

MINUTES OF JULY 23, 2012 RYE BOARD OF SELECTMEN MEETING

Final Revision B – Provided by the Rye Civic League

Present: Selectmen Jenness, Musselman and Mills. Also present: Michael Magnant and Cindy Gillespie.

NOTE: These are not the official minutes of this meeting. They are prepared by the Rye Civic League from notes taken during the meeting by members and are not prepared after listening to recordings of the meeting. Every effort is made to ensure the accuracy of these minutes, including the review by those RCL core committee members in attendance at the meeting.

Fire Lieutenant Gallant honored for USS Miami Fire bravery

The meeting began with a brief ceremony. Selectman Jenness mentioned a unanimous U.S. Senate resolution honoring the firefighters who responded to the May 23, 2012 fire on board the Los Angeles class attack submarine in dry dock at the Portsmouth Naval Shipyard. She indicated that U.S. Senators Shaheen and Ayotte had honored the firefighters in a ceremony. Fire Chief Sullivan then recounted details of the incident, and how several Rye firefighters had responded to the call. After several firefighters had entered the submarine, the fire flashed and the conditions became unbearable. Firefighter Hirtle collapsed from the heat and smoke and was rescued by Lieutenant Gallant. Firefighter Hirtle was then hospitalized. As Lieutenant Gallant was being presented with the award, Firefighter Hirtle came forward to thank the Lieutenant for saving his life.

Approval of minutes

The minutes from the July 9, 2012 meeting were unanimously approved with minor corrections. The minutes from the non-public session were unanimously approved without changes.

Presentation by Michele Sopher of the Rye Energy Committee

Ms. Sopher presented a very comprehensive study of the Town's energy usage, including heating and electrical needs for buildings and street lighting and fuel for vehicles. She passed out a 42 page color report with very detailed charts and graphs indicating where the Town was consuming energy. Elements of the energy usage include heating oil, propane, electricity, diesel fuel and gasoline. Town energy use, including all subdivisions (i.e. School District, Rye Beach Village District, Jenness Beach District, Sewer, and Water) was \$424,273 in 2011, reflecting annual usage of 15,029 million BTUs and 2.712 million pounds of carbon dioxide emissions. Electric usage is converted to BTUs.

Editor's note: a BTU is a British Thermal Unit. There are approximately 3412 BTUs per kilowatt hour (kwh), 138,000 BTUs per gallon of heating oil or diesel fuel, and 125,000 BTUs per gallon of gasoline. As Ms. Sopher admitted to me afterwards, converting kwh to BTUs is a bit misleading as the cost per BTU of electricity is significantly higher. At the \$.10552 to \$.17309 per kwh that the Town pays for electricity (page 34 of the report, variation based on usage band), electricity is \$30.93 to \$50.73 per million BTUs, while heating oil at \$3.00 per gallon is \$21.74 per million BTUs).

Of the energy cost, 75% is for buildings, 19% for vehicles and 6% for street lights. Of the energy usage, 77% is for buildings, 22% for vehicles and 1% for street lights. *Editor's note: street*

lights are a much higher fraction of the cost than of the energy usage because of the higher cost of electricity compared to fossil fuels, and because much of the Town's lighting cost is not metered but calculated at a high rate based on the number of lights and the hours of darkness for the month. All Town buildings are on PSNH rate G.

In presenting the data, Ms. Sopher indicated surprise at the high usage of energy at the Public Safety building, which is new (*Editor's note: constructed in the mid-2000s*) and presumably well insulated. A comment was made that most of the use was for air conditioning in the summer (*Editor's note: usage of heating oil is also high, see below*). Selectman Musselman commented about the energy use of the uninsulated Town Hall being reasonable compared to the other Town buildings and national averages, also presented by Ms. Sopher. Ms. Sopher also reported that last August the electric bill for the Public Safety Building was almost doubled by the demand charge (i.e. charge based on maximum usage during the month). She reported that the Library is looking at installing electronic controls to stagger air conditioning use and reduce the peak demand during the month. Ms. Sopher also commented about the absence of consistent savings at the Junior High School, despite a number of energy savings projects. Summer use of electricity at the Junior High School, while reduced relative to other months, is also higher than expected. *Editor's note: a greater reduction was apparently expected due to the absence of classes during the summer*). The report and the presentation provided the following data (*Editor's note: the gallons per sq. ft. was not presented, but is a calculation*):

| <u>Building</u> | <u>Square feet</u> | <u>2010-2011 htg. oil gal.</u> | <u>Gal. per sq. ft.</u> |
|-----------------------|--------------------|--------------------------------|-------------------------|
| Rye Elementary School | 50,467 | 15,742.8 | .312 |
| Rye Jr. High School | 52,155 | 24,789.4 | .475 |
| Public Safety Complex | 19,818 | 6,322.9 | .319 |
| Rye Public Library | 11,097 | 3,364.8 | .303 |
| Town Hall | 5,642* | 1,945.3 | .345 |
| Public Works | | <u>923.7</u> | |
| Total | | 53,088.9 | |

**Editor's note: Elsewhere a calculation in the report indicates approximately 6033 square feet was used for the Town Hall. This figure is closer to the actual total for that building.*

Editor's note: The 53,088.9 gallons for the six buildings listed in the report amounts to nearly \$160,000 annually at \$3.00 per gallon. A substantial portion of the total is for the Junior High School. Heating oil use for that building alone is nearly \$75,000 annually, which accounts for nearly 18% of the Town's annual energy use for all purposes (heating, electricity, vehicles and street lighting). The Junior High School should be receiving high priority, particularly given the high usage per square foot. Electricity usage for that building appears to be averaging approximately 18,000 kwh per month throughout the year, which amounts to nearly \$23,000 per year before considering demand charges (demand charges are based on the heaviest electricity usage during the month).

Vehicle energy use is approximately \$80,000 annually for gasoline and diesel fuel. Of this, 35% is for the police and 37% for diesel for Public Works vehicles.

Ms. Sopher then launched into a long discussion about street lighting costs which are approximately \$25,000 annually for the town. Most of this is located near the beaches and most lights are mercury, less efficient than some other technologies. Some Rye Beach lights are incandescent, which are even less efficient. Hampton and North Hampton are looking into reducing lighting to those

locations where there is a safety issue, i.e. intersections and curves in the road. Ms. Sopher recommends switching to metered vs. flat rates for street lighting, and eventually installing LED lights. *(Editor's note: although not entirely clear from the presentation, it appears that the rates paid by the Town for non-metered street lighting includes the cost of periodic bulb replacement, which would be additional costs after conversion to metered street lighting. LED lights are an emerging technology and the bulbs, while long lived and very efficient, are still very expensive).*

Selectman Mills, noting that, outside of the Jenness Beach and Rye Beach precincts, the Town has only 9 street lights, asked Ms. Sopher why she was going after the Selectmen on the issue of street lighting. *Editor's note: The Beach districts have their own boards that are responsible for street lighting in their districts.* Selectman Musselman commented that the Jenness Beach District commissioners are rarely to be found, as they meet only annually.

Defibrillator gift from Jim and Ellen Labrie

The Board of Selectmen voted unanimously to accept this gift.

Firefighter Association Boot Drive

The Board of Selectmen voted unanimously to approve this event.

Discussion regarding Seacoast Science Center, Liquor License and entertainment

Police Chief Kevin Walsh engaged the Board of Selectmen in a long discussion about his authority to approve, on behalf of the Town, entertainment associated with events that require a temporary liquor license. The situation apparently arose out of a wedding that occurred at the Seacoast Science Center on July 21, 2012. Chief Walsh had refused to take action until he had reviewed the matter with the Board of Selectmen. Laughter ensued after Selectman Jenness noted that the date of the event had already passed. *Editor's note: The Board of Selectmen has previously complained about late requests and retroactive approvals. See RCL minutes for June 25, 2012 relating to a raffle at the Wentworth by the Sea Country Club.*

According to Chief Walsh, N.H. RSA 179:19 gives the Towns veto authority over the issuance of liquor licenses by the State when entertainment is to be offered on the premises. *Editor's note: the statute appears to be geared more towards permanent establishments that offer "entertainment" or "dancing" and also serve liquor, but by its terms is not restricted to permanent businesses.* Chief Walsh stated that generally the police department attempts to ensure that any music ceases by 11:00 p.m., particularly if the event is held in a tent and/or in a densely populated area such that the music may disturb neighbors. Selectman Mills raised the issue of state sovereignty over the Seacoast Science Center and whether they need to abide by Town ordinances at all.

Chief Walsh noted that 90 percent of the time it is appropriate for the Town to approve the entertainment, and permitting him to grant approvals would avoid the need for a delay of up to two weeks pending a Board of Selectmen meeting. While there was no motion or vote, the consensus appeared to be that Chief Walsh should grant approvals and bring only exceptional cases to the attention of the Board of Selectmen.

Investment Policy

Cindy Gillespie presented a proposed policy that is in response to GASB 40, which apparently requires that towns adopt policies to minimize risk in their investments. Ms. Gillespie indicated, in response to a question from Selectman Mills, that “Leon” and the Town’s auditors are in agreement with the policy. *Editor’s note: this is an apparent reference to Leon Blaisdell, the Town Treasurer.* Ms. Gillespie stated that the policy requires diversification, limits investments in higher credit risk securities and staggers maturity dates. In response to a question from Selectman Musselman, Ms. Gillespie indicated that sources for the policy include the FDIC and GFOA web sites, and GASB 40. The proposed policy was unanimously approved as presented.

Abatements

The abatement for the Calvinos at 5 Heather Dr. was tabled after the Selectmen expressed uncertainty as to how it was arrived at. There is a proposed reduction of \$600,000 to the building value that is explained (apparently in writing by Norm) as a reduction from “excellent plus 50” to “excellent” based on all of the houses in the neighborhood being assessed at “excellent” and his inability to find any difference between them and 5 Heather Dr. They will need to hear from Norm before deciding. *Editor’s Note: this is an apparent reference to Norm LeBlond, the Town Assessor.*

The abatement for Aquarion Water Company, 480 Central Rd. was unanimously approved. Selectman Musselman noted that the value is higher than the DRA value and between what the town and the taxpayer wanted.

Letter from Deb Cross on 2012 Petitioned Warrant Article 20, televised meetings

Selectman Jenness, referring to this letter, noted that it contains a great many useful suggestions. Selectman Jenness referred to adapters and camcorders suggested by Ms. Cross in her letter. The letter states that these items cost \$200 or \$300. Selectman Jenness stated, however, that, no matter how small the amount of money involved, there was no money voted in Petitioned Warrant Article 20. The best that can be done is to work towards a warrant article providing funding in next year’s election. Ms. Cross’s letter will be helpful with budgeting. Mr. Magnant indicated that one provider out of York, ME had already contacted the town regarding the televising of meetings.

Peter Crawford, a Rye resident, spoke to indicate that the amounts set forth in Ms. Cross’s letter are small, and asked whether, if the funds were donated, the televising of meetings could occur earlier than Selectman Jenness indicated. After the Selectmen responded that this would not make a difference, Mr. Crawford suggested that the equipment itself could be donated. The Selectman indicated that they were unsure whether this would be permissible, but would check with the State Department of Revenue Administration (“DRA”).

Ms. Cross, presently not a resident of Rye, (*Editor’s note: Ms. Cross used to live in Rye, and has written a book about earlier life in the Town*) spoke to ask whether, if someone donated the camera, televising could start next week, advancing the process by seven months. Selectman Musselman indicated that they would want to make sure that any recording is continuous and complete, not selective. Selectman Mills indicated that they would see what the DRA says. Selectman Jenness indicated that they’re working on, and intend to put in, a warrant article. Selectman Musselman indicated that, if only \$800 is involved, no warrant article is needed; it could be done as a budget item.

Letter from Army Corps of Engineers regarding dredged material

This letter suggests depositing dredged material from Portsmouth Harbor and the Piscataqua River Project for “beach nourishment.” Selectman Mills indicated that the Town does not want dirty soil deposited at Wallis Sands. The Selectmen agreed to ignore the letter.

Letter from U.S. Senator Jeanne Shaheen

This letter offered assistance to the Town in general terms.

Heritage Commission letter regarding placing Town Hall on State Register of Historic Places

Selectman Jenness addressed this issue. *Editor’s Note: Selectman Jenness also serves on the Heritage Commission.* She indicated that she is in the middle on this issue, and “Joe” and “Craig” (referring to the other two selectmen) did not previously support registration, although she did. She stated that the state program imposes no restriction on alterations and that the Heritage Commission, with significant effort, can complete the application.

Richard Davis and Sara Hall, both from the Heritage Commission, were present. Ms. Hall indicated that a 2010 application for planning purposes was returned due to lack of specificity. Selectman Jenness interjected that Ms. Hall would be doing a lot of the work. Selectman Musselman asked who had done the prior work. Mr. Magnant indicated that he and Kim Reed had, until the Board of Selectmen stopped the work.

Selectman Musselman indicated that the present letter is a major improvement over a draft that he saw a week and a half ago. That letter had gotten off of the subject and discussed insulation and windows. The Heritage Commission should be off of that issue and focused on historic preservation.

Selectman Musselman stated that out of 100-150 historic properties in Portsmouth, only 2 were in the State Register. Ms. Hall replied that many of these properties had been acquired before either the federal or state registers existed. Mr. Davis stated that since any money available as a result of registration would reduce the amount of bonds that would need to be issued, registration was a good idea.

A motion authorizing the Heritage Commission to prepare the application for registration of the Town Hall was approved unanimously. The Selectmen will then review it and decide whether to submit it.

Letter from State Regarding applicability of town ordinances to State Parks

A letter from Philip Bryce, DRED Division of Parks and Recreation, was received. The letter asserts that the State is sovereign and not subject to town ordinances.

According to Peter Rowell, Building Inspector, a private party had wanted to erect a tent at Rye Harbor State Park. Mr. Rowell had concerns over high winds from thunderstorms. The tent company had sent him the necessary information and assured him that the tent would not be set up if high winds were predicted. Two days later the Bryce letter arrived from the state. Under RSA 155A, according to Mr. Rowell, all structures must comply with the State Building Code. While local ordinances relating to setbacks cannot be enforced on state land, the State has no independent means to ensure compliance with building codes for temporary structures. He feels that it was appropriate for the Town to be involved. Fire Chief Sullivan indicated that if the State has an emergency at one of its locations in

Town, they should be required to use the State Fire Department and State Police. Selectman Mills indicated that the Town probably gets 7 false alarms a year from the Odiorne Point Science Center which is on state land. Two can play this game, he said. The State should be charged for these false alarms.

Selectman Musselman asked whether the issue had been run by Town Counsel Donovan yet. He understands that the state doesn't apply for building permits, but a temporary structure may be different. This should be put back to the State with a cogent argument with a legal basis. Selectman Jenness said that they don't want to start a war. Selectman Musselman indicated that in the meantime the Town should continue to send ambulances to the beach.

Policy on solicitation of gifts and donations

Editor's note: see minutes of July 9, 2012 meeting. This issue arose in the context of a Heritage Commission mailing to Town residents that contained advertising.

Selectman Musselman indicated that no decision from Town Counsel Donovan has been received on this issue. It should be placed on the agenda for next time. When the Heritage Commission comes back seeking authority to spend the money that they have collected, the Board of Selectmen will need to receive information on those who donated money and the company that funded the mailing.

Request to pass out Recreation Survey at Recycling Center

Mr. Magnant indicated that Lee Arthur, Recreation Director, has requested permission to pass out copies of this survey on Tuesdays and Saturdays at the Recycling Center. Selectmen Mills and Jenness indicated that they had gotten their copies of the survey by mail. Selectman Mills questioned why Ms. Arthur wanted to harass people at the Recycling Center. Selectman Jenness responded that she is anxious to get a high number of returns. Selectman Mills responded that Ms. Arthur wants to put in tennis courts. *Editor's Note: Indoor and outdoor tennis courts are 2 of 24 possible facilities that the survey asks residents to consider and rank for development priority.*

Policy regarding links on the Town web site

Editor's note: This issue arose out of a request by the Seacoast Science Center for a link, as well as from the request by the Rye Civic League to make its Citizens' Handbook available on the Town web site. It was last discussed at the June 11, 2012 meeting. See the official minutes of that meeting for a draft of the policy. The policy bars links to websites for candidates for office and organizations advocating positions on local state or federal issues, and restricts links to organizations with some connection with the Town.

Selectman Jenness introduced the issue and noticed a couple of typographical errors. A reference was made to the first italicized paragraph having been inserted at the suggestion of Mr. Donovan.

A question was raised with respect to the eligibility of entities that charge for services, such as Seacoast Country Day School, for a link. Selectman Jenness noted that there was no distinction in the policy based on whether an entity charges or not. Selectman Jenness noted that Bill Nye of the Seacoast Science Center is advocating science, which is a political issue, suggesting that the policy might prevent them from obtaining a link. There was general agreement, however, that the Science

Center should be permitted to have a link. Selectman Musselman proposed that the policy be approved as is and issues dealt with on a case by case basis.

After Selectman Jenness asked for comments from the audience, Cecilia Azzi, a town resident, questioned whether links to entities such as Gus' Bike Shop and Portsmouth Kayak Adventures are appropriate for the Town's web site. Ned Paul, another Town resident, suggested that the policy could provide that all links require Board of Selectman approval.

The policy was adopted unanimously with four minor changes.

Selectman Musselman's comments on RCL version of minutes

Selectman Musselman noted that he had been forwarded an e-mail that referred to two sets of minutes for meetings. *Editor's note: This is an apparent reference to the Civic News, published by the Rye Civic League. The Civic News generally provides links to the RCL minutes (i.e. documents such as this) as well as the official minutes on the Town's web site.*

He stated that he reviewed the RCL minutes of the July 9, 2012 meeting in the same way that he reviews the official minutes. He has 27 comments, of which 15 involved things that were not true or were incorrect. He said "we can either decide we are going to have one set of minutes or we can decide we are going to have two sets of minutes and ignore it, but if we do that there will be a set of minutes out there not commented on..." He went on to say that "if they [i.e. the RCL] wanted to continue with the second set of minutes, we could review them each time, and put in our minutes the things that are wrong in their minutes." He stated that "it is not a matter of bias. It is a number of things that were just wrong."

Selectman Musselman went on to note the alleged errors. First, he stated that he was in fact present at the July 9 meeting (*Editor's note: the heading of Revision A of the minutes, copied from the prior meeting, incorrectly states that he was not present, although the body of the minutes refers to comments made by him*).

Second, he noted that the Superior Court case did not involve a property on Harbor Road, but rather a determination of private ownership of the road. *Editor's note: the case was brought by a Harbor Road property owner and involved whether the street adjacent to his property should be plowed as a Town road or whether it was a private road not subject to plowing. The Board of Selectmen, acting in a judicial capacity, determined that the road was private. The case was appealed to the New Hampshire Supreme Court, which determined that the Board of Selectmen had exceeded their jurisdiction and sent the case back to the Superior Court for a de novo (i.e. decided anew, without any deference to what the Board of Selectmen decided) determination of the road's status. No. 2009-836, decided June 15, 2011. The Superior Court has apparently now made an independent assessment of the facts and determined that the road is private.*

Third, he noted that an alleged statement that the Board of Selectman would await a formal request regarding utility poles was incorrect and that the request was to hire a utility appraiser. *Editor's Note: The minutes indicate that the request indeed involved the hiring of an appraiser.*

Fourth, he denied agreeing with an assertion that the Town needs to be spending \$300,000 annually on roads. *Editor's note: This comment was made by Public Works Director Dennis McCarthy. Selectman Musselman nodded his head in apparent agreement, noting that the Town had, until recently, been spending \$200,000 annually on roads.*

Fifth, he took issue with the wording of a statement that a one-time bond issue to take care of the roads might be rejected by the voters, or if accepted, all of the roads would be done at once. He asserted that this statement was made in the context of other communities. *Editor's note: the text of*

the RCL minutes refers to issuing bonds, "as some towns do," and thus makes clear that the issue was brought up in the context of other towns.

Sixth, he took issue with the date of Nancy Weiland's resignation, claiming it was September 30 and not October 1. *Editor's note: The resignation letter is attached to the official minutes of the July 9, 2012 meeting and was read into the record at that meeting. The letter states that her resignation is effective October 1, 2012 and that her last day will be September 30, 2012. The RCL minutes refer to the effective date and are correct.*

Seventh, he took issue with a statement that Public Works was unable to repair a drain line in Jenness Beach. He asserted that they were not attempting to repair the line, which was not repairable. *Editor's note: The RCL minutes state that a sink hole was created by a drain pipe that collapsed due to disintegration, thus making it clear that the pipe was not repairable.*

Eighth, he took issue with what was said about whether a policy, as opposed to an ordinance, would need voter approval. He denied having referred to voter approval. *Editor's note: The RCL minutes accurately refer to Selectmen Jenness having asked whether voter approval would be required, and Selectmen Musselman having said that it was not. The interchange occurred as follows. Selectman Jenness stated that "if it was approved here, then it would have to go to the voters." Selectman Musselman then asked "do all policies go to the voters?" Selectman Mills replied "no." Selectman Jenness responded "I didn't know that." Selectman Musselman then said "it depends on what it is." Selectman Mills then said "it is not an ordinance, it is a policy."*

Ninth, he took issue with the statement that noise in the meeting room was the biggest concern relating to the geothermal system. *Editor's note: The RCL minutes, indicate that this comment related to the meeting room being the location with the biggest concern about noise.*

Tenth, he asserted that the reference to "solar powered vents" was inaccurate, and should be to a solar powered fan and ridge vents. *Editor's note: In fact, Mr. Magnant referred to "solar powered vents" although technically it is only the fan that is solar powered.*

Eleventh, he asserted that the comment about Historic District Commission involvement in reviewing the ridge vents was as to voluntary review, rather than voluntary compliance. *Editor's note: The RCL minutes refer to other towns voluntarily complying with decisions of their Historic District Commissions. This accurately reflects what he said.*

Selectman Mills noted that the Board of Selectmen have no control over a private individual. If what transpired at a meeting becomes an issue in court, the official minutes will be used, not the RCL minutes.

Selectman Musselman suggested that the RCL put a disclaimer at the top of the minutes. Nobody wants to go through this every week. The RCL minutes are misleading and largely incorrect, he asserted.

Selectman Jenness noted that there are errors, and people need to look at the official minutes.

Unlicensed dog warrant issued

The Selectmen voted unanimously to sign the warrant, pursuant to N.H. RSA 466:14, relating to unlicensed dogs. *Editor's note: According to this RSA, this warrant authorizes the local enforcement officer to seize unlicensed dogs. After 7 days, title to the dog is transferred to the Town. The RSA requires the local governing body to issue the warrant within 20 days after June 20, which deadline was not met.*