

# **RULES & REGULATION SUB-COMMITTEE MEETING**

**Thursday, June 9, 2022  
4:00 p.m. – Rye Town Hall**

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

***Also Present from the Public:* Kathy Hodson, Funi Burdick, Jane Holway, Dania Seiglie, Roger Wiegley and Arthur Ditto (representing the Rye Water District)**

## **I. Call to Order**

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

## **II. Finish review of White Paper items**

The Committee started their review where they left off at the May 25<sup>th</sup> meeting, which was #25 on Attorney Donovan's memo.

Referring to comment #25, Attorney Donovan noted that he put his recommendations into an amendment form, which is Proposed LDR Amendment 2022-22. The objective of this amendment is to try to address some of the issues that came up during the 711 Long John Road application, which was a three-lot subdivision involving a new road. The engineer for the applicant, was very strictly reading the regulations involving stormwater management to interpret the regulations as mandating that all of the runoff generated on site had to go into some type of raingarden or bio-retention facility, so that the groundwater recharge post development would be equal to, or greater, than prior to development. It seemed like they were creating two raingardens which were really not necessary under reasonable circumstances. Those raingardens involved destruction of a fair amount of woodlands. His suggested amendment would allow the Planning Board to balance the goal of groundwater recharge with the goal of the protection of the natural environment. Attorney Donovan pointed out that Steve Harding, Sebago Technics, has reviewed the proposed amendment and believes it is workable. Three different sections of the Land Development Regulations would be amended; §202-9.2.A(2), rain barrels and drip edges was inserted in the list of low impact development techniques that should be considered; §202-9.3.B contains the balancing language; and §202-6.8 addressing preservation of natural environment.

Referring to a February 3, 2021 document, Member Losik stated that Steve Harding was talking about low impact development techniques: *“This option has been used extensively in past subdivision projects in Rye. It would seem that using drip edges and/or some combination of rain barrels, strategically placed raingardens, permeable pavers instead of paved drives, limited*

*or no-cut wooded areas creating wooded buffers, would allow the design to meet the Rye Stormwater Regs without having to build the bio-retentions on lots B and C.”* She asked if permeable pavers can be added, instead of paved drives, and also the limited or no-cut wooded areas creating the wooded buffers.

Attorney Donovan agreed with the addition. He suggested to add permeable pavers and no-cut buffers to the list with drip edges and rain barrels. He pointed out that this language would also be added to 9.3.B.

Member Losik asked if they can say permeable pavers or paving, as there are more permeable pavement options.

Attorney Donovan agreed with adding permeable pavement.

It was agreed the wording should be “permeable pavers, permeable paving and no-cut buffers.”

Member Losik stated that they can’t get as far as they want, in terms of totally avoiding the mathematical analysis, which the engineers will undertake in areas. However, this gives the Board a greater opportunity to create the balance or argument.

**Motion by Steve Carter to move Proposed LDR Amendment 2022-22 to the Planning Board for review and to be scheduled for a public hearing.  
Seconded by Pat Losik. All in favor.**

Referring to item #26, Attorney Donovan noted this is a very straight forward concept, which he confirmed with Steve Harding. When the new LDRs were adopted, it seemed that it lost the requirement for a new detention facility to be designed for a 100-year storm. Steve Harding confirmed that the requirement is not in there anymore. If the Committee agrees, he will put together an amendment. Attorney Donovan read from the old regulations and pointed out that this would go back into the regulations.

Member Losik read from 202-9.3.B(4); *“Calculations shall include sizing of all structures and BMP’s including sizing of emergency overflow structures based on the 100-year 24-hour frequency storm discharge rate.”*

Attorney Donovan explained that his plan is if the Committee agrees it should be in there, he will make sure it is not already in there.

Member Losik asked if it should be in 202-9.2.A(8) because that’s where it caps off at the 50-year. She commented this was confusing because there is the “bucket” in A(8). There is also the bonus calculation in 12 for the 15%. In the general performance criteria, there’s 9.3.B(4).

Attorney Donovan stated that he will go back and review A(4), A(8), and (12) to make sure the 100-year storm isn’t already in there. He will confirm this with Steve Harding. In that case, they wouldn’t need to do anything further, but to perhaps clarify these sections to make sure they include all detention facilities.

Member Losik noted that there was a comment in a letter from Steve Harding regarding the time of concentration (TOC) calculations. She asked if the language around TOC is clear.

Speaking to Attorney Donovan, Planning Administrator Reed suggested that he ask Steve Harding about the 850 Washington Road letter that was submitted. She agreed to forward the letter to Attorney Donovan.

Referring to item #27 regarding irrigation systems, Attorney Donovan stated that if they want something in the LDR, it will take him a couple of hours to draft. He pointed out that they just can't reference the model regulation. DES has set it up as a regulation that the town itself enacts. It's set up as a municipal ordinance on irrigation rather than a land development or zoning regulation. He will go through the model regulation and pick out what's applicable for major site plans. He suggested language, such as; *if a major site development is going to have an irrigation system, it must be shown on the landscaping plan approved by the Planning Board and must comply with the following regulations.* He noted that the particular requirements that apply would be extracted from the model regulation.

Referring to subdivisions, Attorney Donovan asked if they would want a similar provision that says if any of the lots are going to have irrigation, the irrigation system has to be shown on the landscaping plan. He noted that they wouldn't necessarily have a landscaping plan for each lot. He pointed out that there may be an issue when an individual lot owner buys the lot with who is going to enforce the requirement that the irrigation system has to comply with the ordinance. What DES did is put this out as a town-wide ordinance. He stated that the Committee may want to consider recommending to the Select Board that it be a town-wide irrigation ordinance and forget about trying to deal with this through site plan and subdivision review. He noted that he will think more about subdivision. He suggests limiting the major site developments.

Referring to the model ordinance, Member Losik pointed out that section 5 refers to subdivision and site plan review regulations. It's looking at the detail that needs to be included. In site requirements, it gets into the application of that. Member Losik noted that Art Ditto from the Rye Water District has submitted a proposed zoning ordinance addressing irrigation systems under Article V, Section 511. The proposed zoning ordinances and amendments are being undertaken by Attorney Maher.

Chair Carter read the proposed new zoning ordinance submitted by Rye Water District, which would fall under Article V, Special Regulations.

Administrator Reed will send the proposed zoning amendment to Attorney Maher.

Member Losik commented that since this has become such a tough issue, maybe they should be continuing the conversation about where this belongs.

Attorney Donovan stated that he can think of an equal protection argument that an owner of a lot in a new subdivision could make if they were required to comply with certain irrigation requirements, where there are two thousand existing lots in town that don't have to comply, because they are grandfathered against this subdivision regulation, unless there is a town-wide

irrigation ordinance. He suggested they continue the conversation. Generally, DES talks about a town-wide regulation; the Water District is suggesting a zoning amendment and there has been discussion about a land development regulation. He suggested tabling this to continue the conversation about how Rye wants to regulate irrigation systems.

Member Losik commented that she'd like some more time to think about this. She likes what DES has done. She is struggling to have a limit in the LDR to major site developments.

Chair Carter pointed out that the current paragraph in the LDR is pretty general. One of the benefits of having Attorney Donovan work on this is they would come up with a specific list of things that people would have to pay attention to, whether it's a site development or subdivision. He would be in favor of pulling out of the model regulation something that would replace Article 11.5B.

Member Losik asked if he thinks this should go to the Selectmen.

Chair Carter replied that he would have to think more about the implications of that. If it was voted down, then there would be nothing. He pointed out that what the Water District is proposing would have to go to the Town anyway.

Speaking to Attorney Donovan, Member Losik asked if the DES model is Board of Selectmen enacted.

Attorney Donovan replied no. He explained that the DES model requires town meeting vote.

Administrator Reed asked the Committee how they would like to continue.

Member Losik stated that it makes sense for Attorney Donovan to look at incorporating as much of the language as possible, as broadly as possible, in the LDR.

Chair Carter agreed.

Attorney Donovan commented that he will probably set up appendices in the LDR. It would say that if a parcel is to have an irrigation system, it needs to be shown on the landscaping plan, approved by the Planning Board, and shall comply with the requirements of Appendix G. Appendix G would extract the things that are applicable to development plans.

Chair Carter replied that makes sense to him.

Member Losik noted that she would like to see it for subdivision and site plan. The subdivisions that the Board is seeing are going to have irrigation.

It was agreed to have Attorney Donovan write up something and the Committee can have further discussion.

### **III. Vote to forward Amendment 2022-01 to full board for scheduling of hearing**

The Committee reviewed proposed LDR Amendment 2022-01 regarding Editing Changes and Corrections. Some editorial changes were made to the draft by the Committee.

**Motion by Pat Losik to forward LDR Amendment 2022-01 regarding editing changes and corrections, subject to the additional changes that were discussed at this meeting of June 9, 2022, to the Rye Planning Board for the July 12<sup>th</sup> meeting.**

**Seconded by Steve Carter. All in favor.**

### **IV. Review Amendment 2022 -02. Vote to forward to full board with any revisions desired by the committee**

The Committee reviewed proposed LDR Amendment 2022-02 regarding Article III Submittal Requirements. There were no suggested changes to 2022-02.

**Motion by Pat Losik to forward LDR Amendment 2022-02 regarding Article III Submittal Requirements to the Rye Planning Board for the July 12<sup>th</sup> meeting.**

**Seconded by Steve Carter. All in favor.**

### **V. Begin review of Amendments 2022-03 to 2022-21. Each one, after review, requires a vote to forward to full board with any revisions**

The Committee reviewed the draft package submitted by Attorney Donovan, dated June 1, 2022, for Proposed LDR Amendments 2022-02 through 2022-21. Chair Carter noted a minor edit to the Truslow submittal (2022-13), which will become Appendix F. He also questioned bullet 5 regarding the UNHCE Conference for Landscapers.

**Motion by Pat Losik to accept and forward to the Planning Board Meeting of July 12<sup>th</sup> Proposed LDR Amendments 2022-03 through 2022-21.**

**Seconded by Steve Carter. All in favor.**

The Committee continued their review of Proposed LDR Amendments 2022-14 through 2022-21. Chair Carter pointed out a minor edit in 2022-15. He also pointed out a typo in 2022-20.

**Motion by Pat Losik to move Rye Planning Board Proposed LDR Amendments 2022-14 through 2022-21 to the Planning Board Meeting on July 12<sup>th</sup>, subject to the changes.**

**Seconded by Steve Carter. All in favor.**

### **VI. Other**

Attorney Donovan noted that the only thing that is left is the irrigation and the stormwater drainage amendment relative to 100-year storms. He continued there were two others that he wanted to ask the Committee about. He asked if they want something that will require a stormwater management plan for minor applications.

Member Losik stated that when there are stormwater concerns on individual lots, the Building Department is asking for a drainage study. She doesn't see how they cannot ask them of minor subdivisions.

Attorney Donovan commented that he believes Member Losik advocated doing them for site developments as well.

Administrator Reed stated that they are getting to a point where they need stormwater management plans for almost every development in the Town of Rye.

Member Losik pointed out that water is an issue.

Attorney Donovan stated that he thinks the best approach is to add the requirement for a stormwater management plan for minor applications, site development and subdivision. He suggested putting in a provision that the Planning Board may waive the requirement. Applicants can ask for a waiver. He continued that the other approach would be to say that it's not required to be submitted with the application, but the Planning Board may require a stormwater drainage management plan. The problem with that is the applicant will already be before the Board and then it may take another four months to get that done.

Member Losik commented that it's an important piece of information. If it can be proved that it's not needed, the applicant can ask for a waiver.

Attorney Donovan noted that he will add this to the list.

Referring to 202-2.1B(4), Exempt Activities, Member Losik asked if they are in the right place with the guidance. She asked if this is still relevant.

Attorney Donovan commented that he thinks this has been changed a bit from what it was. He didn't have any problem with the changes.

After some discussion, Administrator Reed agreed to ask the Building Inspector about the exemptions and the language in 202-2.1.B(4).

➤ **Committee will meet with Attorney Donovan again on June 28<sup>th</sup> at 4:00 p.m.**

- **Approval of Minutes – May 5<sup>th</sup> and May 24<sup>th</sup>**

**Motion by Pat Losik to accept the minutes of May 5, 2022 as written. Seconded by Steve Carter. All in favor.**

**Motion by Pat Losik to accept the minutes of May 24, 2022 as written. Seconded by Steve Carter. All in favor.**

## **VII. Public Comment**

Chair Carter opened to the public for comments.

Referring to the statement about irrigation regulations only being required for new systems, **Arthur Ditto, Rye Water District Commissioner**, commented that this will be parallel to the requirements for septic systems. They don't make everyone go back and redo their septic systems; however, if it's being rebuilt, it has to be brought up to current standards. He asked the Committee when they would be addressing the zoning amendments.

Administrator Reed noted that it will probably be August. The Committee met with Attorney Maher in non-public and he has his checklist. In the meantime, Attorney Donovan has been engaged to work on the Land Development Regulations. She pointed out that they are very close to finishing the regulations. She also pointed out that she has the draft amendment from the Water District and will forward it to Attorney Maher, so he can work on how it can be incorporated into the zoning ordinance.

Mr. Ditto noted that the Rye Water District adopted standards for standalone irrigation systems, which is metered by itself and not through a household (non-residential irrigation system). He pointed out that the key is the separate meter. The City of Portsmouth has a regulation for irrigation system requirements, which parallels what the State has as guidance; 2010 Water Efficient Landscaping Regulations.

Member Losik noted that DES updated the regulations in May 2020.

Speaking to Mr. Ditto, Administrator Reed asked if property owners have to go through this process if they are on a well.

Mr. Ditto replied no. The Water District is trying to manage how the water is used. He pointed out that it says in the proposal for this ordinance "Rye Water District Service Area" because the District doesn't manage Aquarion or Portsmouth, as they have their own requirements. He continued that the key is how this is going to be tracked. This is where the building permit would come in. If someone comes in for a building permit for irrigation; hopefully, the Building Department would notify the Water District. That would kick in the whole process and RWD would take responsibility. He commented that the Town can keep the permit fee, as RWD does not have a problem with that. It's just a matter of how this is tracked.

Member Losik stated that it sounds like between what RWD is doing and the model from NH DES, they can make some broad headway.

Mr. Ditto agreed to read through the State's model regulations and send his thoughts to Administrator Reed to forward them to Attorney Donovan.

### **➤ Model Water Efficient Landscaping Regulations for Municipalities; May 2020.**

**Cathy Hodsdon, 616 Central Road,** asked why the earlier items in the white paper were done in non-public.

Planning Administrator Reed explained they were items that had to be discussed with the committee members first. She further explained the items could have an impact on developments or applications coming in to the Board. A non-public was held because it could have ramifications. She noted that the amendments will be made public once she receives the final drafts with edits and will be available on the Town's website. They will also be public at the Planning Board meeting as drafts.

### **Adjournment**

**Motion by Pat Losik to adjourn at 5:46 p.m. Seconded by Steve Carter. All in favor.**

Respectfully Submitted,  
Dyana F. Ledger