

**TOWN OF RYE - PLANNING BOARD
MEETING
Tuesday, December 18, 2018, 7:00 p.m.
Rye Town Hall**

Planning Board Members Present: Chairman Bill Epperson, Vice-Chair Patricia Losik, J.M. Lord, Jeffrey Quinn, Jerry Gittlein, Steve Carter and Selectmen's Rep Priscilla Jenness.

Others Present: Attorney Planning & Zoning Administrator Kimberly Reed

I. Call to order and Pledge of Allegiance

Chairman Epperson called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

II. Public Hearings on Applications:

- a.** Major Subdivision by Tuck Realty Corporation for property owned by Joseph Goss and located at 0 Ocean Blvd, Tax Map 8, Lots 58 & 59 for a 5-lot subdivision. Property is in the Single Residence District. Case #11-2018.
Public Hearing closed, Board will deliberate.

Chairman Epperson stated that the Board will first acknowledge and discuss the new plan that has been submitted by Mike Garrepy, Tuck Realty Corporation. The Board will then go into deliberations about the plan that is before them and make a decision. He noted that the board members have all seen the plan. He asked Mr. Garrepy to briefly describe the new plan.

Mike Garrepy, Tuck Realty Corporation, explained that what they have attempted to do with the latest version of the plan is to eliminate the need for any waivers. The roundabout has been shortened about 250 to 300ft. At one of the previous meetings, Attorney Donovan had suggested shortening the road so the team took a look at that. The Board saw a previous version of the plan at the last meeting that showed a tomahawk approach. That design still required waivers. He continued that with this plan they advanced the concept a little further. No waivers are required. There is no longer a super elevated road. There is a 24ft wide pavement all the way around the cul-de-sac with no request for change in diameter width. He pointed out the road has been shortened, which will lessen the impact overall to the field. He stated that they also have some plans that Jeff Highland has put together that the Board has not seen, which shows an aerial view of the field (Field Impact Plan). It shows that the impact to the field will be reduced. The total acreage of the field is 3.75 acres. The previous plan is a 1.75 acre impact to the field. This newest design is about a 1.5 acre impact to the field. He commented that he really thinks they have made some strides to address the impact.

Mr. Garrepy stated that a letter was submitted to the Board that talked about no waivers being required. The letter articulated how this new plan complies with the regulations with respect to the preservation of natural features. He noted that they would like to advance this plan. It is still a five lot plan. In the spirit of working together with the Board, he feels it would be appropriate to reopen the hearing so this new revision could be considered.

Chairman Epperson asked why this plan was not submitted three or four months ago, if it is significantly better with no waivers required.

Mr. Garrepy explained that the idea of a shortened road was advanced to help with the process several meetings ago. They had gone to the Zoning Board to get the determination that Ocean Boulevard could be used for the frontage. It struck him at that time, that they could advance a plan that showed a shortened road, utilizing the frontage from Harbor Road and/or Ocean Boulevard for some of the other lots. It didn't occur to him in the beginning to take that approach.

Chairman Epperson stated the plan is a significant departure from the other one. He is not sure that discussion could be opened on that plan. There are abutters' notices that are needed because it is significantly different than the other plan.

Mr. Garrepy stated that it is a very similar plan in terms of the layout and location. Things have been tightened up a bit with the road shortened. This was done given the feedback that was received from abutters and the Board. He suggested that they continue advancing the plan in a better direction as they go forward. He would agree that notification to the abutters that the hearing is going to reopen makes sense. This would just keep the application going forward.

Attorney Donovan noted that no one is present other than the applicant and the Board. The public hearing and record is closed. Referring to the new plan, he stated the road is closer to one of the neighbors on the west. There is a different location for the drainage going into the wetlands. The Conservation Commission has not received notice of this new plan. He continued that if it is a new plan, it conflicts with the zoning amendment that has been posted that corrects the ZBA decision that was made.

Mr. Garrepy replied their position is this is not a new plan. It is a plan revision. The Board has closed the public hearing; however, the application was continued. The Board, at its discretion, can reopen the public hearing. The Board has not closed the application.

Attorney Donovan pointed out the record is closed as well.

Mr. Garrepy commented he is sure it wasn't the intent of the Board to close the loophole on this application.

Chairman Epperson noted that the Board did not know about the new plan. That is the problem.

Mr. Garrepy stated that the proposed amendment that is being advanced to the warrant should not impact this. With respect to this application, it is sort of in a grandfathered state.

Chairman Epperson reiterated that public comment and the record were closed. When the record is closed, there is nothing to be submitted beyond that.

Attorney Kevin Brown, representing the applicant, stated the Board has a decision to make tonight on whether or not to reopen. The Board has the right to reopen the record to hear this. There is a big distinction between whether this is a new application or it simply needs to be re-noticed. He stated they do not disagree that it needs to be re-noticed. They have no issue with that. There is no one present at the meeting. It would not be fair to simply go forward. Re-notifying the abutters, as a matter of fairness, makes sense. He continued this is not a new application. This is a change from the prior iteration. This plan has changed significantly as the process has gone forth, as it should and as it typically does when a planning board works with an applicant. This is a five lot subdivision application. The road is roughly in the same configuration. He thinks it is a stretch to say it is an entirely new application, setting aside the notice issue and the closing of the public record which can be reopened. It is seemingly unfair to the applicant to call this a new application, which he does not think the Board would in any other circumstance. As it was asked, why wasn't this here three months ago? He understands the concerns about timing. If this plan had come in three months ago, would it have been said that this is an entirely new plan, it can't be accepted and an entirely new application has to be filed with re-notifications to everyone? He doubts that would be the case. He would ask that a distinction be made between whether this is a new plan, which would be subject to the new zoning that would have great effect on the applicant, versus the notification issue, which is agreed should occur as a matter of fairness. He reiterated the Board has the right to reopen the hearing. He would ask that they do and certainly re-notify in that case; however, it doesn't change this to a new plan.

Chairman Epperson stated there has been months and months of discussion about this particular lot. It has been changed significantly over the last four or five months. Originally, the applicant could have come in with a three lot subdivision with no street issues whatsoever. That is something that the applicant is obviously not interested in. There was also a four lot possibility with some additional waivers. The Board has made it very clear, over the last three months, that this is a stressed piece of property and the Board would like to see four lots on that property. That is what the Board has always said. Referring to the new plan, he stated this is something that they have not seen until recently. He agrees that this could probably be reopened and revisited but he does not think it is the right thing to do. He would like to hear from the rest of the Board.

Member Lord commented that he would like to make a correction. It was said that this plan has gone through a number of significant changes since it came before the Board. He disagrees. The layout of the plan, (not the new one but the old one), has stayed consistently the same. The layout has not changed over the last six to eight months. It was just the parameters; making it a one-way cul-de-sac, shrinking the radius of it, lowering the grades and lowering the slopes. That is what has changed. Over the last five to six months, there have not been a lot of changes to this plan. It has been tweaked to try and make it work. In putting the new and old plan side by side, he thinks it is a very different plan. At the last meeting, Attorney Phoenix really wanted a decision then. If the Board made a decision then, the new plan wouldn't have been available.

Vice-Chair Losik stated she agrees with member Lord that the plan has been consistent with just a few tweaks here and there. It has been a consistent approach to develop the property and the new plan is functionally different, particularly with the abutter to the west and the impact is now less. The notices can be done but it has been known throughout this process, whether it be the site walk or the time before the Planning Board, that the public has been exceedingly engaged in this project. The fact that there is no notice, there is no opportunity for notice and they are not present to even hear this discussion live, is a disadvantage to the process. That doesn't represent the direction of the town. At the last meeting, they were in the midst of beginning deliberations on the waivers. The new project wasn't before the Board then. She thinks it is an improper result to consider this a continuation of the existing project.

Mr. Garrepy pointed out that the public has been noticed for this meeting and hearing. It's just the public hearing portion of this process that was closed. The continuation was made at the last meeting so the public has been duly noticed. He is surprised that they are not present. He would be present if he was a neighbor just to hear the Board deliberate. He is assuming that they know a revised plan has been submitted for consideration. He pointed out that they are walking in a gray area because the statute talks about grandfathered applications; whether or not a new plan has to be submitted for the January 8th meeting or whether or not this meeting is continued and the public hearing is reopened on January 8th. He assumes it was not the Board's intent to render this a new application so it would no longer comply with the new warrant article.

Chairman Epperson replied that is not their intent. Going back to the three lots and four lots, Attorney Phoenix said at one of the meetings that he felt like the hardship on this particular piece of property was financial. The more money spent on it, the more the margin is diminished. He pointed out that this property and where it located is invaluable. Speaking to Mr. Garrepy, he asked if he is aware of the lot that is about a mile down the road that is about .93 acres. The lot is lower than this and is not near as nice as this property. The lot is on the market for \$695,000 and it is not nearly as nice as these lots. He would argue that it is not an economic hardship. It is just trying to put everything on one piece of property that can possibly be done.

Mr. Garrepy stated they are not really arguing there is an economic hardship. He thinks there may have been some discussion about economic hardship with respect to some of the waivers being sought; however, they are not asking for waivers anymore. He noted that he made a point to speak with his whole team to work with the Planning Board. They have been doing that for over a year. He is just asking for that same consideration back. He knows there is a way to make it work.

Chairman Epperson asked if he can make it work with four lots.

Mr. Garrepy replied he can make it work with one lot, which it already is; however, that is not what he has applied for. He is still looking for a five lot subdivision.

Chairman Epperson replied he understands but the Board is still looking for something less dense. This would have been significantly easier and less laborious if the Board was met halfway. The Board thought five lots was excessive.

Member Gittlein stated he agrees that size has always been a problem. He thinks they are on a slippery slope if they start talking about reopening something that has already been closed. He does not think there is any alternative motive from anyone on the Planning Board, other than to operate in the best interests of the people who come before the Board and the citizens of the town.

Member Carter agreed with Member Lord and Member Gittlein.

Selectmen's Rep Jenness stated she does not believe they can reopen without public notification. Obviously, people are not present because the agenda says "public hearing closed, board will deliberate", which means nobody comes. People may be watching behind the lens (live-stream) but they have no ability to speak or participate.

Mr. Garrepy stated he is hoping to avoid the Board voting this evening against the waivers. Then it would be just a request for an extension of the application to go back and redesign the current road (longer road) without any waivers, which can be done; however, they thought they would take Attorney Donovan's concept of shortening the road and having a compliant cul-de-sac. He assumes that if the Board votes against the waivers, he would still have an opportunity to redesign without waivers. He asked what the goal is. To work together or not? He is asking that they work together on this plan, which he has tried to do from the beginning. He noted that they have complied with every study the Board has asked them to do. Now there is a plan that has less impact to the field and less overall impact with no waivers required.

Member Quinn stated there has been a lot of stated and unstated opinion expressed just by the attitude of the people that have been here and the way the development was proposed, which is too densely developed. In the spirit of working together, he would hope the applicant would understand that point of view and come back with a plan that is less developed than the one being proposed.

Mr. Garrepy asked why that loophole was not closed when the zoning requirements were discussed. He noted this plan meets all the dimensional requirements and all the zoning setbacks. It meets every single requirement. If this is too dense, the zoning allows for more density than the Board wants. He asked why the dimensional requirements have not been changed.

Chairman Epperson stated that this plan was dropped on the Board because at the last meeting he asked; "you know where this is getting ready to go. Are you prepared to go that way?" The Board was getting ready to deny the waivers and that is where it was headed when it was objected to strenuously and was continued.

Attorney Donovan noted it has been stated several times in the past several months by Attorney Phoenix and Mr. Garrepy that the original plan in March didn't require any waivers. That is simply not true. It required waivers of the cross sectional diagram, the retaining wall, guardrail and super elevation. He pointed out to the Board in his April 6th memo that those waivers would be required. The March plan was not a plan that didn't require waivers. He does not want to lose focus on the fact that the new plan depends on using Ocean Boulevard for legal frontage for

two lots, based on the ZBA decision. When the ZBA made that decision, the Planning Board decided not to challenge it because it was only one lot. The Boards could have challenged it and instead of reviewing applications for the past several months, it probably would have been in court. Now there is a new plan where three of the five lots take advantage of something that the Board felt was a loophole in the regulations. If the Board had seen three lots doing that, they may have challenged it. Maybe the ZBA would have decided differently. He really thinks that is a significant change. He does not think the Board can accept the revised plan because of that.

Attorney Brown stated the ZBA decision was clear and was consistent with its prior decision with the Hoefle Subdivision. That was based on the language of the ordinance and its definitions. It has nothing to do with whether it is one lot or three lots. He takes serious exception to the suggestion that it makes a difference whether it is one lot or three. The Planning Board could have appealed that but it would have been the same outcome, whether it was one or three. The clear language of the zoning ordinance does not require access over frontage. He wants to be very clear on the record that one or three makes no difference under the ordinance or under the ZBA's determination in Hoefle and this application.

Attorney Donovan stated that his point was whether this is construed as a new application or not.

Mr. Garrepy stated they tried to develop a plan that didn't need any waivers and actually improved the plan from what was being looked at for the past several months. He continued that they can go back to the current plan that the Board was hoping to deliberate on tonight with the longer road, make that plan where all the lots have frontage on the new road that was 200ft or more and have no waivers required for that. He asked why they would do that. He asked why the Board would not want to see something different and better when they have the discretion to do so.

Chairman Epperson commented they also have their integrity with the public. On the agenda it says one thing and now something else is being asked.

Mr. Garrepy replied that he is not asking for it to be done without proper notice. He would not encourage the Board to take a vote on this one tonight or reopen without the process of a re-notice.

Chairman Epperson stated the Board, over the last year, has bent over backwards to do what they think is correct for the town in consideration for what the builders and developers want to do. He does not think they have ever had a situation where the Board was so clear on what they wanted but the applicant was not willing to acquiesce to that. He called for a poll vote from the Board on whether they are for or against reopening the case.

Poll Vote:

Quinn – against, Lord – against, Losik – against, Carter – against, Jenness – against, Gittlein - against

Attorney Donovan summarized the reasons for denying the request to reopen the application.

- **The Board feels it is a new plan with a significantly different layout than what has been before the Board for the last eight (8) months.**
- **The abutters have had no notice of the new plan.**
- **It conflicts with the Zoning Amendment 2019-03, which was posted several weeks ago.**
- **The plan could have been presented much earlier. It was only after the Board indicated they were going to deny the waivers that it was presented.**
- **Had the Board finished their deliberations last month there would not be a new plan.**

Chairman Epperson called for a motion to deny the request to reopen the hearing. So moved by Patricia Larson. Seconded by J.M. Lord. All in favor. Vote: 7-0

Chairman Epperson noted that the Board is back to deliberating on the plan that they have been reviewing for the last few months. He continued that Attorney Donovan has articulated pretty well what the circumstances were for the original plan of March. It was stated that it did not need any waivers; however, it did. He does not think there has been a significant answer about the fill being brought in to that particular piece of property. He thinks the Board should have a discussion about the waivers.

Vice-Chair Losik summarized the waivers being requested;

1. **602.2 B (1) b: 3-1 side slope where 4-1 is required.**
2. **602 A (7) b: width of the cul-de-sac from 24ft to 20ft for inside radius.**
3. **602.2 B (2): grade request waiver.**

Attorney Donovan noted that the Board needs to keep in mind the standard for waivers.

Chairman Epperson stated the standard is in **Section 900** of the Land Development Regulations (LDR). ***The Planning Board may waive the requirement of the direct regulation for which a waiver is not specifically provided in such cases where in the opinion of at least four (4) members present voting, strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulation.***

He noted that if the Board feels it is contrary to the spirit of the regulation they have the obligation to deny it.

Member Lord stated that in his mind, all three of the waivers can be wrapped together because they all deal with the seasonal high-water table and they had to find a way to get around that. All three of these were done in an effort to get away from that. The design of the plan was altered so that did not become a factor. He continued that he does not think it is a hardship on the property. The hardship is because of the way it is laid out. The way the development was laid out is the hardship. It has nothing to do with the property. There are high-water tables all over the place. The last two or three subdivisions had high-water tables. He thinks that is a very common theme across most pieces of property. He does not think this property is an exception.

Referring to the minutes of the site walk, Attorney Donovan stated there was a question to the engineer as to why so much fill was required (the original design). The site walk was April 23rd. Two reasons were given. One of them was that the State regulation for separation of the bottom of the raingarden from seasonal high-water table had to be met and that required a certain amount of fill. In looking at the first design, it is easy to see why it had to be the case. The super elevation, retaining walls and wide pavement drained everything to the middle and a fairly deep cup was needed to hold it all. Changing all that reduced the amount of fill but created the need for other waivers.

Member Lord agreed. Drainage has been dispersed out across the property since then.

Vice-Chair Losik stated she agrees with Member Lord about the seasonal high-water issues. The Board has had other projects before them dealing with this issue. She thinks that the applicant is not demonstrating unnecessary hardship in regards to the specific components of the waiver. The application is not advancing significantly because it gets down to the point of the applicant's overwhelming desire for five building lots. There is no unnecessary hardship other than the expense of complying with the LDR's.

Attorney Donovan noted the property could have been subdivided into three lots without any street construction. That is probably relevant to the hardship analysis also.

Motion by Patricia Losik to deny the waivers to Sections 602.2 A (7), 602.2 B (2), and 602.2 B (1) b; subject to drafting of the Notice of Decision by Attorney Donovan and the communication to be taken up at the January 8, 2019 Planning Board Meeting. Compliance to the regulations would not pose an unnecessary hardship. Seconded by J.M. Lord. All in favor. Vote: 7-0

Referring to LDR 606.1 and 606.2, Vice-Chair Losik stated she has some concerns and would not be in support of approving the subdivision. In looking at 606.1 and 606.2, she has long held and communicated concerns with these two areas. (Vice-Chair Losik read a prepared statement into the record.)

Goss' Grant
12.17.18

Concerns remain regarding the proposal, most recent update 11/01/18, as the PB has, to date, not agreed to hear the 11/30/18 plan. Fulsome concerns have been expressed by the PB, Conservation Commission, abutters and Rye residents regarding the ecological limitations of the two parcels over the past year. Attorney Donovan brought forth a concept which would eliminate one lot, move the road further west and thus allow preservation of the meadow and less stress to the tidal salt water system. The Developer has ascertained a commitment to a 5 lot subdivision.

The Drainage Analysis (Analysis) narrative (dated 11.1.18, received 11.5.18) notes on page 4 that the land of 22.555 acres consists of two different types of land: "One of which is being a large area of undeveloped uplands which is mainly mowed grass and the other being a large tidal salt marsh system". Based on the current proposal, 5 lots aggregate 17.545 acres and incorporate 6.43 acres of uplands with supporting infrastructure.

Testimony has been given by experts on behalf of both the Town and Developer regarding concerns regarding flooding. Under accepted modeling, the Drainage Analysis methodology notes: "Each storm event has been increased by 15% to be consistent with project located within the Coastal or Great Bay Area." The rainfall events correspond to 5.68", 8.63" and 10.34" for the 10, 50, and 100 year storm events, respectively.

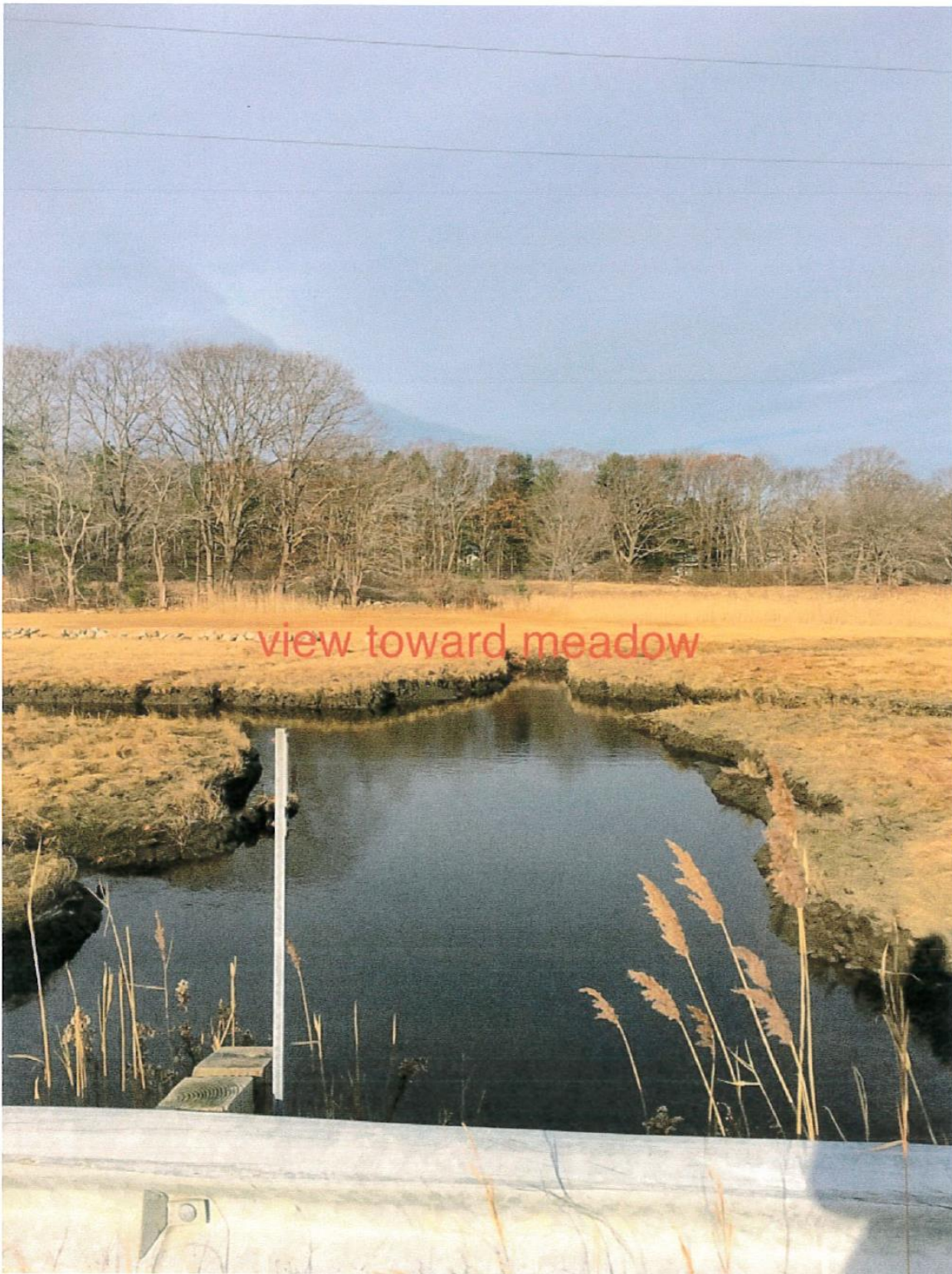
For design purposes, the Analysis notes that the values of the 3 hydraulic conductivity tests performed in the winter of 2018, yielded 9.5 in/hr for 2 tests and .4in/hr. The values obtained were cut in half for drainage study design purposes.

The Analysis notes that the entire site which exists between Locke Road, Harbor Road, and Ocean Boulevard, "flows downhill to a large centralized wetland", a resource which must be considered under LDR 606.1 or 606.2.

The Drainage Analysis reflects diminished post development flows through the establishment of three raingardens to help maintain the peak discharge, treat and infiltrated stormwater. Erosion and sedimentation is handled via the use of erosion control blankets, vegetated treatment swales, riprap inlet and outlet protection aprons. The Study notes that "existing wetlands and abutting property owners will suffer minimal impact resultant from this development."

The Soil Map (USDA Natural Resources Conservation Service) included in the Study incorporates additional acreage of abutters to the east and west of the development. The defined Area of Interest (Attachment B) includes 33.4 acres (50.6%) of 397 and 497 soils (Attachment C). These soils are described as: Ipswich mucky peat, 0-2 % slopes, very frequently flooded and Pawcatuck mucky peat, 0-2% slopes, very frequently flooded. Testimony from abutters and concerned residents has been presented throughout this process which has consistently pointed to frequent flooding. The 11/1/18 plan set denotes significant areas of 397 – very frequently flooded soils (Attachment A).

November pictures on 11.18.18 at 8:39 am (non-storm, one hour post high tide) indicate high water, please see additional representations in the public file:





These pictures and others may reflect significant importance of this water body for water storage capacity impacting Locke and Harbor Roads to the west and south, and various abutters to the east.

Question remains: does the Analysis accurately account for the flooding concerns associated with these resources?

LDR 606.1 - General

The land developer shall identify and take suitable steps as required by the Planning Board to preserve and protect significant existing features such as trees, scenic points, brooks, streams, rock outcroppings, water bodies, wetlands, other natural features and historic landmarks.

The water body/wetlands are visible in the Soil Map included in the aforementioned Drainage Study. Given its function as a "centralized wetland", has the developer identified and taken suitable steps as required by the Planning Board to preserve and protect this significant existing feature? For example: reducing the development size from 5 to 4 lots would achieve both greater preservation and protection by reducing flow to this resource and may enhance protection for developed lots when conductivity changes.

LDR 606.3 - Character of Land for Development

Land judged by the Planning Board to be unsafe for building development because of exceptional danger to health or peril from fire, flood, tidal water, poor drainage, impermeable soil, excessive slope or other hazardous conditions shall not be approved for development until appropriate measures have been taken to eliminate the hazards.

Per the aforementioned Analysis, a significant portion of the two parcels are comprised of soil which is "very frequently flooded". Flood, tidal water, poor drainage, and impermeable soil are characteristics of these parcels and represent important considerations under LDR606.3. Have appropriate measures been taken to eliminate and or reduce the hazards? For example: reducing the development size from 5 to 4 lots would appear to provide some ratable enhancement of safety and thereby a corresponding ratable mitigation of the exceptional danger to peril from flood and tidal water.

Quite possibly, to satisfy compliance with the two LDR's, the question of WHY SO MUCH WATER under variable weather circumstances should be answered. Sensible development would fully consider risk and would responsibly develop a solution given the fundamental challenges of the resource.

The Stormwater Management Operation and Maintenance Manual which accompanies the aforementioned Study, and, in the future, assigns significant responsibility to the owners and assigns for the performance of the maintenance obligations or by hiring a Professional Engineer on an annual basis for maintenance and certification of the stormwater system. There are suggested approximately twenty-three tasks attending to the parking lots, roadways, culverts, erosion, vegetation and landscaping, riprap outlet protection aprons and rain gardens. It is unclear how these steps interrelate, either directly or indirectly, with protection of the tidal salt water system. In the Planning Board minutes of 10.9.18: Mr. Garrepy discusses the tidal marsh:

"Mr. Garrepy explained that he met a couple of times with the Conservation Commission. He may need to get creative, post-approval, with some kind of zoning relief to carve off the tidal marsh. He noted there is land owned by the Town adjacent to the property. It might make sense for the Town to own that tidal marsh in its entirety. He continued that they are really contemplating deed restrictions but would also consider some kind of conservation easement on the property."

Given the importance of the functions of the tidal salt water system, it will be important for the Planning Board to clearly understand future ownership and management.

In summary, the proposed development (11.1.18) does not adequately address compliance with LDR 606.1 and 606.2.

Referring to 606.1, Chairman Epperson commented it was also stated that the land developer shall identify and take suitable steps to develop something else that is involved in that particular scenario. He thinks the Board believes the developer should have eliminated one lot and located the street further to the west. The houses and the leachfields would be further west and thereby preserve more of the meadow. The Board has also encouraged the developer to do that on numerous occasions. Everyone has also seen Attorney Donovan's sketch plan which would be a cul-de-sac, rather than a tomahawk. That goes under LDR 606.1. In regards to the flooding issue, the Board had also discussed, in significant detail, that there is exceptional danger to flood and tidal water due to sea-level rise and storm surge. If there was a four lot layout with the homes and septic system being built further uphill, it would be an appropriate measure to avoid this danger. In addition, 602.1 a (3) and a (2), states; except on cul-de-sacs, rectangularly shaped lots having side lot lines perpendicular to straight streets or radial to curved streets are preferred for buildable lots less than three acres in size. Some of these are irregularly shaped lots. In particular, 59-3, which is the lot the Board thought should be eliminated, and lot 58, which have been gerrymandered to obtain the required frontage. Based on those points, there is a pretty good case for denying the application.

Member Lord asked how the application can be approved if the waivers are denied.

Chairman Epperson stated they are trying to make it clear what the Board feels are the issues with the application for the property.

Attorney Donovan stated the Board may stop at the denial of the waivers. The subdivision plan could be denied because the required waivers were not granted. The Board is also free to add other reasons why they denied the subdivision beyond the reasons for the denial of the waivers.

Referring to the discussion about danger to flooding, Mr. Garrepy stated that they spent a substantial amount of time and expense, with the town's expert and his expert, talking about flooding, storm surge and sea-level rise. He thought they had addressed everything appropriately. It even meets the theoretical sea-level rise in the future. He thought they had met the worst case potential.

Chairman Epperson commented that Vice-Chair Losik's statement will be in the public record to read.

Chairman Epperson called for a motion to deny the subdivision application because it needs waivers, which were denied, and for non-compliance to 606.1; 606.2; 602.1 A (3) and A (4); and 611.2 b.

So moved by J.M. Lord. Seconded by Jerry Gittlein.

All in favor. Vote: 7-0

Chairman Epperson noted that Attorney Donovan will prepare a notice of decision for the decision to be final at the January 8, 2019 meeting.

Attorney Donovan noted there is not a final decision, which could be appealed, until the Board approves the notice of decision on January 8th. The proceeding is not over. There has to be a notice of decision prepared and approved. He continued the Board denied the request to re-open. There should also be a written notice of decision reviewed regarding that on January 8th. That way, there will be no question in the applicant's mind as to whether they have thirty days from tonight to appeal that. All notice of decisions will be drafted, provided to the applicant and reviewed by the Board on January 8th.

Attorney Brown confirmed he understood.

III. New Business

Proposed Zoning Amendments for discussion and schedule for public hearing

The Board reviewed the following proposed zoning amendments to consider moving them to a public hearing on January 8th.

a. Proposed Zoning Amendment 2019-12 Re: Fees

RYE PLANNING BOARD PROPOSED ZONING ORDINANCE AMENDMENT 2019-12

Re: Building Permit Fees

Delete the last sentence of Section 801.1 which exempts alterations costing less than \$1500 from building permit fees.

Explanation

Several years ago the town meeting authorized the board of selectmen to establish fees for building permits. The zoning ordinance exemption for alterations costing less than \$1500 conflicts with the authority granted to the board of selectmen. The administration, review and subsequent inspection of even small amounts of work requires the time of building department staff. Thus, the planning board believes allowing the selectmen to charge a reasonable fee to cover such work is appropriate.

Motion by Steve Carter to move Proposed Zoning Amendment 2019-12 to a public hearing on January 8, 2019. Seconded by Priscilla Jenness. All in favor.

b. Proposed Zoning Amendment 2019-11 Re: Growth Ordinance

RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2019-11

Re: Rescission of Growth Management Ordinance (GMO)

Delete Article IX- Growth Management from the ordinance.

Explanation

The present GMO, which is a limitation (i.e. “cap”) on the number of building permits which may be issued, was adopted in 1987. It was intended to assure growth in Rye balanced local and regional development needs based, in part, on court decisions related to municipal growth management. The GMO resulted from a master planning study that examined Rye’s historical rate of growth and regional growth projections. In the +30 years since 1987, the annual number of building permits issued has been significantly fewer than the number allowed. For example, the present annual cap is [insert cap], but in 2016 only 20 new dwelling units were built in Rye, and in 2017 only 6 new dwelling units were built. Thus, the planning board believes the GMO is no longer necessary.¹

Motion by Patricia Losik to move Proposed Zoning Amendment 2019-11 to a public hearing on January 8, 2019. Seconded by J.M. Lord. All in favor.

c. Proposed Floodplain Ordinance Amendment: 2019-01

The Proposed Floodplain Ordinance Amendment is a complete rewrite of the Floodplain Development and Building Ordinance, relevant to the Town of Rye, based on the work and drafted by **Jennifer Gilbert, State Floodplain Program Coordinator and Rye’s FEMA Representative**. A complete copy of the **Floodplain Development and Building Ordinance** draft (18 pages) may be viewed in the Building Department, Rye Town Hall. It will also be posted on the town’s website.

Motion by Patricia Losik to move Proposed Floodplain Ordinance Amendment 2019-01 to a public hearing on January 8, 2019. Seconded by Jerry Gittlein. All in favor.

d. Proposed Zoning Amendment 2019-08 Re: Generators

Additional work and information is needed in regards to proposed changes for generators. Rules and Regulations will continue to work with the building department for a possible proposed amendment for 2020.

e. Proposed Zoning Amendment 2019-05 Re: Fences

Additional work and information is needed in regards to proposed changes for fences. Rules and Regulations will continue to work with the building department for a possible proposed amendment for 2020.

IV. Old Business

- None

V. Other

- None

Adjournment

Motion by Patricia Losik to adjourn at 8:20 p.m. Seconded by J.M. Lord. All in favor.

**All corresponding documents and files may be viewed in the Building Department, Rye Town Hall.*

Respectfully Submitted,
Dyana F. Ledger