

**RYE PLANNING BOARD
WETLANDS & SURFACE WATER OVERLAY
SUBCOMMITTEE
Tuesday, September 12, 2017
10:00 a.m. – Rye Town Hall**

Present: Patricia Losik, Scott Gove and Planning Administrator Kimberly Reed

Others Present: Resident Jeff Nickerson.

I. Call to Order and Pledge of Allegiance

Chair Losik called the meeting to order at 10:00 a.m. and led the Pledge of Allegiance.

II. Overview – History of the Subcommittee Work

Chair Losik stated that the Wetlands Subcommittee met last year from July to October and focused on Section 301, Wetlands Conservation District. Last year, as the subcommittee came together they reviewed a proposed ordinance called ‘Proposed Wetlands and Surface Waters Conservation District’. That was reviewed at a public meeting on December 29, 2015. It was presented to the town after a long period of study with a consultant and planning board members. Because of the questions that came up with that proposed ordinance, it was thought that it would be best to take a step back and look at the current ordinance (301), the proposed 301 and make some changes. The subcommittee studied all the working ordinances in the coastal areas and the Great Bay Estuaries. After several months, the subcommittee updated the RZO with regard to (1) mapping, (2) Purpose, (3) Permits for tree cutting in wetlands for non-forestry, (4) Guidance for replacement of buffer located septic; and (5) Best Management Practices were fully incorporated into the definitions. She noted that these changes went to the public and all of them were voted in, March of 2017. The subcommittee felt it was beyond their scope to work on the (1) definition of district, (2) buffer descriptions; and (3) exceptions. All of those areas were kept intact.

She stated there is a request that has come before the subcommittee from Peter Rowell, Building Inspector, in regards to 301.8, which is specific to the wetlands buffer. Mr. Rowell has requested that the subcommittee look at it in regards to the buffer. In his opinion, it would be easier for the owners and enforcement staff if the town ordinances were in line with the DES Shoreland Protection Act. That way, the owners would not need to comply with two different set of rules. She continued that when she thought about that it caused her to go back and look at where they would pull people in to the current 301, where they are impacted by RSA 483:B, which is the Shoreland Water Quality Protection Act at the State level, and where are the inconsistencies? She really thinks it would be wise for this subcommittee, in this short period of time, to just stay focused on that. She commented that they can talk about time and whether the subcommittee has

the resources to do more. It was concluded last year, that if it was felt that the subcommittee should go further and bring in surface waters, that it would be beneficial to have someone with the expertise and working knowledge to come back and help. She noted that this resource is not in the budget right now.

Chair Losik stated that 483:B, Shoreland Quality Protection Act, brings in all land within 250ft of public waters. What is located in Rye that comes under that RSA are three areas (1) Atlantic Ocean, (2) the tidal marshes; and (3) Eel Pond. Those three natural resources are under RSA 483:B at the State level. What happens at the town level is the Atlantic is not incorporated, tidal marshes are incorporated and to the extent that the portion of Eel Pond buffers are outside of what is under the jurisdiction of the Rye Beach Village District, the Town of Rye and Jenness Beach deal with that. She pointed out there are some areas of inconsistencies. In thinking about Eel Pond, it is subject to State regulations and Rye Beach Village District; however, there is also the part that is on the west and north side, which may have some implications because it is in the 250ft setback from the edge of the Eel Pond. There is also the 250ft setback with the tidal marshes. The building inspector is dealing with the State rules that say one thing and the town's, which say something else.

She stated that in terms of the preparation work she sent the subcommittee a variety of documents to review; DES Shoreland Water Quality Protection, Bill 486 (which is now before the House). She noted that DES had concerns about Bill 486. She asked Mrs. Reed to find out where DES stood on this issue.

- **Thoughts from the Subcommittee**

Member Gove stated that he was surprised because the town has to comply with the State. The town cannot be less restrictive than the State. Regarding the permanent monument and markers, he stated the wetlands change over time for better and worse. He knows that North Hampton requires that granite monuments are placed at the edge of the wetlands and are shown on recorded plan; however, that could change in five years for the better or worse. He is not sure this makes a lot of sense. He pointed out the subdivision on Brackett Road required placards on the trees, which makes a lot of sense.

Chair Losik asked how the town would deal with the changes over time.

Member Gove asked if the wetlands have to be marked if someone comes in for an addition.

Planning Administrator Reed explained that if someone is coming in for a building permit, the building inspector will require that they delineate the wetlands if they are close by. Also, the ZBA will ask applicants to mark out the wetlands.

Member Gove stated this makes sense because it is what is required in most towns. The application needs to know what the impact to the buffer is for the ZBA.

Planning Administrator Reed pointed out that the ZBA changed its check list almost two years ago because applicants were going before the board without going to the Conservation

Commission. Now, if there are any applications that need relief from Section 301, the Zoning Board makes them go to the Conservation Commission prior to going before the ZBA. The Conservation Commission is just advisory but the ZBA takes their comments into consideration.

Referring to the standards for the buffers, Chair Losik asked Member Gove if he is saying that he subcommittee can proceed with making proposed changes in the ordinance for the currently named assets so there is agreement and consistency with 483:B.

Member Gove asked if this is for when people develop their land.

Chair Losik confirmed. She stated there are these overlapping areas. It doesn't relate to every wetland but it does relate to wetlands that are under 483:B jurisdiction at the State level.

Public Comment:

Jeff Nickerson, Resident, asked who mandates the placards. He asked if this has been looked into with the State. He is not sure the town can arbitrarily state that this has to be done on private land. He agrees that any time someone is doing something to their land they need a licensed wetland scientist to delineate the wetlands. The posts could be a steel spike to delineate where the wetlands are. It is true, the wetlands will change every seven years. Every seven years, that person is going to have to have it reevaluated. He reiterated that really needs to be done by wetland scientists. In regards to 483:B, he stated that it should stipulate exactly what water ways because it could be viewed as streams, Berry Brook and so on.

Chair Losik disagreed. She continued that the information on 483:B is on the DES website. The water bodies are listed by town. The shorelands are listed and all tidal marshes because they are subject to the ebb and flow of the tide.

Mr. Nickerson asked what will happen in five or ten years when the town has new building inspectors. By law, it is left up to the building inspector's interpretation of what is considered a water way or not. He commented that he agrees with the philosophy that everything should be very, very specific, as far as restrictions. It should be clarified in great detail. There are a lot in the documents that are very vague, redundant and actually violate a lot of State laws.

Chair Losik stated that when the town is dependent upon a body who can be current and updates, the ordinances are made stronger because the information is there. She also believes that when information is readily available, it helps people to understand what they have and what the allegations are. She continued that it was clear, in terms of the strong outcry in December of 2015, that bringing the surface waters into 301 met with objection on many levels. She does not recommend that the subcommittee try to bring the surface waters, the ocean and the shoreland in to 301. Some towns deal with that particular area of their ordinance as Shoreland Protection separate from 483:B. She feels they need the expert to guide them through this. All the subcommittee is looking at right now, is changing and conforming the buffer requirements to 483:B and helping landowners deal with any areas of confusion around the overlaps. That is the only thing she thinks is before the subcommittee.

Mr. Nickerson asked what if there is something that does not conform to 483 but it is wetlands that are considered slightly wet?

Chair Losik explained that 483 only deals with those specific assets.

Mr. Nickerson clarified that this is what would be incorporated and not implementing a 250ft setback for all wetlands.

Chair Losik confirmed. She continued they want to be sure to carve out in the ordinance the assets that are under 483 and that the buffer restrictions conform. She is not saying to tighten or change buffer restrictions for assets that are outside of 483:B.

Mr. Nickerson stated he looked at the House Bill that is being proposed. He thinks it is pretty reasonable. Actually, the setbacks are a lot more lenient and it really asks that prime wetlands be segregated from regular wetlands.

Chair Losik stated from a planning purpose and consistency in terms of revisions to the Master Plan, there are some wetland assets that are significantly important to the town's overall welfare but it doesn't mean that it is every wetland. What is coming out of 486 is that they are not all the same. She continued that the subcommittee needs to go back to Mr. Rowell and make sure they are all on the same page, in that he is talking about that segment of assets in 483:B.

It was agreed to invite the Building Inspector to the next meeting for discussion.

III. Review the similar ordinances enacted for Durham and Wolfeboro

Chair Losik commented that Durham has segmented out their shoreland within their Shoreland Protection Area of their zoning ordinance. In regards to Hampton, they have a system with approximates 483:B. She asked the subcommittee to review these ordinances for the next meeting.

IV. Next Steps:

- **Planning Administrator Reed will email all information to the members of the subcommittee. She will also send notices of the next meeting dates.**
- **Members should have reviewed the information and be prepared with thoughts on recommended language.**
- **Building Inspector, Peter Rowell, will be invited to the next meeting.**

Next Meetings:

- **Wednesday, October 11th, 10:00 a.m.**
- **Wednesday, October 25th, 10:00 a.m.**

Adjournment

Chair Losik adjourned the meeting at 10:50 a.m.

Respectfully Submitted, Dyana F. Ledger