable regulations.

505.9 Removal of Abandoned Antennas and Towers: Owners of property on which one or more WTCFs are being deactivated or abandoned shall promptly notify the Rye Building Inspector and the Planning Board in writing, within 60 days of becoming aware of such plan to deactivate or abandon. Any WTCF or Tower that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the lessee or owner of said Tower provides proof of quarterly inspections. The property owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town notifying the lessee or owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the Tower. If the abandoned WTCF or Tower is not removed within 90 days, the Town may have the WTCF or Tower removed. This provision may apply to individual WTCFs provided it shall not apply to a Tower all WTCFs cease using the Tower.

505.10 Consultant Fees: The Board may retain the services of a consultant qualified in WTCF siting and design review to review the application and all associated information. The Board may further require, pursuant to RSA 676:4 I (g) that the applicant reimburse the Town for reasonable costs of this review. No application shall be approved until such fees, if applicable, are paid in full. This provision shall not limit or restrict in any way the Board's ability to require other investigative studies under its permitting and site plan review authority.

505.11 Waivers: Where the Planning Board finds that extraordinary hardships, serious practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the foregoing regulations or that the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve waivers to these regulations, provided the Planning Board makes specific written findings for each such waiver based on the record. The purpose of granting waivers under provisions of these regulations shall be to ensure that an applicant is not unduly burdened as opposed to merely inconvenienced by said regulations and/or to obtain an outcome that is most consistent with the purpose and intent of this ordinance. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that all of the following apply:

A. Requirements for Waivers:

1. The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.
 2. The waiver is to provisions within this Section 505 and will not, in any manner, vary the other provisions of the Rye Zoning Ordinance, Rye Master Plan or Official Maps.
 3. Such waiver(s) will substantially secure the objectives, standards and requirements of these regulations.
 4. A particular and identifiable hardship exists or a specific circumstance warrants the granting of each waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:
 - a. Information requested is not relevant to or not necessary for making a decision,
 - b. A requirement in this Section 505 does not reduce the impact of the proposal in the context of its design and location compared to the result proposed with waivers,
 - c. The effort required to comply with this Section 505 regarding application content, design criteria, performance criteria or other criteria is unreasonably disproportionate to the intensity and scale of the proposal or the resources of the applicant.
- B. **Conditions:** In approving waivers, the Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.
- C. **Procedures:** A petition for any such waiver shall be submitted in writing by the applicant with the application for Board review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant. The Planning Board will not consider a waiver request unless it has been submitted in writing.

505.12 Compliance with RSA 12-K: 7: (Adopted, March 2011) (Rev 3/11/14/)

- A. Upon receipt of an application to construct a new PWSF Tower or to complete a Substantial Modification to an existing PWSF Tower or Mount which will be visible from any other New Hampshire municipality within a 20 mile radius, the town shall:
1. Provide written notification of such application to such other municipality, per RSA 12-K:7, I (b); and
 2. Publish a notice in a newspaper customarily used for legal notices by the town, as required by RSA 12-K: 7, I (b). Such notice shall be published

not less than 7 days nor more than 21 days prior to the date of any public hearing which may be required.

- B. For applications to the Zoning Board of Adjustment relative to a proposed Wireless Telecommunications Facility, the building inspector shall provide the above notifications required by RSA 12-K:7.

505.13. Collocations/Modifications: Pursuant to RSA 12-K: 10, PWSF Collocations on Towers and Mounts with existing Antennas, and Modifications to existing PWSFs that are not Substantial Modifications, are exempt from the requirements of §'s 505.4 to 505.11.

Applicants for Collocation or Modification shall apply to the building inspector for a building permit. The Building Inspector's review and decision shall comply with RSA 12-K: 10, II. Nevertheless, such Collocations on existing Towers and Mounts and such Modifications shall comply with the criteria of the underlying site approval and the performance criteria under this Ordinance to the extent they are not preempted by federal rule.

505.14 Administration: WTCF application reviews are subject to certain federally imposed time constraints known as "shot clocks" and other restrictions.

A. Shot Clocks

- a. In the case of applications for Collocations or new Towers regulated herein, or for Determinations of Eligible Facilities Requests, the Planning Board has 30 days from receipt of application to decide whether the application is complete. Shot-clocks may be tolled until the application is deemed complete, subject to procedures outlined by the FCC, including, without limitation, providing the applicant written notice clearly and specifically delineating all missing documents or information. To facilitate efficient application-completeness review, the Planning Board may delegate the responsibility of making such reviews to the Town Planner or other town employee, who shall act in consultation with the Planning Board Chair, including the decision whether to engage the services of a WTCF siting consultant to assist with the review at the applicant's expense. This administrative activity shall be brought to the Planning Board for consideration when the Planning Board opens the hearing for the application.
- b. It is presumed that an application for Collocation can be heard and decided within 90 days, while the presumption for new Tower applications is 150 days. Applications for Determination of Eligible Facility Request must be decided upon within 60 days (plus any legitimate tolling or mutual extensions) at which time the FCC asserts the application is deemed granted. The Planning Board shall make reasonable effort to meet these schedules and shall document any exigencies that contribute to the time required to fully hear and act on the application. The Planning Board shall obtain written agreement of tolling of the shot clock or extension of deadline from the applicant when practicable.

B. Eligible Facilities Requests

- a. The Planning Board is responsible for entertaining all Determination of Eligible Facilities Request applications.
- b. The applicant must file an application for a Determination of Eligible Facility Request with the Planning Board, which application shall conform to the criteria below and any regulations adopted by the Planning Board.
- c. Upon receipt of such an application, the Planning Board must make a determination of completeness within 30 days of receipt, according to the procedures above.
- d. Within 60 days of receipt of a Determination of Eligible Facility Request, plus any legitimate tolling or mutual extensions, the Planning Board shall determine in writing whether the proposed project is a valid Eligible Facilities request or is subject to Site Plan Review or Special Use Permit Criteria. If the application is determined to be an Eligible Facilities Request, the written determination may also include any reasonable conditions consistent with prior approvals and considering the nature of the proposed Modifications. The conditions may not further limit those characteristics that determine the proposed Modification is not a Substantial Modification. The Planning Board may not deny and shall approve a valid Eligible Facilities Request.
- e. Applications for a Determination of Eligible Facilities Request shall be accompanied by such evidence as necessary to demonstrate the scope of the project is clearly within the bounds of an Eligible Facilities Request, including, without limitation:
 - i. Documentation showing how the project involves:
 - 1. Collocation of new Transmission Equipment;
 - 2. removal of Transmission Equipment; or
 - 3. replacement of Transmission Equipment.
 - ii. Documentation showing the project involves an Eligible Facility, and
 - iii. Documentation showing how the project is not a Substantial Modification.
- f. The Planning Board's review of a Determination of Eligible Facilities Request may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. It may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.

Explanation

Upon the recommendations of a Consultant hired by the Selectmen to look at the telecommunications ordinance in its entirety and update it and look at gaps in coverage and ways to fill those gaps. The area behind the soccer fields would be a good location to provide an area in Rye where there is a gap in coverage to allow for a Telecommunications facility

RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2020-14

Re: Wetlands

- I. To adopt the revised Section 505: **Wireless Telecommunications Facilities** adopted March, 1999 and amended March 11, 2014 and replace in its entirety the current Section 505.

- II. Amend Section 505.3: **Wireless Telecommunications Facilities District and Map:** to add the following site to the District and Map

<u>Map/Lot</u>	<u>Location</u>	<u>Present Use</u>	<u>Controlled by</u>
012-079-000 Recreation	55 Recreation Road	Woods	Rye

Explanation

Upon the recommendations of a Consultant hired by the Selectmen to look at the telecommunications ordinance in its entirety and update it and look at gaps in coverage and ways to fill those gaps.

The area behind the soccer fields would be a good location to provide an area in Rye where there is a gap in coverage to allow for a Telecommunications facility to come in with a plan.

RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2020-15

Re: Workforce Housing

Amend Section 402.3F of Section 402 Multi-Family Dwellings & Multi-Family Developments as follows (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

F. Workforce Housing: At least ~~20%~~ ***30%*** but not more than 51% (each rounded to the next highest whole number) of the dwelling units in a multi-family development shall be workforce housing units (“WF units”). The WF units shall be allocated as nearly as possible to individual dwellings based on the same ratio as exists for the multi-family development. Where the allocation does not work out evenly, the planning board shall have the authority to approve the allocation among dwellings, but the overall 51% limitation on the development shall be controlling.

At least ~~20%~~ ***30%*** but not more than 51% (each rounded to the next highest whole number) of the dwelling units in a multi-family dwelling on a single lot (i.e. a multi-family dwelling that is not part of a multi-family development) shall be workforce housing units.

The Planning Board shall impose conditions on the approval of multi-family dwellings and multi-family dwellings which shall assure that the approved number of workforce housing units remain permanently available for workforce housing as defined by RSA 674:58. Such conditions may include requirements for restrictive covenants and/or liens.

Explanation

The amendment increases the town’s commitment to encourage affordable workforce housing in Rye. Multi-Family Developments with workforce housing are limited to an overlay district along Lafayette Road. Multi-Family Developments are limited to a maximum of 40 units. For a 40 unit development, the amendment would change the workforce housing requirement from 8 units to 12 units.