

**RYE PLANNING BOARD
RULES AND REGULATIONS COMMITTEE**

Monday, September 25, 2017

3:00 p.m. – Rye Town Hall

Members Present: Chair Patricia Losik, Jeffrey Quinn and Steve Carter

Others Present: Zoning Administrator Kimberly Reed

I. Call to Order and Pledge of Allegiance

Chair Losik called the meeting to order at 3:00 p.m. and led the Pledge of Allegiance.

II. Approval of Minutes

- **August 22, 2017**

Member Quinn noted that prior to the August 22nd meeting some information was received from Sam Winebaum in regards to his concerns about Well 5A. Mr. Winebaum was present at the August 22nd meeting. The representatives from Aquarion were at the meeting and there was a full discussion. Mr. Winebaum had asked questions. He wanted to make sure that Mr. Winebaum's concerns that he had put forward were addressed. He thinks this would be important to note as a matter of record.

Chair Losik commented there was some additional amount of detail from Mr. McMorran (Aquarion Water) regarding tests that were done for the volatile organic compounds and the synthetic compounds. This information should be included for the record.

- **Tabled for a review of the tape for additional information for minutes.**

III. Meeting with Building Inspector

- **Fences (RXA510)**

Building Inspector Peter Rowell stated that after he thought about the discussion at the last meeting, he would like to forget about trying to define the height of a fence. He will make the decision on whether or not the fence complies with the 6ft rule and see if it meets the spirit of the ordinance. If he does not feel it meets the spirit of the ordinance, he will speak up. If people who are raising the issue have any complaints, they can appeal his decision.

Chair Losik clarified that they are talking about RZO 510.3, regarding height, “fences and walls shall not exceed 6ft in height”.

Mr. Rowell confirmed. He stated he will use his best judgement in determining the height of the fence. He reiterated that anyone who does not agree with his decision has the right to take it to Board of Adjustment as an appeal.

Regarding the permitting process for fences, Chair Losik asked how many of them raise concern from his perspective. How many go to the ZBA?

Mr. Rowell replied that none have gone to the ZBA that he can think of. He has had two or three recently that people have had concerns primarily about the space under the fence. If the space under the fence is too much it ends up being too tall. One was a situation where the fence stepped down. Another one, the terrain went up and down. There was probably a 6” difference on it. The third complaint was basically a neighbor dispute.

Speaking to Mr. Rowell, Member Quinn stated that for protection from being accused of being arbitrary, he may want to consider some upper limit. At the last meeting, they had this discussion about supporting posts and space. As he is looking at the height issue, it might be prudent to have “exclusive of supporting posts” wording in there to lean back on.

Mr. Rowell commented that part of his job is to be fair and equitable to everyone. It might be good to have the wording “exclusive of support structures”.

Member Carter stated they may want to consider putting a maximum on posts; such as “cannot extend 8” above the main fence”.

Member Quinn stated that it should conclude with the sentence “no portion of the structure shall exceed 7ft from grade”.

Mr. Rowell pointed out that they have to be careful with no portion of the fence being a certain height. They may say that the fence is no more than that with the posts cut off nice and even with the whole fence being 7ft high. It would have to be limited to support posts only.

Member Quinn commented that if this gets into further muddy water, it is not such a good idea. He continued that he thinks a well balance view should be taken of the structure and whether the people are trying to stay within the spirit of the ordinance. He is satisfied with the building inspector’s call.

Mr. Rowell stated that he thinks this will work.

Chair Losik stated they will leave it as is based on this suggestion. This can always be revisited at a later date.

- **Wetlands**

Mr. Rowell stated that DES does have Shoreland Protection. It does not protect as much shoreland as the Rye Ordinance does. DES does not go into the marshes at all. They go into major bodies of water. The Shoreland Protection Ordinance has been thought out. It is not the easiest but it seems to work. If Rye was to mirror its ordinance after that, it would be a lot less work for people to grasp on to. He does run into some spots where both the town and DES are controlling some shoreland. The issues have seemed to be able to be resolved to date. However, it would be easier if the applicant only had one set of rules to go by.

Referring to 483-B, Shoreland Quality Protection Act, Chair Losik stated it deals with lakes and ponds basically greater than 10 acres in size, coastal waters and the highest observable tides. In general, this is talking about the ocean and Eel Pond. Most of Eel Pond exists within the ordinance of the Rye Beach Village District. However, outside of Rye Beach Village District there are incremental requirements within 250ft. She continued they would need to map that area outside of the Rye Beach Village District because that would be the area that would fall under Rye Zoning.

Mr. Rowell stated it is also the saltwater marshes. He noted that Rye's Ordinance also picks up freshwater wetlands as a buffer. It also picks up Berry Brook Watershed. He commented that he is not sure they want to take control of the 200. He thinks they should stick to the 75ft and 100ft. There is 75ft on freshwater and 100ft on the tidal. It's how the cutting is regulated and the land use changes within that 75 or 100ft.

Chair Losik clarified that he is not looking at going to 483-B and guarding the buffer. She asked if he is saying conform with the requirements within the 75 and 100ft buffer.

Mr. Rowell confirmed. He pointed out that DES talks to well vegetative area. They have a point system so a view path can be cleared. Hopefully, people will be applying for a permit before they cut so they are not asking for forgiveness.

Member Quinn stated that there was an issue raised about monuments or markers of some kind to delineate the location of the buffer. He asked for thoughts on that.

Mr. Rowell noted they have the markers finally. The Conservation Commission has them. When the Planning Board and Zoning Board hears cases involving the buffer, there should be a permanent marker put in so it stays there.

Member Quinn asked if the applicant buys the marker and what it is.

Mr. Rowell replied that the applicant buys the marker. It is a square green marker that says "wetland buffer" on it. Sometimes the markers are attached to trees. He thinks they are better placed on stakes. The Planning Board has required that in a couple of situations; marking the Wellhead Protection Area.

Member Quinn stated that it seems like the signs could get lost in the shuffle. If a homeowner is being depended upon to put them on there, it might be better to ask a developer to accurately place them.

Mr. Rowell stated that he would like to see the Planning Board require these buffer monuments be installed during the planning process or the approval process for a subdivision or a site plan. The plan would show where each marker is supposed to be placed.

Speaking to Chair Losik, Member Quinn asked if this is something the subcommittee could carry forward.

Chair Losik confirmed. These are the two areas that the subcommittee is looking at. She noted that within the wetlands subcommittee last year, they analyzed the existing ordinance and analyzed the ordinance that was proposed. When the subcommittee did the work last year and looked at the definition of wetlands, they did not include the “all surface waters” definition that was included in the consultant’s proposed work for 301. At this time, 301 picks up tidal marshes, freshwater marshes, streams and ponds. The 75ft buffer is for one acre or greater and 100ft for Eel Pond, Burke’s Pond, Brown and East Rye Pond. What is not in there is the Atlantic Ocean; tidal bodies of water. That does not exist in Rye’s 301; however, it exists in 483-B, at the State level.

Mr. Rowell commented that he felt this was left out because so much is impacted already. Almost the complete ocean frontage in the town is built on. It is all impacted. That may be the reason why it was left out. He continued that the Harbor is also included as part of the ocean.

Chair Losik asked if he is looking at those assets and applying 483-B.

Mr. Rowell noted that any project on the ocean frontage needs a Shoreland Protection Permit. They have to apply to the State to get that permit.

Chair Losik asked if he is constrained because there isn’t anything within RZO 301 that contends with those issues.

Mr. Rowell reiterated that a lot of that area is impacted heavily already. There is not a whole lot of stuff left to protect. Most of the frontages are 80 or 100ft and some are less than that. He thinks that DES looks fairly heavily at that resource.

Chair Losik noted this is the work of the subcommittee and they will be looking at that.

Mr. Rowell commented that the markers are very important. If the house changes hands and there is work being done, if the markers are there and are on the plan, it can be shown where the buffer is located.

Member Quinn asked if there is any way to make them more permanent.

Mr. Rowell commented there are lots of ways to make them more permanent but it has to be reasonable. He continued that with a new subdivision the markers can be put in every 50ft. It needs to be done right at the beginning because the loggers and the excavators are the ones who are doing a lot of the damage. If the markers are placed people typically respect them.

Member Quinn asked at what point is it valid to put them in. He asked if it is when the initial survey is done or during the engineering.

Mr. Rowell stated if it is a subdivision the markers should be installed early on before the trees are cut. The surveyor should locate the edge of the buffers and they should be installed. That area should never be disturbed again.

Planning Administrator Reed noted that the Planning Board has a checklist where the chair will sign off when those things on the list have been met. She suggested adding to the list "Plans will be recorded after wetlands are delineated". It could be put into the checklist; "subject to". She continued that the Land Development Regs are going to be revised. This is something that could be put into the Land Development Regs.

Chair Losik asked Sam Winebaum if he had any thoughts about the discussion.

Sam Winebaum, 52 Cable Road, member of the Wetlands Subcommittee, stated that he looked at the Google Map and the 250ft from the high tide line. That involves pretty much every house that is on the ocean to Route 1A and in many cases, to the other side of 1A. He continued that DES looks at the front side of the lot. On the back side, in some cases it gets very close. Tons of stormwater is coming off the back side into all the marshes. He is not sure how deep DES looks at that. He asked if Parson's Creek Marsh is considered in the Shoreland Protection.

Mr. Rowell commented it is a tidal marsh.

Chair Losik noted that 483-B picks up all the tidal marshes, all bodies subject to the ebb and flow of the tide.

Mr. Winebaum commented that in looking at the back of the properties there are steep driveways and water can run wherever it wants. Maybe it gets a little over done on the front, in some cases, and under done on the back.

Chair Losik pointed out that there is grandfathering language in 483-B around 2008 and prior structures for activities within those properties. She asked Mr. Rowell if this is of interest.

Mr. Rowell stated that in the buffers they are going to be getting variances from the Zoning Board. That is where grandfathering is going to be looked at. He deals more with vegetation. There should be an ordinance that people will want to comply with because they can get what they want, such as a view path.

Chair Losik reiterated that this will be address by the Wetlands Subcommittee.

- **Swimming Pools & Spas**

Mr. Rowell stated that he recommends taking all the language for swimming pools and spas out of the Rye Building Code and leaving it up to the International Code Counsel, through Appendix G, to control the barrier requirements for pools. He noted that their barrier requirements are 4ft. He commented that the town can make things more restrictive but they cannot make it less restrictive than the State.

Member Quinn asked if he does not feel that a point of emphasis in the Building Code is necessary.

Mr. Rowell replied that he feels a 4ft fence is adequate. He continued that if all references are taken out of the Rye Building Code for pool barrier requirements, it is going to fall back on the State Building Code, which has been adopted in the Rye Building Code already.

Chair Losik stated that it there was discussion at the last meeting about the electrical components and the ancillary items of safety that relate to this kind of activity. She asked how far they should go with this work.

Mr. Rowell stated that all of that is covered in the State Building Code. The town adopted the 2014 International Electrical Code which has a whole section on how to wire a swimming pool. The IRC also has a section on wiring. The two codes mirror each other and where they overlap it is taken out. The town is already there.

Planning Administrator Reed clarified that 712 will be removed. The State Building Code will not be referenced because it is already there.

Mr. Rowell confirmed. He continued that in looking at the 2015 IRC, they have actually dropped Appendix G completely. They will probably have a Pool and Spa Code with its own separate code book. He thinks the State will accept this as one of their reference codes.

Chair Losik asked the thoughts of the committee.

Member Quinn stated he is leaning towards eliminating the 5ft and going with the State Building Code.

Mr. Rowell commented he thinks this is adequate protection. He pointed out if the State changes then the town changes.

IV. Discussion re: Aquarion Well 5A (RZO306)

Chair Losik explained it was seen in a document, that Aquarion filed with DES in March of 2017 for Well 22, that the engineers for Geosphere had indicated a protective radius around Well 5A that was approximately in excess of 1000ft to the northeast, east and southeast. When Mr. McMorran and Mr. Eaton (Aquarion Water) were queried, they indicated that the Wellhead

Protection Area around that well, in definition, resided with resources of DES. DES had the mapping. DES was able to provide that mapping, which reasonably conforms to the Rye Stratified Drift Aquifer. The most recent map from DES is a combination of their Wellhead Protection Area around Well 5A, plus the Wellhead Protection Area around Bailey, Cedar and Garland Wells and the Rye Stratified Drift Aquifer. At the site walk at Well 5A, Mr. McMorran presented two maps. Again, the question came up about a broader area around Well 5A. There is a section that seems to not be in the DES records. She continued that Mr. McMorran indicated at the site walk that he would be able to get the source of information from Geosphere; what they are using. She thinks they should go in both directions so the committee can understand exactly the Wellhead Protection Area around Well 5A because that should be brought into the mapping resources. Also, Section 306 should be redefined, particularly with the definition of the Wellhead and Aquifer Protection Area.

Mr. Winebaum stated that he looked at the GIS System in regards to the zones around each of the existing wells. It covers a huge area. There are many homes that are within 4000ft of the bedrock wells. In looking at the map, some of the properties that would be in a 400ft radius around Well 5A are in the radius of the bedrock wells. His advice would be to ask DES, Geosphere and Aquarion what are the relative risks if it is extended on the map and nothing else is done? With the homes that are within 400ft of Well 5A, would they recommend that something additional be done? The reason he mentions this is because there are a number of deed restrictions on the new construction on Marjorie Way, which is within the 4000ft and much closer to the Garland Well.

Referring to 306.11, Chair Losik pointed out this is the SPR language; Sanitary Protection Radius. ***A Sanitary Protective Radius of 400ft exists around each of Rye Water District's three wells. As required by DES Regulations, the area within the SPR shall be maintained in a natural state at all times. Only activities or uses approved by the Rye Water District may occur within the SPR.*** Speaking to Mr. Winebaum, she stated that it sounds like he and Mrs. Winebaum are asking the committee to look very closely at that language in the SPR and make sure that the addition of the Well 5A has been considered and that they also have the Best Practice language from the DES perspective, or Aquarion's perspective or Geosphere's perspective, with protection in the SPR.

Mr. Winebaum confirmed.

Chair Losik stated it was interesting to hear at the site walk about the process of information that flows between the planning board in Hampton and Aquarion. Aquarion is early in the process when something is happening, whether it is a significant change on a property or development.

Mr. Winebaum stated that Mr. McMorran stated that he would like to see no septic systems within 400ft. He pointed out there are some. What would make the water company feel more comfortable since they already exist? Referring to 306.11, he stated this might be the area where it covers inspections for septic systems that already exist. He commented that they may also want to consider making the area within the 400ft a mini district so people in that district will know what is required of them.

Dominique Winebaum stated that words “protection” and “sanitary” need to mean something. She pointed out that the other 400ft Protective Sanitary Radius has nothing there.

Chair Losik stated there are a couple of different ways to look at this. There are the Performance Requirements. That is where there is an escape hatch for private residences but it is only in Performance Section; the Conditional Use piece. With what has been discussed at this meeting, those should be looked at to be sure they have the appropriate protections for the Sanitary Protection Radius. Before the next meeting, they should look at that so they can compare the model ordinance to the current ordinance.

V. Other

Next Meeting:

- **Wednesday, November 1st, 3:00 p.m.**

Adjournment

Motion by Jeffrey Quinn to adjourn at 4:07 p.m. Seconded by Steve Carter. All in favor.

Respectfully Submitted,
Dyana F. Ledger