Rules and Regulations
MEETING
Tuesday, May 24, 2022
4:00 p.m. – Rye Town Hall

Present: **Chair Steve Carter, Patricia Losik, Planning Administrator Kim Reed and Attorney Michael Donovan**

Present from the Public: **Cathy Hodson**

I. Call to Order

Chair Carter called the meeting to order at 4:02 p.m. and led the pledge of allegiance.

II. Amendment 2022-01

Chair Carter noted that the Committee will start the discussion with the amendments proposed by Attorney Donovan. The Committee wanted to talk about the deletion of Article VI, Land Development Standards.

Attorney Donovan stated that he sent a memo on May 12th after watching a portion of the May 5th meeting. He tried to understand the Committee's concerns and responded with a memo. He had a hard time understanding the questions and concerns.

Member Losik stated that the basic question is how to get to Article VI. The Committee wants to understand the interrelationship.

Chair Carter noted the question was how to invoke Article VI, which pertains to everything, without mentioning it in the different areas.

Attorney Donovan explained that the organizational concept is that in one place, which is intended to be Article III, there should be a listing of all the information so the applicants and their team only have to go to that section of the LDR to see what the information submittals are. That is distinct from Article VI, which is clearly a listing of substantial requirements. To him, this raises confusion about what the information submittals are. In looking at the stream of the last meeting, Chair Carter had suggested a good resolution of the concerns, which is in the memo of May 12th.

> *Applications for design review, required plans and information:*
> *Applications for design review shall be accompanied by the following plans and information, which shall demonstrate compliance with the requirements of Articles VI and XXI.*

He commented this will make it clear and this will not be looked at by applicants as a way of circumventing the requirements.

Attorney Donovan stated that there was some concern that the details of things like requirements for the stormwater management plan, which are listed under the requirements of design review but are not listed under the requirements for final application. He pointed out this is the same organizational format that was in the old LDR. The intent is to not make them too long. For example, if there's a page long set of requirements for a stormwater management plan, it's only put in once. In this case, it's in Design Review because that's the first thing that comes along in the LDR. In the Final Application, it just says submittal of a stormwater management plan which will comply with the requirements previously listed in Design Review. This avoids getting into repeating the detail of stormwater management plan requirements in the LDR. This is the intent for the organizational structure.

Chair Carter commented that one of the questions about the stormwater management plan is what's required for a minor subdivision and what's required for a major subdivision.

Referring to 202-3.4,B, Attorney Donovan read: *Final subdivision applications; required plans and information. Applications for formal approval shall be accompanied by the submittal requirements of 202-3.1, (Engineering Requirements), and 202-3.4 (being removed).* He pointed out that the applicant has to go back to 202-3.1, which is incorporated by reference. He also pointed out that there is no cross reference in 202-3.4,E.

Member Losik read from 202-3.4, E(2): *The final stormwater management plan shall include all information required by 202-6.8 and Article IX.* She noted that this doesn't go back to the SWMP for the design requirements.

Attorney Donovan suggested that he take another look at the LDR. He wants to be sure it's all included. It appears that there is not a requirement listed for a stormwater management plan.

Member Losik pointed out that the same applies in 202-3.5,B(1)(a).

Attorney Donovan noted that he will take another look at Article III to be sure it clearly lists all the requirements. Sections to be reviewed: 202-3.3,B; 202-3.4,B; 202-3.4.D; 202.3.4,E; 202-3.4,E(2); 202-3.5,A; 202-3.5,B(1) and 202-3.5,B(1)(a).

Referring to the Committee's question about bonding, Attorney Donovan noted that he tried to address this in the memo. He wasn't quite sure what the concern was about bonding. Attorney Donovan continued that he had suggested eliminating the section on payment bonds. It appeared that the Committee might not be familiar with what a payment bond is. When a town like Rye does a construction project, the contractor would be asked to post two types of bonds; a performance bond and a payment bond. The first bond ensures the that contractor finishes the job according to the planning specs. The payment bond guarantees that before the final payment is released to the contractor, that the contractor has paid everybody who worked on the project. If the prime contractor has not paid those parties, they can come back against the contracting party, the town, for payment. He pointed out that the payment bond protects against that;

however, it has nothing to do with development bonds. A completion bond, which are allowed by statute, guarantees that all the improvements are completed by the contractor by a certain date. For example, a subcontractor of Washington Green can't go back against the town if the contractor doesn't pay them because there's no contractual relationship between the builder of the land development and the town. He pointed out there's no role for payment bonds with the planning board approval process. The Planning Board has never required a payment bond for any development. He is suggesting that be eliminated.

The Committee agreed to delete that section.

Member Losik noted that Attorney Buckley was concerned about the banks because there have been occasions where banks have gone out of business. It would be more of a question of whether the surety is coming from a bank or a bond company. She pointed out that they mostly see letters of credit from a bank. She asked if this is something they should be concerned about.

Attorney Donovan replied that he would have to do some research to find out if the obligation remains if the bank that issued the letter of credit goes out of business. He suspects it does. Even if it doesn't, the risks of that versus the risks of the bond not being called by the town in time, weigh in favor of continuing to require a letter of credit. The problem with a bond is that it terminates on a certain date. The burden is upon the municipality to take action to call the bond. If that's not done and the project is not complete, without money to complete the project, it could turn into a mess. Also, when there is a bond, it allows the insurance company, as well as the developer, to challenge the amount that is being requested for completion under the bond. This does not happen under a letter of credit. A letter of credit doesn't allow a challenge on the reason for calling. Under the letter of credit, the reason for calling it would be that the certificate of completion has not complied with by the due date. That's the only requirement for getting the money. The bank doesn't get to argue whether it's complete or not, nor argue about the amount of money being requested. He's recommending that the language not be changed to add in the word "irrevocable".

The Committee agreed to keep the wording under 'Letter of credit and other forms of guarantee' as is, without the word "irrevocable" and to remove D(2).

III. LR White Paper Transmittal, Consultation with Counsel Non-Public

Motion by Patricia Losik to recess for the purpose of consultation with counsel. Seconded by Steve Carter. All in favor.

IV. Other

None

Adjournment

The Committee came out of recess and a motion to adjourn was made by Patricia Losik. Seconded by Steve Carter. All in favor.

Respectfully Submitted, Dyana F. Ledger