

**TOWN OF RYE SELECT BOARD  
MEETING**

**Monday, January 22, 2024, 5:00 p.m.  
Rye Town Hall & Via Zoom**

***Select Board Present: Chair Tom King, Vice-Chair Bill Epperson, and Selectman Bob McGrath***

***Others Present: Town Administrator Matt Scruton and Town Attorney Eric Maher***

**5:00 p.m.**

**I. CALL TO ORDER**

Chair King called the meeting to order at 5:00 p.m.

**II. NON-PUBLIC SESSION (1) per RSA 91-A:3, II (c) Reputation  
(2) per RSA 91-A:3, II (l) Legal Advice**

**At 5:00 p.m., Tom King made a motion to go into Non-Public Session per RSA 91-A:3 II (l) Legal Advice. Seconded by Bill Epperson. Roll Call: Epperson – Yes, McGrath - Yes, King - Yes.**

**At 6:00 p.m., Tom King made a motion to come out of Non-Public Session. Seconded by Bill Epperson. Roll Call: Epperson – Yes, McGrath – Yes, King - Yes.**

**At 6:00 p.m., Tom King made a motion to go into Non-Public Session per RSA 91-A:3 II (c) Reputation. Seconded by Bill Epperson. Roll Call: Epperson – Yes, McGrath - Yes, King - Yes.**

**At 6:27 p.m., Tom King made a motion to come out of Non-Public Session. Seconded by Bill Epperson. Roll Call: Epperson – Yes, McGrath – Yes, King - Yes.**

**6:30 p.m. RECONVENE PUBLIC MEETING**

**III. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Chair King called the meeting to order at 6:35 p.m. and led the Pledge of Allegiance.

#### IV. ANNOUNCEMENTS

- The NH Primary is Tuesday, January 23<sup>rd</sup> with voting being held at the Rye Elementary School from 8:00 a.m. to 7:00 p.m.
- The Rye Deliberative Session is being held on Saturday, February 3<sup>rd</sup> starting at 9:00 a.m. at the Rye Junior High.

#### V. PUBLIC COMMENT – (at the beginning of the meeting, for any comment by any Rye resident on any topic. Requested time limit, up to 5 minutes each person.)

**Hugh Lee, 220 Pioneer Road**, asked if the public would be allowed to speak on the petitioned warrant articles.

The Select Board agreed to allow public comment.

**Michael Bean, 112 Grove Road**, noted that he attended the election machine testing on January 12<sup>th</sup>. He pointed out that folded ballots were never tested through the machine during the test period. RSA 656:42-8(e)(11) requires testing and it tries to encompass every possible characteristic that could occur with the ballots. Folding wasn't an issue at the time; however, today, it is. The testing has to be completed and successfully passed, which wasn't done in the Town of Rye. He does not personally believe that folded ballots, which are all absentee ballots, should be processed through the machine. There's no evidence and no testing of how folds will react in the machine. He believes that all absentee ballots should be put in the side vessel of the box and should be hand counted the day of the election. Mr. Bean noted that the decision to use the machines, test the machines, and maintain the machines, rests solely with the Town.

**John Bellino, 2136 Ocean Blvd**, thanked Rye's Fire, Police and Public Works Department for the support and help they provided during the floods over the last two weeks. He also thanked Selectman Epperson for taking his texts during a stressful situation. He gave a special thanks to Fire Chief Cotreau as his department mitigated a lot of potential loss for residents at the beach. Chief Cotreau's department did it with calm and grace, and simple kindness. He's noted that he is speaking for a lot of residents that couldn't be at the meeting. Mr. Bellino commented that a lot of people complain about the property taxes rising. However, he thinks the residents are fortunate to have great public service personnel who really care about the people who live in the community. This includes the Town Administrator, Assistant Town Administrator, everyone who works in the Town Hall, the Town Clerk's office, and the Select Board. He knows the Select Board works very hard and their efforts are appreciated.

**Alec Belavitch, 21 East Atlantic Ave.**, thanked the Town Departments in the community. He noted that the Police and Fire Department went out of their way to assist. Besides being professional, they are the best in their field. He gave sincere thanks to the professionals who run the Town.

**Steven Borne, 431 Wallis Road**, asked for a copy of the petitioned warrant articles. He commented that he's looking forward to new voting machines next year.

**Joe Cummins, 990 Washington Road**, spoke in regard to the petitioned warrant article addressing town legal expenses. He also spoke about the Budget Committee's process.

## **VI. AGENDA ITEMS**

### **A. Traffic & Pedestrian Safety Workshop**

**Police Chief Kevin Walsh** followed up on the Traffic and Pedestrian Safety Workshop that was held in October 25, 2023 between the Select Board and residents of Rye. Chief Walsh updated the Board about what the Police Department has been doing to address the residents' concerns since that time; specifically, targeting Central Road and Lang Road, which has received the most complaints from the community. The Department has been working on a driver's compliance plan, which includes education, awareness, voluntary compliance, and enforcement. He also spoke about the proposed town ordinances brought forth by residents with regard to lowering the posted speed limits and why the Town should not adopt such an ordinance. Chief Walsh reviewed the plan for moving forward with continued education, awareness, compliance, and enforcement.

**Attorney Hope Flynn, RPD Prosecutor**, spoke to the Select Board about the process when a speeding violation is brought into court.

Chair King opened to the public for questions or comments.

**Hugh Lee, 220 Pioneer Road**, asked about the number of cases that are taken to court annually on an average. He also asked about speed bumps being installed in town.

**Steven Borne, 431 Wallis Road**, suggested not allowing beach parking stickers, for two years, to residents who receive a moving violation.

**Roger Wiegley, 633 Central Road**, spoke about whether there are urban residence districts in Rye. He noted that every section in town where there is a 30-mph speed limit is an urban residence district, which is the State speed limit for urban residence districts. An urban residence district is determined by the number of residences and buildings that are established within a certain distance on the road. He pointed out that on one end of Central Road it's 30-mph. It then changes to 35-mph for one mile, just after the cemetery, until Grove Road, and then it goes back to 30-mph to the end of Central. Within the 35-mph section there are more houses per distance than there are in the 30-mph sections. There are blind driveways, two intersections, two business, and an entrance for equestrians to enter Central Road. There is no justification for having that section at 35-mph, if the ends of Central Road are 30-mph under state law. The same could be said for other roads in Rye. Mr. Wiegley commented that the speed limits in town haven't changed in fifty years, but the population and density has grown. He's not sure that

reducing the speed limit to 30-mph will actually cause people to slow down, but it can't hurt. Mr. Wiegley spoke further about NH RSA 259:118, Urban Residence District.

**Danie Seiglie, 633 Central Road**, spoke in regard to the number of residents who are very upset and have expressed their concerns about the amount of speeding that happens in town. Speaking to Chief Walsh, she asked what the challenge would be to go from 35-mph to 30-mph.

Police Chief Walsh noted that if there isn't a justification as to why the speed is being reduced, that is a defensible right that will be brought into court. If it's not justified, the Town is going to lose the case. He also noted that when things are presented to the Board to make changes, he has fact-based information. The fact information is not showing that this change should happen. The Board's past practice has been to not change policy based on people's perception, but on facts. He commented that if he felt the roads in Rye were not safe, he would already be presenting these changes to the Board.

Ms. Seiglie noted that ultimately the Town's people will decide. She pointed out that data doesn't always give the full picture. She also pointed out that Rye's officers should be seen more often. The Town only has one speed monitor, which should be moved around the Town. She commented that she will continue to fight for a lower speed limit.

**Alex Herlihy, 55 Lang Road**, expressed his concerns with regard to the speeding vehicles throughout town.

**Joe Cummins, 990 Washington Road**, spoke about the possibility of rumble strips being installed in town.

**John Bellino, 2136 Ocean Blvd.**, commented that he doesn't see any empirical evidence to support making a change. He doesn't feel it would drive the results that the Town needs. He thinks that what drives reduced speed limits is police visibility. The number of officers that are parking in strategic locations has been noticed. He doesn't think "feel good" activities with limited resources are a good value for the Town.

**Mary Ann Sullivan, 754 Central Road**, expressed concerns about residents' safety with the speed of vehicles driving through town.

**Joan Zofnass, 693 Central Road**, spoke about the importance of having consistency in town with the speed limit. She also spoke about the dangers of not having sidewalks in town.

Vice-Chair Epperson stated that the Town pays the Department Heads to do the job they are trained to do and he supports each one. He doesn't see where the evidence would show that the Select Board should make an arbitrary movement to lower the speed limits.

Selectman McGrath noted that the Department Heads are the experts and best in their fields. The Town is lucky to have them. The Department Heads have factual information. He pointed out that one of the main things said by a resident at the workshop is that they can't get out of their driveway. He can't connect speed and not being able to get out of a driveway. The volume of

traffic in town is increasing. He thinks they should trust the Town's professionals and make the decision based on factual information.

Speaking to Attorney Maher, Chair King asked if it's true that if the speed limit is 30-mph, it's an urban residence district.

**Attorney Eric Maher** explained that the district defines the speed, not the speed defining the district. The mere fact that the speed is 30-mph means it's already been designated as an urban residence district. The statute defines an urban residence district and that definition is based off the amount of territory and frontage in a certain territory before an intersection is reached. It's dictated by the use of the properties and the amount of use between intersections, which ultimately defines the speed. If there are certain roads that because of the passage of time, buildout, and the altered amount of frontage, along with change of usage, it may very well be that a certain road's designation or district that a certain road is on may have altered over time. He pointed out this would require an in depth look at each road, in terms of distance and use.

Chair King asked if a road should have a speed limit of 30-mph, if it falls within the definition of an urban residence district.

Attorney Maher replied that the statute says if it falls within the district, that is the statutory speed limit, unless a study is done to increase or reduce based on the eighty-fifth percentile.

Chair King commented that it seems that the Town has a responsibility to look to see if something is an urban residence district. If so, the speed limit becomes 30 because that's what the statute says.

Attorney Maher confirmed.

Chair King pointed out that any areas that are 35-mph should be looked at to determine if it's an urban residence district. He thinks it's incumbent upon the Select Board to start a longer-term program to determine urban residence districts.

After discussion, the Select Board agreed to have Police Chief Walsh and the Town Administrator work on a proposal to study Central Road to determine if there is an area that is 35-mph that should be 30-mph.

**B. Tracy Degnan, Rockingham County Conservation District – Thriving NH Coast Project**

**Tracy Degnan, Rockingham County Conservation District (RCCD)**, met with the Select Board to talk about two projects involving the Town of Rye. The Fairhill Saltmarsh Restoration Collaborative Planning Effort is a grant funded program from the NH Charitable Foundation. RCCD is the project manager and is working with NH DES. The saltmarsh acreage encompasses the Berry's Brook and Seavy Creek watersheds, which is about 220-acres in total. Within the study area, there is a focal point of the Fairhill Saltmarsh which is approximately 62-acres. RCCD has started some workshops with folks; including, regional saltmarsh experts and practitioners talking about the legacy impacts from agricultural. Those agricultural impacts are

now creating problems for the saltmarsh health, as well as sea-level rise. The goal of the project is to come up with some low impact techniques to help with making the saltmarsh healthier. RCCD has also received funding to do an implementation phase, which was funded through an America the Beautiful Grant from the National Wildlife Federation. This is a two million dollar DES grant that covers saltmarsh restoration in North Hampton, and Odiorne Point as an initial restoration area.

Ms. Degnan briefly described the initial phase, in order to keep the Town and Select Board informed about the project. It was pointed out that there have been discussions about the project with the Rye Conservation Commission and they have been involved with the workshops that have been held.

Ms. Degnan noted that the other project is a twenty-eight-million-dollar quest for the State of New Hampshire that involves sixteen partners; which includes the Town of Rye and RCCD. The project scope for Rye is to be submitted to the State by the end of January with a request for Rye of one million six hundred thousand dollars. The project will focus on coastal adaptation and will be managed by RCCD.

Ms. Degnan also spoke to the Select Board about her request for a letter of support for a culvert project she is working on in New Castle. She noted that a component of this project is that there are three vulnerable spots on Route 1B, which affects both Rye and New Castle residents.

The Select Board agreed to have town counsel review the letter of support submitted by Ms. Degnan and they will sign if there are no issues.

### **C. Telecommunications Infrastructure Committee Update**

**Howard Kalet, Telecommunications Infrastructure Committee Chair**, provided an update on the work of the Committee. He reported that Verizon has approached the School District about putting a tower behind the soccer and ball field at the Elementary School. Health concerns were raised by the State Division Study of 5G Technology, dated November 1, 2020. The study questioned the location of a tower near an elementary school and children. The study suggested that a tower should not be within five hundred meters of a school, which is 1,640 feet. Mr. Kalet noted that there is room at the back of that property; however, that is in Berry's Brook Watershed with no reasonable access. He pointed out the school is discussing this again on February 21<sup>st</sup> with Verizon.

Mr. Kalet continued that the company that is working to develop this tower site is very keen on the elementary school location because of economics. This tower would cover the apartment complex in Portsmouth at the end of Lang Road, as well as provide additional coverage for Rye. The next step in the project would be for Verizon to provide a coverage map to show what areas in Rye the tower would cover. Mr. Kalet noted that Verizon has asked him about the lot at the end of Liberty Common (Lot 016-071-02), which is presently conservation land. The lot is dry in the center and wet on the sides; however, it's far away from homes. He's not sure what the conservation restrictions would be on this parcel. He pointed out that he walked the property and it would be an excellent location. The location fits the same description of what Verizon is looking for in terms of coverage and it would provide additional coverage for Rye.

Mr. Kalet noted that if Verizon is not successful with either of these locations, they are going to be inclined to look for other locations in town. If they find a location, they are going to try to develop it. There could also be the situation where they find a location in Portsmouth on the Rye border, which would not provide Rye with the same level of coverage as the other locations; however, it would meet Verizon's financial needs by covering Lang Road. He summarized that Verizon appreciates the fact that Rye has a committee that's trying to work with them on some of the details. He recommends the Town continue to work with Verizon.

The Select Board agreed.

Speaking as the Rye Energy Committee Co-Chair in regard to Rye Community Power, Mr. Kalet noted that the rate will be 8.1¢ per kilowatt hour, as of February 1<sup>st</sup>. The Public Safety Building and other municipal buildings in town are signed up for that rate, which is a six-month rate. He noted that for the first six months of the program, the rate payers in town have saved over two hundred thousand dollars.

**D. Rye Heritage Commission – Request to form Town Hall Restoration Subcommittee**

**Alex Herlihy, Rye Heritage Commission Chair, and David Choate, Rye Heritage Commission Member,** met with the Select Board to discuss the Commission's request to form a Town Hall Restoration Subcommittee for the purpose of researching the work that was done in the past related to the restoration of the Town Hall. This will be done in context of understanding the employees' space needs relating to both the Town Hall building and the Annex. The committee will be an advisory committee and point of contact to the Select Board to help move the restoration project forward over the next few years.

The Select Board agreed to have Town Administrator Scruton work with the Heritage Commission on a draft charter for the committee, which will be presented at a future meeting to the Board for consideration.

**E. Town Historian**

Town Administrator Matt Scruton noted that the position of Town Historian has been advertised. Alex Herlihy has responded to the public posting with a letter of interest to the Board. It was also noted by Administrator Scruton that the Select Board has already approved the position requirements.

**Motion by Bill Epperson to appoint Alex Herlihy as Town Historian in accordance with the charter and term. Seconded by Bob McGrath. All in favor.**

**F. The Rye Heritage Commission requests permission to accept and expend funds received from donations made in the amount of \$7,825.00**

**Motion by Bob McGrath to accept and expend donations received in the amount of \$7,825.00 by the Rye Heritage Commission. Seconded by Bill Epperson. All in favor.**

## **VII. SELECTMEN'S 2024 BUDGET WORK SESSION**

### **A. Petition Warrant Articles**

**ARTICLE \_\_\_\_ (By Petition)** To see if the Town will vote to appropriate human and technical resources needed to document all procedures for obtaining a building permit. Documentation shall include, but is not limited to, how commissions such as RCC (Rye Conservation Commission) and DRC (Demolition Review Committee) are to be engaged, by whom and when. Documentation shall also specify the legal limitations on the RCC, DRC and any other appointed (un-elected) committees in terms of their recommendations.

Procedures will also address zoning and planning variances, including: how an applicant can be adequately prepared for presentation to said committees, the limitations on committees revisiting previously determined elements of a submission and expectations on how long a decision will take as well as any costs that may be incurred.

These procedures will include a schedule of fees and expected expenses, as well as reasonable expectations for how long each step of the process will take. This information will enable applicants to better plan and prepare a budget for their building maintenance and improvement projects and in so doing use the time of the ZBA (Zoning Board of Adjustment) and PB (Planning Board) more efficiently in service to the Town of Rye and the applicants.

**Motion by Tom King to move the petitioned warrant article to the Town Warrant.  
Seconded by Bob McGrath. Vote: 3-0**

**Attorney Eric Maher** stated that as this article is written is for a laudable intent, which is to provide some sort of guide for the public to be able to understand the land use and building process. Some aspects are going to be very difficult to comment upon. For example, to say what the costs will be is going to be exceptionally difficult, because that's always project dependent. The other concern he has is providing a document that could be construed as providing legal advice. A lot of the information sought in the article is project dependent and would require consultation with supreme court case law; particularly, as to the expectations, and variance criteria, which is often best left to consultation with an attorney, engineer, or architect who has the knowledge and experience. As written, there are some concerns associated, but there are ways to amend the article that would serve the same purpose without triggering those areas of concern. However, he wouldn't recommend the article as written.

Selectman McGrath commented this is a step in the right direction in trying to alleviate some anxiety for people in town who are working on projects. He also thinks it would increase efficiencies between the departments and the clients, which would save money for the Town in the end. However, he agrees with Attorney Maher that it needs to be done in a way that's legal without town legal exposure, which he assumes will happen, so he is in support.

**Motion by Bill Epperson to not recommend this petitioned warrant article as written.  
Seconded by Tom King.**



Chair King opened for to the public for comment.

**Steven Borne, 431 Wallis Road**, spoke about having a process to present at the Deliberative Session.

**Jenn Madden, 620 Central Road**, noted that she offered the petitioned article. She pointed out that the intent and the purpose of the article is to document procedures. She wants to be sure the focus is on documentation of proceeds, not what the procedures are and knowing in advance the fees.

Attorney Maher noted that the underlying concern is that those procedures exist in one capacity or another. It's sometimes challenging to know what to look for, as there's the Land Development Regulations, Planning Board Rules of Procedure, Zoning Board Rules of Procedure, Floodplain Management Ordinance, and building codes. It can be daunting to navigate.

Ms. Madden stated that she has a vision of an advocate who starts at the beginning with the applicants on what to expect, which would spawn the procedures. She agrees that not every situation can be covered, but there should be something in between.

Selectman Epperson commented that the article has to go to the Deliberative Session as written. The Select Board can authorize Attorney Maher to work on making the article something that would be very useful as a tool for people going through the building process.

Chair King noted that petitioners submit the warrant articles and it cannot be changed by the Select Board. The article has to be put on the warrant and the only option is to recommend or not recommend. Legally, the Select Board does not want to recommend this article. He thinks the idea of the article is good. However, this written proposal is not acceptable. Maybe the article will get changed at the Deliberative Session to something the Select Board can support. He commented that the Board can authorize town counsel to prepare an amendment that would work. He reiterated that the Board doesn't disagree with the intent of the article, just the wording.

**Note: It was agreed by the Select Board later in the meeting that Attorney Maher could provide wording for the petitioned warrant article that would be more appropriate, which could be presented and discussed at the Deliberative Session.**

Chair King called for a vote on the motion to not recommend this petitioned warrant article as written. **Vote: 2-1**

**ARTICLE \_\_\_\_ (By Petition)** Shall the Town of Rye reduce the speed limit from 35 mph to 30 mph on all town roads where the current speed limit is 35 mph, effective June 1, 2024.

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*Explanation: Some town roads have segments at 35 mph, preceded and/or followed by a 30 mph speed limit. This warrant article will provide for a consistent maximum town speed limit, which will promote increased safety on town roads.*

**Motion by Tom King to move this petitioned warrant article to the Town Warrant.  
Seconded by Bob McGrath. Vote: 3-0**

Attorney Maher stated that his ultimate concern with this warrant article is that it's contrary to RSA 265:63 which requires a speed study prior to a municipality altering the prima facie speed limits. There has been a lot of discussion as to what dictates the speed limit. The state statute is dependent upon what district the section of road is designated. In order to alter the speed limit away from that statutory designation or lower it from the prima facie speed, there has to be a speed study. There is no alternative under the state statute. After a speed study is done, it has to be submitted to the Commissioner of Transportation for approval. He continued that the conversation earlier in the meeting was about analyzing the roads to see if the designation has changed; such that, an area that was at one time residential and is now urban residential, so the prima facie speed limit has now changed, which wouldn't require a speed study. That would require analyzing the road to determine the proper and appropriate designation. Attorney Maher noted that the petitioned article as written is unlawful and non-binding.

Chair King opened to the public for comment.

Mr. Borne suggested that town counsel work with the Select Board and petitioner of the article to come up with something that would work.

**Frank Drake, South Road**, asked clarifying questions with regard to an urban residence district designation.

Attorney Maher addressed Mr. Drake's questions.

Ms. Seigle commented that she sought legal support before finalizing this warrant article and did a lot of research. She asked why the warrant article is not legal and binding.

Attorney Maher explained that RSA 265:60 establishes the prima facie speed limits for roads throughout the State. Those speed limits are based upon the designation of particular stretches of roads. The designation is set by statute. RSA 265:63 provides that if a locality wants to alter the speed limit in a manner that is different from the prima facie speed limit under the statute, the municipality must first have a speed study conducted and then must submit the proposed speed limit change to the Commissioner of Transportation. He continued that the proposed warrant article that would change the speed limit from 35-mph to 30-mph, without the conduct of a speed study, circumvents the required procedures under statute; therefore, it's unlawful.

Ms. Seigle commented that eighty to ninety percent of the town roads are in an urban residential area; therefore, prima facie would have a 30-mph road under that definition.

Attorney Maher noted that if this is correct, there would still be the ten to twenty percent of town roads that this warrant article would still affect. It would be unlawful as it relates to those ten to twenty percent of properly designated roads.

Ms. Seigle proposed to the Select Board that they consider setting up a volunteer group, in lieu of having to spend a lot of money, to determine whether an area is an urban residential area.

Chair King commented that the Select Board will have town counsel suggest an amendment. It's not going to change what the Board does at this meeting with regard to the petitioned article; however, it will give additional information for the Deliberative Session.

Attorney Maher suggested to amend the wording to read: *To see if the Town will vote to establish a traffic control committee for the purpose of studying and identifying the designation of roads, roads on which to conduct a speed study or to consider such other controls that may be advisable to safeguard public health and safety. Said committee to consist of the Chief of Police or his designate, a member of the Select Board or their designate, and a member of the public to be appointed by the Select Board.*

Chief Walsh suggested to the Board that they consider hiring a third-party that does this type of work.

**Michael Bean, 112 Grove Road**, spoke in support of Chief Walsh's recommendation to hire a knowledgeable third-party.

The Select Board agreed with Chief Walsh.

**Motion by Bill Epperson to not recommend the petitioned warrant article. Seconded by Tom King. Vote: 3-0**

**ARTICLE \_\_\_\_ (By Petition)** To see if the Town will vote to correct the boundary of the Town Forest, as established in 1981, that mistakenly included land acquired in 1961 specifically for the purpose of "...an addition to the Central Cemetery" and "...for the purpose of enlarging the Central Cemetery...", as set forth in 1961 Warrant Articles, utilizing a concise metes and bounds description. The described boundaries of the Town Forest shall henceforth exclude the land described in Warrant Article 11 of the 1961 Town Warrant. This Warrant Article hereby confirms the exclusion of all of the 1961 Article 11 cemetery land from the Town Forest. This Warrant Article further authorizes and directs the Select Board to do all things necessary to correct and amend the easement granted to the Rockingham County Conservation District, to conform with the corrected boundary description of the Town Forest as set forth above. This Warrant Article further authorizes and directs the Select Board to do all things necessary to effect the purposes of the foregoing.

**Motion by Bob McGrath to include the petitioned warrant article on the Town Warrant. Seconded by Bill Epperson. Vote: 3-0**

Attorney Maher stated that the article, as written, is going to bring with it a considerable amount of cost. The land in question is called the 'Perry-Walker Tract.' It was deeded to the Town in 1961, acquired using cemetery funds. Shortly thereafter, the land was graded, cleared, divided up into cemetery plots, and started to be sold. At that time, there was a cleared portion, which is a portion of the Perry-Walker Tract. There was also a wooded portion that surrounded it that was part of the Perry-Walker Tract. In 1981, the Town Meeting voted to establish the Town Forest. In that, it said that the wooded portion of the Perry-Walker Tract would go into the Town Forest; meaning everything but the graded, cleared, divided up portion was intended by the Town Meeting in 1981 would go into the Town Forest. At some point in time thereafter, trails were established into that area. Around 2000 or 2001, Town Meeting voted to deed the Town Forest to the Rockingham County Conservation District by and through a conservation easement, which has remained for the past twenty-two years.

Attorney Maher continued that the underlying issue with this warrant article is that it takes the entirety of the tract out the Town Forest and implicates a conservation easement. This will require coordination with NH Division of Charitable Trusts. When the NH Division of Charitable Trusts considers an amendment to a conservation easement, it makes a determination of risk. They identify the risk based upon how much land is going to be coming out, what is going to be done with the land, and whether there's going to be a quid pro quo. Because this would involve taking out the entirety of the parcel without any offset, in his opinion, based upon Charitable Trusts regulations and how it's been applied in the past, they are going to designate it as a high-risk commitment. This means it will go to probate court and a judge will have to be convinced that it is no longer feasible to maintain the conservation easement as granted and deeded. Assuming that NH Charitable Trusts even supports it, the Town would be in it for several thousand dollars. If they oppose, it would be even higher. If another entity seeks to oppose, the costs would be even higher.

Attorney Maher stated that his opinion is that there is a latent defect in the conservation easement and a mistake was made when the conservation easement was created, as the entirety of the parcel was included; however, this does not mean the entirety of the parcel should be removed. The portion that should come out, in his opinion, is the unwooded portion that existed as of 1981, consistent with the vote that established the Town Forest. As written, he doesn't believe NH Charitable Trust will allow it and this would require the Select Board to undertake a potential probate action, which would come with considerable costs.

Attorney Maher pointed out that since this matter has been identified, there have been discussions for a resolution. He applauds the petitioner who brought this forward because it does push this towards getting it resolved at the Town Meeting. At this time, he is not at liberty to say where the Town is at in terms of the resolution, because they are waiting to hear back from the parties. However, he would anticipate an amendment being presented at Town Meeting that would resolve the issue, or at least have Town Meeting decide how to resolve the issue in a manner that is not likely to trigger the anticipated high costs associated with having to go to probate court, and in a manner consistent with what the will of the Town has been over the course of several votes at town meeting.

Chair King opened to the public for comment.

A member of the public, via Zoom, asked about title insurance.

Attorney Maher noted that the conveyance was made to the RCCD, which is not a municipal entity and is a non-profit organization. He can't speak to whether they obtained title insurance when they acquired the conservation easement. In his experience, it would be somewhat rare to obtain title insurance under these circumstances.

Mr. Drake stated that he thought when the tract was acquired in 1961, it was for the purpose of cemetery expansion.

Attorney Maher confirmed.

Mr. Drake asked who would get to change that purpose.

Attorney Maher replied town meeting; subject to any deed restrictions and fund restrictions associated.

Mr. Lee asked if mutual mistake of fact in 1981 was possible.

Attorney Maher replied that the Town Meeting is assumed to know what it's doing. The underlying issue is that the map and lot number is identified in the warrant article that established the Town Forest in 1981. At that time, there was very specific use of the words "wooded portion," which would seem to suggest the Town was aware that a portion of this property was not wooded anymore and had been improved. This would also seem to suggest that the Town was very aware of the current use of this property. He pointed out this is not a contract between two parties. This is a designation of public use as made by a government entity, amongst various departments in a government entity. He doesn't know if contractual concepts, such as mistake of fact, are applicable in this regard. In looking at the language from the 1981 Town Meeting, when the Town Forest was established, it would seem that they knew very well what they were doing at that time. Also, the fact that thereafter, when the conservation easement was described, they included the Perry-Walker Tract, shows that they at least knew they were putting a portion of the Perry-Walker Tract into the Town Forest.

**Cemetery Trustee, Roger Philbrick**, questioned the language in the warrant article that established the Town Forest in 1981.

Attorney Maher addressed Mr. Philbrick's questions.

Mr. Bean spoke in support of putting the petitioned warrant article forward, as written, for the voters to decide how this should be resolved.

Further comments were heard from Mr. Cummins and Mr. Drake.

Selectman McGrath stated that he heard rumors of this when he worked for the Police Department. When he was given the story and given the deed from 1961, it was very clear to

him that in 1981 there was a mistake made. The deed in 1961 specified it was going to cemetery use. The Cemetery was to pay back the note with the sale of cemetery plots. If there was a record of that payment back, there wouldn't be this discussion. It was only assumed this was done. He doesn't think that a warrant in 1981 asking if the voters wanted to put some of the cemetery land into the Town Forest would have passed. Cemetery land is one of the most sacred land in town. He doesn't think it was the intention of the 1981 voters to understand that it was cemetery land. The voters are only given a map and page numbers, which they don't understand. Selectman McGrath continued that his thought is it was an error. It would be great to have everyone come together to resolve this issue.

Chair King noted that the Board is going to deal with town counsel's opinion for recommendation on this article. The article can be amended at the Deliberative Session.

**Motion by Tom King to not recommend this petitioned warrant article. Seconded by Bill Epperson. Vote: 2-1**

**ARTICLE \_\_\_\_ (By Petition) To see if the Town will vote to establish a Litigation Ordinance as follows:**

In order to enhance transparency and financial accountability in the operation of Town government, the voters of the Town of Rye adopt this Ordinance.

#### **Initiation of Litigation**

If the Select Board of the Town of Rye, or any Commission or Committee whose members are not elected but are appointed exclusively by the Select Board, deems it necessary or desirable to initiate litigation against any third party or to undertake an appeal to any State or Federal administrative agency or council, the Select Board shall, prior to initiation of any such litigation or appeal:

- Conduct a Public Hearing at which the Select Board shall describe the need for, anticipated costs of, estimated duration of and likely outcome of such litigation or appeal; and
- After the conclusion of said Public Hearing, vote to proceed or not to proceed with such litigation or appeal.

No funds shall be expended for any such litigation or appeal until the Select Board has voted to proceed with such litigation or appeal, following the Public Hearing.

#### **Defense of Litigation**

If litigation is commenced against the Town of Rye, or any Commission or Committee whose members are not elected but are appointed exclusively by the Select Board, the Select Board shall, within 30 days following the commencement of such litigation:

- Conduct a Public Hearing at which the Select Board shall describe the reasons why such litigation has been commenced, anticipated costs of, estimated duration of and likely outcome of such litigation and whether, and to what extent, the costs will be covered by insurance; and

- Describe what measures can be taken to minimize the cost of such litigation and to effect a resolution at the earliest reasonable date.

### **Annual Reporting**

Between November first and December first of each year the Select Board shall conduct a Public Hearing and report on the status of all litigation and appeals in which the Town has been engaged during the year and the costs and expenses associated therewith. As to each litigation or appeal, the Select Board shall vote to continue or end such litigation or appeal.

### **Motion by Tom King to move this petitioned warrant article to the Town Warrant. Seconded by Bill Epperson. Vote: 3-0**

Attorney Maher stated this will be open season on the Town of Rye. He has never seen or even heard of a similar ordinance in any municipality in the State of New Hampshire, or frankly in the United States of America. It's going to require the Town to make statements as part of a party opponent. This means that anything the Select Board says in a public session is going to be used against them, as it relates to the litigation. It's going to require telegraphing and notifying the advisory in any litigation of any potential weaknesses in the case. It will identify and require the Select Board to err in a public session any "desperation" and will kill settlement potential. It will kill the ability of the Town to adequately defend itself. It will require the disclosure of attorney/client privileged information. Attorney Maher noted that there is a reason that attorney/client privileged information exists. That privilege exists because the attorney has to have the ability to speak candidly with their client. This is so the attorney can tell their client accurately what the weaknesses are behind closed doors without the fear of it being used against them. Having these discussions out in public session is going to "kneecap" the Town. If there are public hearings, as the proposal suggests, it's going to be providing the "road map" by which to defeat the Town. Attorney Maher pointed out that litigation costs are going to increase. The ability for the Town to get insurance coverage is probably diminutive. The ability for the Town to get specialty counsel is highly doubtful, as an attorney is most likely not going to act under such restrictions. He summarized that in terms of litigation, this is going to have a very, adverse impact on the Town.

Attorney Maher continued that the one suggestion in this article that is somewhat palpable, is the disclosure of active litigation on a yearly basis.

Chair King opened to the public for comment.

Mr. Borne spoke about the possibility of having an open public lesson learned discussion with regard to cases that are settled.

**Joanna Silkowski, 121 Garland Road,** commented that she thinks the intent of the petitioned article is so that there aren't surprise litigations. The Town has spent a lot of money on lawsuits that maybe didn't need to be lawsuits. She thinks there's an opportunity to let the public know about a lawsuit without divulging all of the attorney/client privilege. She suggested a modification to the warrant article that says any conversations that are deemed as settlement

discussions can't be used. She doesn't think the Town has to give up everything in order for the public to understand what's being initiated and spent.

Attorney Maher addressed Ms. Silkowski's comments.

Mr. Bean encouraged the Board to allow town counsel to put forth an amendment that works for the Town and for the citizens.

As petitioner of the warrant article, Mr. Lee spoke to the intent and purpose of the proposed article.

**Sam Winebaum, 52 Cable Road**, spoke in support of the third section of the petitioned warrant article for disclosure of the reasons and cost of litigation of cases.

Selectman McGrath stated that he thinks the spirit of the article is transparency, which he agrees with. However, he doesn't think it's a good idea for the Town to release its strategies and disclosures in a public hearing. Selectman McGrath noted that he thinks there is something in the article that can be salvaged to help make things better than they are now.

Chair King noted that the Select Board will speak with town counsel in private about the warrant article. The Board may ask Attorney Maher to provide feedback on a possible amendment.

**Motion by Tom King to not recommend this petitioned warrant article. Seconded by Bill Epperson. Vote: 3-0**

## **B. Warrant Articles**

**ARTICLE \_\_\_\_** To see if the Town will vote to authorize the appointment of a Town Treasurer, in accordance with RSA 41:26-e, rather than the election of a Town Treasurer. If approved, the Town Treasurer at the time of the vote shall continue to hold the office until the 2025 Town Meeting, at which time the elected office of Town Treasurer shall terminate and the Select Board shall appoint a Town Treasurer. (Majority vote required)

Town Administrator Matt Scruton explained that if this is approved, it would allow for the Town to appoint a treasurer, rather than have it be a town elected position. This is an important role in the Town, as the Treasurer handles a lot of the finances. Administrator Scruton noted that the Town has a very qualified treasurer right now. This is about being sure that any future treasurer is appropriately qualified. This would reduce the future likelihood of it becoming a popularity contest, not one based on qualifications. If this is approved, in 2025 this position would become an appointed position.

Chair King commented that the Town has a strong town treasurer right now; however, this might not always be the case in the future. As this position becomes more technical with more specific knowledge being required to handle the Town's finances, the Town needs to be sure it has a



professional that can handle that position. That is the goal of turning this into an appointed position, so the Town can hire versus having it as an elected position.

Selectman McGrath pointed out this is one of the most important positions in town. It came into focus this year, because there was a spike in interest rates and the Town needed to take advantage of investing its liquidity to get some return. It's important to have someone who understands this and is a good negotiator.

Administrator Scruton reiterated that the Town is fortunate to have a very qualified and excellent treasurer now. In speaking with the current Treasurer, she was supportive of the article.

Chair King opened to the public for comments.

Mr. Cummins made comments about leaving the position as it is now.

Mr. Borne asked if there is any data or trends showing that this is what other towns are doing.

Chair King addressed Mr. Borne's comments.

There was further discussion on the Town Treasure role.

**Motion by Bill Epperson to move the article, as written, to change the Town Treasurer position from an elected position to an appointed position, in accordance with RSA 41:26-e to the Town Warrant. Seconded by Bob McGrath. Vote: 3-0**

**Motion by Tom King to recommend the warrant article as written. Seconded by Bob McGrath. Vote: 3-0**

**ARTICLE \_\_\_\_** To see if the Town will vote to continue the combined office of the Town Clerk/Tax Collector. If a majority of those voting on the question do not vote in favor of continuing such combined office, at the next annual meeting in which an election for Town Clerk/Tax Collector is to be held the voters shall choose one individual as Town Clerk and another individual as Tax Collector. (Majority vote required).

Town Administrator Scruton explained this article would separate the Town Clerk and Tax Collector functions. Over the years, there have been changes and an emphasis on additional responsibilities, workload, and tasks for the combined position. Separating the positions is in line with what a number of communities are doing; however, the point can be made that some communities are going the other way and combining the positions, as well. Administrator Scruton noted that by separating the positions it will benefit and alleviate some of the responsibilities into individual functions.

Administrator Scruton further explained that the way the article is worded, it asks the community if they want to continue as is or whether they want to make a change. If they want it to change, it would need a negative vote.

Attorney Maher clarified that a “no” vote discontinues the combined positions. A “yes” vote will separate it into two positions. He noted that the statute requires this language for the article.

Chair King opened to the public for comment.

**Town Clerk/Tax Collector Donna Decotis, 2 Victory Lane, (speaking as a taxpayer),** stated that if the positions are separated, it's going to cause unnecessary increase on the taxes, as additional employees will need to be hired. There are also certain requirements from the State regarding computer equipment and privacy issues. She pointed out the annex will probably have to be reconfigured to account for privacy regulations. She commented that it would probably be easier to have two positions; however, she is speaking on a financial point of view right now. She would vote “yes” to keep the positions combined. She pointed out that there are certain statutes that have to be followed, with regard to privacy acts, when separating out the town clerk and tax collector.

Mr. Cummins commented that he can't imagine that the fiscal impact is going to be a savings. He looks forward to hearing what the rationale is for bringing this article forward.

Selectman McGrath explained that this would be more of a service impact, so residents are being served completely. This would give the Town the opportunity to divide the work so there's more flexibility. If the current Town Clerk/Tax Collector had one single role, she could probably do more of the things she probably always wished she could do, and that would be a benefit to the Town.

Mr. Borne asked where the article came from and why it is felt to be a problem. He also questioned the facts and data. He commented that he can't get behind this being the most fiscally responsible decision.

Administrator Scruton noted that there's another warrant article being proposed for the appointment of a tax collector. In order to appoint a tax collector separately, the position has to be divided. It goes along with risk mitigation. At this time, the Town has a very capable and competent town clerk/tax collector. This isn't about a person. It's about the position. In the future, someone could run that isn't qualified and get elected for the position. There's a lot of tax revenue that flows through that office. This would be a risk mitigation technique because the Board would have appointment authority over the tax collector to make sure that the person is qualified and capable of fulfilling the duties of the position.

Chair King noted that the Select Board is looking across the Town at changes they think need to be made long-term to get the right types of people with the right job loads, so the residents can

be served. The Board is making recommendations to the residents on ways to make the Town better. The Select Board's job is to attempt to improve things.

Selectman McGrath commented that he thinks this will improve efficiencies and customer service issues. He wants to support the Town Administrator, who is now a year in, and is making great decisions. The proposal to separate the positions is something he wants to support.

Ms. Decotis noted that the Town Clerk has to live in town. The Deputy Town Clerk also has to live in town. Right now, there are three people working in the office that could hold a deputy or town clerk position. She thinks the office gives very good customer service.

**Motion by Bob McGrath to move the article regarding the separation of the Town Clerk/Tax Collector to the Town Warrant as written. Seconded by Bill Epperson. Vote: 3-0**

**Motion by Tom King to not recommend the warrant article regarding the role of the Town Clerk/Tax Collector. Seconded by Bill Epperson. Vote: 3-0**

**ARTICLE \_\_\_\_** If the Town votes not to continue the combined office of the Town Clerk/Tax Collector under Article \_\_\_\_, to see if the Town will vote to authorize the appointment, rather than the election, of a Tax Collector. If the Town votes in favor of Article \_\_ and this Article \_\_\_\_, after the 2026 Town Meeting the Select Board shall be responsible for appointing a Tax Collector and establishing the Tax Collector's compensation. If the Town votes in "yes" to Article \_\_\_\_, then this Article \_\_\_\_ shall be void and of no force and effect. (Majority vote required).

Attorney Maher explained this is a contingent warrant article. In order to have an appointed tax collector, the positions have to first be separated. There then needs to be a separate warrant article to change the separated elected tax collector position into an appointed position. The article will live or die based upon whether the Town votes to keep the positions together or to separate.

Chair King pointed out that unlike the Treasurer position, which takes affect one year later, this would not take affect until the end of the current town clerk/tax collector's term, which is in 2026.

**Motion by Tom King to include on the Town Warrant the article regarding appointment of a Tax Collector as written. Seconded by Bill Epperson. Vote: 3-0**

**Motion by Tom King to recommend the article for appointment of a Tax Collector. Seconded by Bob McGrath. Vote: 3-0**

## **VIII. CORRESPONDENCE**

*None*

## **IX. NEW BUSINESS**

*None*

**X. OLD BUSINESS**

*None*

**XI. OTHER BUSINESS**

**A. Transfer Station Use Application**

Town Administrator Matt Scruton reviewed the changes made to the Transfer Station Use Application.

**Motion by Tom King to adopt the new Transfer Station Use Application as written and delegate approval authority to the Town Administrator. Seconded by Bill Epperson. All in favor.**

**Motion by Tom King to approve all contested positions in the March Town Election for the Transfer Station, upon completion of the use application submitted to the Town Administrator. Seconded by Bill Epperson. All in favor.**

**B. Town Center Committee Charge Amendment**

The amendment adds two alternates to the Town Center Committee and it would not change any other parts of the committee's charge.

**Motion by Tom King to adopt the new Rye Town Center Committee Charge amended January 22, 2024 to add two alternate members. Seconded by Bill Epperson. All in favor.**

**C. Select Board Representative Updates**

*Tabled*

**D. Meeting Minutes - Tabled**

1. Meeting, Monday, December 4, 2023, 5:30 p.m., Rye Town Hall
2. Non-Public Session, Monday, December 4, 2023,  
(1) per RSA 91-A:3, II (l) Legal Advice
3. Meeting, Monday, December 11, 2023, 5:30 p.m., Rye Town Hall
4. Non-Public Session, Monday, December 11, 2023  
(1) per RSA 91-A:3, II (d) Acquisition
5. Meeting, Wednesday, December 13, 2023, 9:00 a.m., Rye Town Hall

**ADJOURNMENT**

**Motion by Bill Epperson to adjourn at 11:15 p.m. Seconded by Bob McGrath. All in favor.**

Respectfully Submitted,  
Dyana F Ledger