

NOTES OF NOVEMBER 14, 2012 RYE BOARD OF SELECTMEN MEETING
Final Revision C – Provided by the Rye Civic League

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

Approval of minutes

The minutes of the October 11, 2012 meeting were approved with changes. The minutes of the October 22, 2012 meeting, including the site walk, were also approved with changes.

Public hearing, Capital Improvements Plan

Selectman Jenness started by reading portions of the applicable RSAs. Ray Jarvis, Chairman of the CIP Committee then spoke. He stated that the CIP Committee gathers information, organizes it and then clarifies. The goal is to get everyone to look ahead, and to obtain long-term thinking out to 2018. The Committee met over 5 months to create the plan. He understands that the law says that the Committee should make recommendations. None of the people on the Committee are qualified to do this. All that they have done is to assign priorities: 1, 2 or 3. The document is not static. Ned Paul, Secretary of the Committee is present, Jeanne Moynahan and Tom McCormick were unable to attend.

Selectman Musselman stated that the CIP Committee had done an outstanding job. He indicated, however, that the Recreation Community Center item represented thinking in a vacuum. He asked about space for the staff. Would it be planned for at the Community Center or would it be here at Town Hall? Would space currently at the Elementary School remain there? There was no investigation of what needs might be satisfied by a renovated or restored Great Hall. Nor was there consideration of the impact of a regional Senior Center on plans. He had spoken with Lee Arthur last spring regarding these issues. There has not been much progress. This should not be planned until it has been looked at carefully.

Selectman Jenness stated that this illustrates the value of the CIP plan. Since the first CIP plan, it has grown in complexity and the way it is presented has changed.

Victor Azzi, a Town resident then spoke. He said that the comments by Selectmen Musselman and Jenness were well taken. Is it the charge of the CIP Committee to present or to make judgments regarding whether a submitted project is appropriate or needed? Have they been asked to prioritize or establish a timeline so that projects are coordinated? Or, is it just a list of what the departments would like to have?

Selectman Jenness asked whether he is envisioning something coordinated.

Responding to Selectman Jenness, Mr. Azzi stated that yes, projects needed to be coordinated, if not by the CIP Committee, then by some responsible body, in order that all competing projects be represented in the context of the overall interests of the Town. For example, one year after the Town Hall expenditures are scheduled to start, there is a project for \$10,500 relating to ADA compliance at the Town Hall. He would have thought that that would have been an essential part of the Town Hall planning. It is

scheduled 1-2 years too late. Some body having the capabilities needs to be given the charge of considering the projects in the context of the overall plan.

Ray Jarvis responded that the timeline is based on department information. Mr. Azzi is going into detail on one project. This is far beyond what any committee can do.

Selectman Musselman indicated that there is a \$155,000 cat loader and a DPW truck in 2014. That's fine for the CIP plan, but not what will be done as a community. They want to cover the bases and try to get a place holder. The details of the decisions are not for the CIP Committee.

Ray Jarvis responded that he strongly disagrees with Mr. Azzi. Laws are passed in Concord without proper attention being paid. If they got into the level of detail requested a lot of time could be wasted.

Peter Crawford then spoke. He stated that the CIP Committee had done a good job of gathering information and putting together the plan. However, the plan does not fit within an overall capital budget. In fact, the Town does not appear to have such a budget. At a recent meeting there was discussion about whether a proposed parking lot for the Recreation Area would interfere with the construction of an additional baseball diamond. There is no additional baseball diamond in the CIP plan, but there is a Community Center and tennis courts. Although the Community Center has expenditures starting in 2014, the Space Needs Committee has assumed that this will not occur. Nobody believes that the CIP plan reflects what will occur. It's a good document for identifying possible investments that may be needed, but there is no prioritization or scheduling of the investments.

Mr. Crawford further pointed out that the RSAs and a state document require that the CIP plan be adopted by the CIP Committee. In addition, this hearing did not receive the requisite 10 days notice. That's another reason why the CIP plan cannot be adopted tonight. Mr. Magnant responded that he had checked with the Town Attorney, who did not indicate that there was a problem with having a hearing. Mr. Crawford asked whether he had also said that the Board of Selectman could adopt the plan. Mr. Magnant did not state that the Town Attorney had told him that adoption was permitted.

Dominique Winebaum then provided a copy of an e-mail that she had received from the State of New Hampshire, Office of Energy and Planning, regarding the adoption of CIP plans. It states that the CIP Committee should adopt these plans.

Steven Borne, a Town resident then spoke. He stated that the CIP plan has come a long way. It is now being done every year. What is missing is the capital planning piece. Investments planned for the next 5-6 years should be discussed with the Town. Perhaps things will have changed when the time comes for the investment, but what the Town is considering doing at a particular point in time should be discussed.

Mr. Jarvis responded that it is very important that words be chosen carefully. The CIP plan is not being recommended to the Board of Selectmen. The Committee gathered information, organized it and clarified. There is not a recommendation as they do not have the expertise to make recommendations. There is no reason to go through financial gymnastics for what may never be done. He doesn't know why Mr. Crawford is now saying that a hearing is needed. He attended many of the CIP Committee meetings and was encouraged to provide input.

Sam Winebaum, another Town resident then spoke. He stated that he does not see a road budget projected out over time. How about the traffic calming and shoulder

widening that is discussed on page 60, Appendix B? *Editor's note: That is an apparent reference to the 2012-2017 CIP Plan, which discusses roads at pages 60-61. The 2013-2018 CIP Plan has a similar discussion at Appendix B, pages 75-76. See also page 5-10 of the 2006 Master Plan, which is referenced in both CIP plans. Where is the capital budget for that? North Hampton has done this. They have scheduled the roads. Editor's note: This CIP plan, with the road repaving schedule, may be viewed at www.northhampton-nh.gov. Click on "Boards & Committees, "A-P," then "Capital Improvements Committee." The section on roads begins at page 30.*

Mr. Jarvis responded that the capital plan does not include annually occurring expenditures. Ned Paul stated that the roads and bridges were addressed. They determined that the bridges were either state-owned or did not require investment. There is \$225,000 budgeted for roads.

Selectman Musselman stated that this was a good question. He stated that the Public Works Department has a plan which it follows. A drainage study has also been started.

Victor Azzi then spoke. He stated that everyone agrees that the CIP Committee did a great job. The question is how does the information get used. Who is responsible for coordinating what happens? There are budget issues involved. Not everything can be done at once so projects are likely to be spread out in time.

In addition, there are issues with space conflicts. With equipment that is not an issue. However with buildings some may be vying for the same space. For example, at the Recreation Area, there are proposals to provide more parking, construct tennis courts and another baseball field, as well as a Community Center, all on the same site. Someone needs to sort this out. Someone needs to look at this issue with regard to Town Hall. If this site is to service the Recreation Department there may be density issues with the site. He doesn't know whether the Community Center is \$3.498 million or \$1,370,050. Both figures appear on the sheet. What is the size? Where is it going to go? Some body needs to sort this out. The Town needs a Facilities Master Plan which addresses what, where, when, at what cost and for whose benefit.

Selectman Musselman then made a motion to accept, rather than adopt, the CIP plan. Selectman Mills seconded the motion, which carried unanimously.

Presentation of Space Needs Committee Report by Ned Paul

Ned Paul then discussed the work of the Space Needs Committee. He said that after Article 27 was voted down, there was a need to take a second look at the Town's space needs. *Editor's note: 2012 Article 27, which required the Town to take a broad look at the space needs, and use the square feet per employee of other towns as a benchmark, actually passed. It was Article 10, which was to provide \$135,000 in funding for additional work that failed to pass.*

Cindy Gillespie then presented a slide show of other town halls in New Hampshire and Maine. She stated that 38 towns were selected. The presentation given was very similar to one provided at one of the early Space Needs Committee meetings.

Ned Paul continued. He stated that the Space Needs Committee did its best to hear the public and the department heads. He proceeded to read the executive summary.

Key factors were complying with the Selectmen's Charge, complying with Article 27, addressing safety issues, and maintaining the historic character of the building.

The Committee decided to keep and restore the Town Hall, restoring the Great Hall and the spiral staircases. The renovated facility is to meet the Town's needs for the next 30 years. It will provide space for Recreation Department administration. A total of 10,500 sq. ft., plus or minus 10 percent, is needed. The report recommends the renovation of the Town Hall and expansion of the site. Additional information is needed for the Board of Selectmen to draft a warrant article.

Mr. Paul continued to read from the report. A Facilities Master Plan is recommended. Funding of a study of the Old Police Station and its environmental issues is needed. Significant time was spent on records retention issues. The Town should be studying the use of technology to address this issue. Access to the Public Safety Building basement is highly desirable.

Mr. Paul then read Article 27, with the exception of the last sentence relating to the square feet per employee. He stated that the Committee looked into all of the facilities listed. He then read the last sentence, stating that it led into what Cindi Gillespie had presented.

Selectman Musselman stated that the 10,500 sq. ft. was significantly less than that which had been arrived at before. Mr. Paul agreed, stating that the prior figure was 15,000 sq. ft. Mr. Paul stated that the conclusions were based on 3 supporting documents. First, they took another look at what AG Architects had provided and met with the departments. What was arrived at was less of a wish list and more of a list of what was actually needed.

Second, the survey done by Cindi Gillespie arrived at an average of 750 sq. ft. per employee. However that included a large town hall building in Newington, which includes a very large meeting space. Thus, the average was reduced to 633 sq. ft. per employee. *Editor's note: this is not quite correct. The 633 sq. ft. per employee figure also included Newington, however the average was computed using a different methodology that did not give as much weight to Newington.* There are 13 full-time equivalent employees now. This was increased to 16. Multiplying by 633 sq. ft. per employee gives about 10,200 sq. ft. total, in the same range as the recommendation. They listened to the Rye Heritage Commission and the Rye Concerned Citizens and considered their input.

Selectman Musselman referred to the Facilities Master Plan and Victor Azzi's good comment earlier. The Recreation Department Community Center must be defined. He also asked about whether it was possible that limited investment in the Old Police Station might permit its use for storage. Mr. Paul responded in the affirmative, stating that the facility was moldy. Only items for which mold is not an issue, like greenhead traps and lifeguard stands, are suitable for storage there now.

Selectman Musselman asked whether the Committee had reached consensus. Mr. Paul responded that they had. He stated, however, that there had been "a little trouble" with the public. They feel that if an addition is put on that the size must be reduced. They don't want the addition to overwhelm the building.

Selectman Musselman asked whether a separate building with a walkway hidden by growth might be a way to achieve community consensus.

Selectman Jenness stated that the Chairman of the Space Needs Committee, Ned Paul, did everything in his power to bring people in.

Town Clerk Beth Yeaton stated that the Committee had reached consensus. By and large the public was in agreement. They may have felt that the facility was slightly too big. But there's a question with how they look at the storage space.

Mr. Paul then referred to the Appendix. There's a report from the Rye Heritage Commission, space by department, state requirements relating to records, storage analysis at the cubic foot level, and comparison between AG's recommendations and the recommendation of the Committee.

There was then a discussion of whether a restored Great Hall would accommodate elections. Selectman Mills stated that it could not accommodate presidential elections. Mr. Paul referred to 82% turnout in the election just completed. Beth Yeaton stated that the elementary school must be shut down for these elections.

Mae Bradshaw, Chairman of the Heritage Commission stated that the Commission had voted that any extension of more than 20 feet to the existing building would not be sufficiently subservient.

Peter Crawford then spoke, indicating that the Space Needs Committee had done a great job, and that he agrees with 90 percent of its report. He still has some issues, but will address those in future meetings as the Selectman consider a warrant article.

Victor Azzi stated that he believes that they have come a long way towards achieving a consensus, but they may have a way to go. He stated that he would like to see and review the completed Report and all of its Appendices, even if it is only in draft form. "When will they be made available to the public?" he asked. A detailed discussion among the Selectmen ensued, with discussion about whether and when to make it available. Mr. Paul stated that the information should come out earlier so that there is not a problem at the Deliberative Session. The Selectman decided to table the matter of the report's acceptance, but nevertheless make the report available in draft form.

Selectman Musselman stated that there appeared to be a consensus to move forward for the next year. There will be a question of how big a step the next one will be. This will be needed pretty soon. The Selectmen need to authorize staff to start pulling things together. If they wait until December they will be hard pressed. Not that much detail is needed but a dollar figure will be needed. The support of the public involved is needed. There's no sense in going to the deliberative session and having people carping over issues.

Purchase of Town Land near Foye's Corner

Mr. Magnant introduced the issue. He said that he had been asked in March to get an offer from Bluestone. Mike LaBrie addressed the offer that Bluestone was making. He explained that the land in question was owned by Bluestone and occupied by the Café and Summerhouse Furniture. When the traffic circle at Foyes Corner was installed, the old roadbed of Elwyn Rd., 7200 sq. ft., was supposed to have been abandoned to Bluestone by the State in return for Bluestone having given up .12 acres. This was never done. In addition, there is a strip of land of 4999 sq. ft. located between the abandoned roadbed and Elwyn Rd. that they would like to buy.

Victor Azzi asked whether N.H. DOT acknowledged that they had failed to follow through. Alex Vogt responded that this is part of the calculation in the appraisal report. It is stated in a dozen places.

Mr. Magnant stated that, by law, the matter must be referred to the Conservation Commission and the Planning Board. There must then be two public hearings. Selectman Musselman asked whether the issue had been reviewed by the Town Attorney. Mr. Magnant stated that it had not yet been. He continued that there would need to be a warrant article for next year, not for the abandoned road bed but for the parcel to be purchased.

Attorney Sharon Summers stated that the technical term was discontinuance, not abandonment. There will need to be two public hearings on the purchase, and one hearing for the discontinuance. Selectman Musselman clarified that there would be a warrant article for the discontinuance and two public hearings for the purchase.

Mr. Crawford asked what the price was. Selectman Musselman responded that it was \$7500. Mr. Borne commented that there was a lot to be coordinated.

Selectman Musselman made a motion to notify the Planning Board and the Conversation Commission that the Town intends to sell land to Bluestone of Rye, LLC, recorded at book 2359 page 1462 in the Rockingham County Registry of Deeds, parcel 024/021 on the tax maps. The motion carried unanimously.

A second motion to authorize preparation of a warrant article to discontinue the adjoining public road also carried unanimously.

Reappointment of Gail Snow as Health Officer

Mr. Magnant said that RSA 128:1 provides for the “commissioner” to appoint the Town’s health officer based on the recommendation of the Town. Selectman Musselman moved to reappoint Ms. Snow for three years. Selectman Mills seconded the motion for discussion and asked Mr. Magnant what his recommendation was. Mr. Magnant responded that she had been responsive when needed for a number of issues over the past year. Selectman Musselman pointed out that he had dealt with her on EEE issues relating to the Mosquito Control Commission. The motion to reappoint Ms. Snow carried unanimously.

Gosport Chowder Turkey Trot Event Permit

Police Chief Kevin Walsh stated that everything is in order for this event. No detail officers have been scheduled as participation in past years has been low. The request was approved unanimously

Record Keeping and Storage

Selectman Jenness stated that resolution of this issue has been long awaited, and a recurring theme for some. Prior to the appointment of a Records Retention Committee a firm should be brought in for an initial look at the issue. One thing is abundantly clear, and that is that the methodologies of private businesses cannot be superimposed on municipal businesses.

Mr. Magnant stated that this was discussed with the Space Needs Committee and that the Chairman had asked them to look at the issue. The Town now has distributed records storage. Some records are in the belfry, others are at the Public Safety Building. There's no records retention plan or town-wide policy. There's no plan on purging of records. Rye is not alone in this regard. He participates in a New Hampshire Town Administrators Group. Towns often struggle with this issue. Some of the needed steps are taking an inventory of the records and determining who uses them and how frequently. He and Cindi Gillespie met with companies who specialize in this issue, and have particular expertise in electronic storage.

They propose a \$2500 contract with King. King will do an inventory and categorization of records, and determine which are to be paper, microfilm or electronic.

Selectman Jenness asked whether a warrant article is needed. Mr. Magnant responded that once the basic work has been done they will know how much it will cost. Cindi Gillespie stated that the \$2500 would be a wise investment. How much the total project will cost depends on the use of Town staff vs. the staff of the contractor. Merrimac spent \$50,000, but King was responsible for the implementation. In response to a question from Selectman Musselman, Ms. Gillespie stated that money could be found in this year's budget to do this. Also, there's a \$20,000 place holder for next year. The cost may be higher than that.

Selectman Musselman stated that he is in favor of electronic storage where it's possible. There's a question of whether this can be done legally. Mr. Magnant responded that documents with a retention period of over 10 years must be paper or microfilm. Selectman Musselman stated that electronic storage would reduce the cubic feet of storage required. Selectman Jenness stated that paper records will still be needed.

Mark Galvin, 17 Heather Rd., spoke from the audience. He suggested that they start with Concord and change the RSAs. For \$9.99 per month 250 gigabytes of storage can be obtained from Google. It's duplicated and backed up. He's happy to take up the issue with Concord. It's pretty easier to go there and talk with them.

Cindi Gillespie stated that towns are sinking in paper.

Robert Jesurum, 11 Harborview Dr. stated that he agreed that electronic storage would be wonderful. However, there's nothing like paper for permanent records.

Mr. Magnant stated that the \$2500 was within his approval authority. There was no opposition to moving forward on this issue.

Televising of meetings

Selectman Jenness addressed this issue. She said that the Selectmen are aware of the warrant article. *Editor's note: 2012 Petitioned Warrant Article 20 advised the Selectmen to implement video coverage or on-line streaming of Board of Selectmen, Zoning Board of Adjustment and Planning Board meetings. It passed 894-399.* Unfortunately, Selectman Jenness stated, there was no money attached to the warrant article. She introduced Mr. Magnant, saying he has done considerable research.

Mr. Magnant then discussed his research. There are number of ways to provide the televising of meetings. It could be done through a franchise fee imposed through Comcast. It would involve a quality setup and equipment. Selectman Musselman stated that a charge of \$1 to \$6 per month could be imposed on cable customers' bills. Mr.

Magnant indicated that a franchise fee of 1 to 5% would be permitted. Selectman Musselman stated that this would be just another way to tax people.

Mr. Magnant discussed the possibility of using Portsmouth's Public Media channel. This would involve the delivery of a DVD or videotape to Portsmouth. Cost would be approximately \$13,000. *Editor's note: This is apparently per year.* Live viewing would not be possible.

Selectman Musselman asked whether an operator and equipment would be needed. Mr. Magnant responded yes. He then explained that the other option was online streaming. One would click on a link to watch a meeting live. Archived meetings could also be viewed on demand. This option would require that the person viewing have a computer, hopefully with an Internet connection faster than dial up. Equipment would be needed including microphones and a digital encoder. There are vendors that provide these services. A link on the Town's web site would invisibly direct people to the vendor's web site.

The Comcast peg option would be very expensive. A digital line would need to be run from the buildings in which meetings are held to Portsmouth. Cost would be \$39,000 to \$40,000 to run. *Editor's note: This appears to be an annual figure.*

If premises equipment is needed, the up front cost would be around \$30,000, plus \$4500 to \$20,000 annually for operation. The more affordable option would be live or on demand streaming. Startup cost would be \$10,000 plus \$3000 annually for a subscription fee.

Selectman Musselman asked whether that option would have an operator, or whether someone would just push a button at the beginning of the meeting. Mr. Magnant responded that it would be the latter. If one wanted good quality, there might be multiple cameras (one would be wide angle) with an omnidirectional microphone.

Selectman Jenness asked about closed captioning for the hearing impaired. The response was that this would involve a \$2000 fee and someone to type the captions into a computer. Mr. Magnant stated that Portsmouth has never had a request for closed captioning. Selectman Jenness stated that, if a request was received, the Town would need to comply. She continued, stating that not everyone has Internet access. These tend to be the older citizens. These are the people for which video coverage is being provided as they cannot get to meetings. She suggested they look at the DVD option for now, due to the Town Hall renovations. A more elaborate system could be installed during renovations.

Selectman Musselman stated that the cost would be 4-5 times that of streaming. North Hampton has implemented video of meetings. An average of two persons are watching live and 8 in between meetings. That's a new service which has been active for only three months.

Ben King, who stated that he is a lawyer in Concord and also a Rye resident, indicated that Netflix was required to provide closed captioning to meet ADA requirements.

Mark Galvin, a Town resident, spoke from the audience, indicating that the service could be canceled for everyone if a closed captioning request was received.

Selectman Musselman stated that he did not know how much people would be willing to pay.

Mr. Galvin indicated that 3-5 cameras could be obtained for a relatively small amount of money. People could step up to the camera when they speak. He also indicated that voice to text would be becoming available.

Selectman Musselman indicated that the least expensive option involved \$11,000 in capital cost plus \$4500 for the annual subscription and encoder lease. Mr. Galvin stated that the encoder and web interface are often built in. He believes that the capital cost should be \$7500 and the operating cost \$3000 per year.

Selectman Musselman asked whether it should be a warrant article, or would people be upset that it wasn't done.

Victor Azzi indicated that the important question is how many people are prepared to receive the televised meetings. Someone stated that Comcast has 1700 customers in Rye. *Editor's note: If one assumes about 2.5 persons per household, Comcast reaches about 4300 of the 5200 persons living in Rye.* Selectman Musselman stated that only about 60 percent of the cable service in Town is with Comcast. *Editor's note: If 1700 Comcast customers represent 60 percent, then 100 percent would be about 2800 households. According to the 2000 census, there were 2176 households in Rye.* Mr. Azzi asked how many had Internet access. Availability of access is a strong component.

Selectman Jenness suggested that the first effort be barebones. Mr. Azzi stated that Portsmouth had only one camera when they started. Selectman Jenness continued, stating that they now offer all four options.

Steven Borne stated that in 2005 the voters supported a 5 cent franchise fee. Selectman Jenness stated that a 1 percent fee would provide \$25,643. That would cost \$1.14 per month per subscriber. Selectman Musselman stated that the equipment cost for that option would be \$75,000, plus \$10,000 to \$25,000 in labor annually to film.

Mae Bradshaw spoke about a July 6, 2012 letter from Deb Cross that proposed a less expensive option with Granicus. She continued that Hooksett had selected this option. The lease is \$420 per month. Mr. Magnant indicated that they had talked to Granicus. The Town would need to purchase the equipment and install it. Hardware for the room would be needed, plus \$2500 for the encoder. Low cost digital video could be used, but someone would still need to push the button.

Mr. Magnant indicated that those without computers or Internet access could go to the library to view meetings.

Selectman Musselman asked whether \$10,500 should be budgeted or whether there should be a warrant article.

Mr. Galvin indicated that the issue with stored video is the indexing. That requires the most manual intervention.

Selectman Musselman stated that the videos needed to be stored. If they may only be viewed live it wouldn't be worth it.

Mr. Magnant indicated that tagging the video to agenda items would add to the cost.

Selectman Musselman suggested that they start with the low budget option. It was agreed that they start by getting more detailed quotes from Granicus, Town Hall Streams and Virtual Town Hall. Selectman Jenness stated that they needed to get started. Selectman Musselman stated that "Joe" was looking forward to being live. He has been

very quiet, he said. *Editor's note: This is an apparent reference to Selectman Joe Mills, who in the past has opposed the televising of meetings.*

Fence for Recreation Area

Lee Arthur, Recreation Director, briefly addressed this issue. The Recreation Commission wants a four season fence. Cost is \$4000. Selectman Musselman moved to approve. The motion carried unanimously. Lee Arthur said thank you very much, goodbye, and left immediately.

Approval of Annual Town Holiday Parade

Selectmen Jenness stated that the Annual Rye Parade would be coordinated by the Rye Fire Department. Selectman Musselman moved to approve the parade. The motion carried unanimously. Fire Chief Sullivan then left, stating that he had paint that he needed to watch dry. *Editor's note: This is an apparent comment regarding the slow progress of the meeting to that point.*

Intersection of Clark and Sagamore Roads

The motion to defer this issue carried unanimously.

Robert Jesurum letter on Sanders Poynt and public beach access

Priscilla Jenness stated that the board had received several letters regarding the construction at Sanders Point. Letters or e-mails were received from the following persons: Robert Jesurum, Frank Sanders, Jane Kaufmann, and Sally Baybutt. She stated that the letters expressed concerns about changes at Sanders Point and closing off the access from the road to the beach. She stated that she would not read all of the letters into the record. In response to the letters, she read the following statement:

“Some residents of Rye want the Town of Rye Land Use Boards to prevent the WBTSCC from installing a fence on its property at Sanders Point because they believe a public prescriptive easement right exists relative to an area used in the past by the public for parking and access to the shore. The Town of Rye Land Use Boards have no legal authority to do this. Town Attorney Michael Donovan has advised that the N.H. Supreme Court has ruled in several cases that municipal land use boards have no jurisdiction to decide questions concerning people's ownership or easement rights in land, e.g. Short v. Rye, 121 NH 415 (1980). Thus, neither the Rye Zoning Board of Adjustment nor the Rye Planning Board can prevent the erection of the WBTSCC fence by determining that it obstructs the exercise of a prescriptive right. People concerned about this matter should know that the permit for the fence states 'the issuance of this permit does not constitute an admission by the Town that there are no public prescriptive rights to use the area behind the fence.' This was done to assure that the issuance of the permit by the Town would not be

considered relevant evidence in the event of any Court action resulting over this matter. Whether the public or others have prescriptive rights, which WBTSCC is obstructing by installing a fence at Sanders point, is a private matter to be adjudicated between those who believe such a right exists and the WBTSCC. If there is a private litigation over this matter, the Selectmen reserve the right to intervene if it is in the best interest of the Town.”

Selectman Jenness stated that this is the Selectmen’s statement as far as this matter is concerned.

Bob Jesurum, a Rye resident, stated that he has been a Rye resident for 22 years. He has been walking on that beach almost every morning for those 22 years. There used to be a fence that separated the golf course from Sanders Point. It was open to the beach, and from what he can tell, it had been open to the beach for hundreds of years. However, Rye has decided rather than make the golf course prove that they have a right to that land, the Selectmen are making the citizens go to court at great expense. It is going to take many years to get the land back unless the Select Board acts. He went on to state that the land disappeared overnight; it took WBTSCC two days to close it off completely with no notice to the public. The permit that was issued was violated but no one ever inspected it. The permit was issued for a 66-foot long fence, but the fence is 71 feet 3 inches long. However, this doesn’t make any difference as the Town just rubber stamped this. It went through against the public interest of the State, and now citizens are being forced to go to Court, and to further tie up the overburdened court system, unless the Selectmen change their minds and revoke the building permit for the fence. He further commented that the building permit is farcically written as the Town gives permission to build a fence yet states that there may be prescriptive rights. The Select Board is hiding behind the Town Attorney’s opinion and doing the bidding of one of the richest residents of the Town.

Bob Jesurum’s attorney, Paul McEachern from Portsmouth, spoke following his client’s statement. He gave the Selectmen a packet containing public documents that he would be referring to as he spoke to them regarding this case. He began by stating that it was not too late for the Town to reconsider and withdraw the building permit. He then referred to the packet and Google pictures of what it looked like before the fence was put up. He pointed out the fenced area that was installed by one of the previous landowners of the Wentworth. The fence clearly divides the golf course area from Sanders Point. In 1995, the Town took over Sanders Point, by erecting signs, as is stated in the Town’s minutes. Attorney McEachern went on to say that it was wrong for the Town to say that this was a private matter when the Town itself was in the best position to speak for the citizens. It would be easier for the Town to admit that they have made a mistake in issuing the permit and withdraw it, than to have citizens go through court to adjudicate when it really should be the Town that is protecting the public interest. It just boggles his mind that the Town had taken such a stance. He then asserted that, if an average citizen had approached the Selectmen under similar circumstances, that the citizen would have had to demonstrate that he had a right to fence the area off. But that was not what was done in this case. Then, Attorney McEachern read from minutes of the August 27, 2012 meeting:

Town Administrator Magnant stated the (sic) he has requested a letter from Wentworth By The Sea, to the Selectmen, regarding their request.

Wentworth By The Sea is contending that the point of land which abuts their property, belongs to them. The Town seems to have taken over this land and has posted signs saying “no parking” and “no camping.”

Editor’s note: It is believed that the sign read “no overnight parking.”

Their concern is that it is adjacent to an active green. There has been more recreational use of that land and there is a concern for safety. The Wentworth would like to extend the corral across that area and block off public access to that property. They are also requesting the Town remove the signs. Mr. Magnant pointed out the minutes from 1997, where the Selectmen had responded to a complaint about people parking on this land. The Selectmen voted to post “no parking” and “no camping” signs. There is no indication in the minutes as to why it was felt that this property may have belonged to the Town. Motion by Craig Musselman to table until the letter is received from Wentworth By The Sea. Seconded by Joseph Mills. All in favor.

Attorney McEachern pointed out the minutes that Mr. Magnant referred to must have been from 1995, not 1997, as he has found minutes from 1995, but not 1997. He then reminded the Selectmen of what they had done. They “tabled it until the letter is received from Wentworth By The Sea.” He went on to explain that he knew quite a bit about parliamentary procedure. After the matter had been tabled, it must be taken off the table by a vote. He suspected, even though he hadn’t looked at the September BOS minutes, that the Selectmen never took it off the table. They just issued the permit.

Craig Musselman interjected that the letter was never received. Attorney McEachern responded that the motion was to table until the letter was received. That did not mean that they were going to issue a building permit.

Attorney McEachern continued by pointing out that the building permit contains an interesting double negative: “The issuance of this permit does not constitute an admission by the Town that there are no public prescriptive rights to use the area behind the fence.” He reminded the Selectmen that they represent the public. He went on to say that if you were to put the language in the building permit in the positive, it means “that there may be a public prescriptive right.” He then referred to a study done in 1984 by the Rockingham Commission – The Public Shorefront Access Study – and what the study concluded regarding this area: “Interviews suggest that the public has acquired a prescriptive use at this site by virtue of uninterrupted use for hundreds of years, primarily in search of shellfish and worms along the sides of Little Harbor” *Editor’s note: this appears on p. 35 of the Public Shorefront Access Study, 1984.* He concluded his statement by asking the Selectmen to reconsider their decision. What the Selectmen have done is to force the citizens to go to court. The Wentworth could have easily gone to court and asked the court to quiet title and determine that they own the land without prescriptive rights of the public. It is almost a denial of reality for the Town to have issued a building permit because some landowner wants to deny public access. That’s not the way it’s done, that’s what the courts are for. He suggested that the Selectmen should intervene on behalf of the public rather than forcing the public to act on its own. He stated that the Selectmen were mistaken when they summarily ceded one of the few points of public access, particularly when Selectman Mills had been so vigilant in the past in preserving access rights.

Ben King, the Attorney representing the Wentworth took the floor. Peter Crawford, a Rye resident, asked Attorney King what his address was, inasmuch as he had stated earlier that he was a Rye resident. Attorney King responded: "50 Pollock Drive." Attorney King pointed out that Attorney Michael Donovan and the Board of Selectmen were correct, as that body had no power to determine prescriptive rights, and that this was not the right forum. Given the letters by the neighbors, he wanted to make some clarifications. He added that the Wentworth prides itself on being a good and responsible citizen and a good neighbor. The Wentworth does allow public access to its property, it allows people to cross-country ski and to sled and they have traditionally allowed public access to the property with the expectation that the public treat the property and the staff with respect. That means not leaving dog feces on the path to the beach, leashing one's dog and not leaving trash and litter on the golf course. The Wentworth just got fed up with having to clean up the dog feces and the trash and decided to take action to protect its own property. He went on to state that it is categorically untrue that the Wentworth has blocked access to the beach. He indicated that there is an access point to the beach a short distance from the point that is being discussed.

The abutters' legal position has no merit. According to Attorney King, there is no prescriptive easement here. A prescriptive easement cannot arise as a matter of law when a property owner permits the use. The use by the person who asserting the easement has to be against a claim of right. As access here was by permission, a prescriptive easement can never arise.

He then commented that Bill Binnie had reached out to Mr. Jesurum and that it was his understanding that Mr. Jesurum had not responded. Attorney King also stated that he had reached out to Attorney McEachern who had not responded to him. He concluded by stating that the parties are hopeful that they can resolve this dispute without litigation, but again, he stated that this matter was not properly before this board.

Selectman Musselman asked a question to Attorney King regarding a quote – perhaps a misquote - that had been in the paper that day with Bill Binnie saying that there was access to the shoreline, 20-30 feet away from the fence. Selectman Musselman also referred to what Attorney King had just stated, namely that there was access to the shoreline a short distance away. He then asked where the access 20-30 feet away from the fence was and why that access could not be established? He could not find it as there is a bank that is heavily vegetated.

Attorney King responded by stating that it was a misstatement in the paper and that he would defer to the golf course superintendent, Jason Bastille, to answer that question.

Jason Bastille stated that without having measured it, it was perhaps 60 feet from that location. It was nearby.

Craig Musselman asked for clarification of where the access to the beach was located. He made reference to an asphalt parking lot. Was the access on the New Castle side or on the Wentworth By The Sea side of that parking lot?

Jason Bastille responded that it would be on the Wentworth By The Sea side. However, Selectman Musselman pointed out that there was no clear walkway. Jason Bastille stated that it was a 10-foot opening in a fence. Selectman Musselman responded that it was blocked by vegetation. Jason Bastille denied that it was blocked. Selectman

Musselman stated that he had not seen the opening that morning when he went to look for the access.

Attorney King interjected that Bob Diodati, the general manager of the Club, was also present. Bob Diodati explained that if you approached while traveling down the road towards New Castle, it was before Sanders Point, probably 60 feet away. There is an unobstructed opening in the split rail fence.

A resident spoke from the audience, saying it was on the golf course. This was just an opening for Mr. Binnie to drive his golf cart through through, he said.

Another resident, Bob Jesurum, interrupted, raising his voice. He stated that this was laughable. Now the Wentworth wanted the public to go through the golf course where people were teeing off. There was no way to get to the beach from there. The Wentworth is just inventing now. The access point has not changed in hundreds of years.

Selectman Musselman then stated it was a safety issue. People should be kept off the golf course.

Selectman Musselman sought to regain control of the meeting by rereading the legal advice that was read earlier by Selectman Jenness, namely that “neither the Rye Zoning Board of Adjustment nor the Rye Planning Board can prevent the erection of the WBTSCC fence by determining that it obstructs the exercise of a prescriptive right.” That was the legal advice that they had received and they were acting on that advice.

Mark Galvin, 17 Heather Drive, a direct abutter, spoke from the audience. He began by stating that he had been a member of the Planning Board for 5 years. He was not here to complain about the Wentworth, but to complain about the Town. He explained that the Planning Board is responsible for executing the Land Development Regulations (LDR). The LDR clearly states that non-residential use of land requires site plan approval or a waiver of site-plan approval. This requires that an applicant be in front of a Planning Board with adequate public notice to all abutters. He received no public notice and he believed there was no public notice. The town issued a building permit for a fence that is not shown on a filed site-plan, which is not a reasonable action. He believed this was a serious issue as this is a safety issue under the purview of the Planning Board.

The issue of safety would have come up at a planning board hearing. If safety had been addressed, it would have been determined that there should not be access on a par 3. There are 2-3 tee boxes in the area. He also commented that he was unable to walk his dog on the beach because the access had been blocked; it would be very dangerous for him to do so. He would hope that this access to the beach be re-opened to the public and that it be properly addressed by the Planning Board. The Town Attorney did not specifically state that the Planning Board is not responsible for approving the safety of site-plans. He only referred to prescriptive rights.

Mr. Galvin stated that there are now boulders located on Route 1B. This is one of the busiest roads in the area. He asked whether the Planning Board had approved the boulders. Selectman Mills stated that this was a state road. Selectman Musselman stated that the Town had no purview there.

Peter Crawford, 171 Brackett Road, spoke from the audience. He stated that he had been forwarded documents that Mr. Jesurum had sent to Alex Herlihy, and that he spent a fair amount of time, along with Sam Winebaum, researching this matter. It appeared to him that there was quite bit of land that was either owned by nobody or

owned by the prior owner who never deeded it over. He thought that there might be a solution between the Town, the Selectmen and the Wentworth to provide some public access through this gap, which might have been created for that purpose. Otherwise, there might need to be a warrant article proposed on the issue. There are a lot of very upset people here, he said.

Selectman Mills interrupted, telling Mr. Crawford that Mr. Binnie owns the golf course and the former Allmendinger house and that it is a continuous property now.

Mr. Crawford corrected Selectman Mills by stating that the plan had been redone and that one of the iron pipes had been moved, as indicated on the latest plan. There was quite a bit of a gap now.

Selectman Mills jokingly asked if Mr. Crawford had a day off so that he could go with the superintendent of the golf course, Jason Bastille, to mark the area.

Selectman Musselman then stated that the Selectmen had asked Town Counsel to review the deeds and the description of the deeds and that he had been told that the land was now all under common ownership.

Mr. Crawford stated that according to his research that there appeared to be a gap.

Mark Galvin indicated that there appears there is a septic easement for map 26 lot 17. This was not the lot purchased by Mr. Binnie. *Editor's note: This is the lot further up the road towards New Castle, on the same side.* For some reasons, it appears on the plan, Mr. Galvin said. The planning board would have looked at all of the details.

Mr. Crawford stated that he believes that both lots share the septic easement. He continued, stating that access to the beach has become very difficult as a result of the fence. One must either navigate through thick vegetation or go down a fairly steep embankment. Given the statement of Mr. Binnie in the paper, and Mr. King's statements here as well, it seemed that the Wentworth was willing to provide access. There may be a solution to this problem.

Selectman Musselman asked the Wentworth why they could not provide a stairway at the northeast end of the fence, from the public right of way down to the end of the tidal zone?

Attorney King stated that the Wentworth would be willing to have a dialogue with the different parties to address the public's concerns. However, he was not in the position tonight to commit to any position. He agreed that Mr. Crawford was correct. His client is not trying to interfere with access.

Attorney McEachern stated that Mr. King had stated that he had tried to reach out to him. This however consisted of a voicemail from Attorney King stating that he would be representing the Wentworth and could accept service. He reiterated some of the comments he had made earlier about the long history of public access, including the existence of a parking lot, and the fact that the fence erected by the Wentworth had now blocked public access to the shore. He talked about the fact that prescriptive rights have existed there for hundreds of years, according to the study conducted 28 years ago. He suggested that the matter be referred to the Planning Board, and Mr. Binnie could assert his rights there.

Mr. Jesurum also reiterated a number of comments he had made earlier about blocking public access. He asserted that steps would not restore access for kayakers.

Sam Winebaum, 52 Cable Road, spoke from the audience. He indicated that he had done quite a bit of research, as Mr. Crawford had stated. He found government aerial

photographs from 1962 clearly showing a parking area in the same area that it is now. He also found a 1893 topographic map.

As a result of his research, he has come up with a solution that could be friendly or unfriendly. He referred to a road, called “Old Ferry Landing Road” which led to a bit of laughter from the audience – and the Selectmen. A portion of the road had been relocated in the area of Frontier’s Street in 1970. He did not believe that road had been discontinued through the Wentworth, as it shows up on many recent plans. What the Town could do – maybe – and in agreement with the Wentworth, would be to discontinue that road through a warrant article, in exchange for restoring the public parking. Another option, if the Wentworth did not agree to such a proposal, would be for groups of citizens to exercise their rights to “ambulate” on that public class VI road, if it could be properly located. That could be done during the summer, which would probably be a great distraction to the golf course. So a friendly way to solve it would be to discontinue the road in return for cleaning up the beach access and restoring the parking.

Priscilla Jenness asked Sam Winebaum where he had located a remnant of Old Ferry Landing Road.

Mr. Winebaum stated he had found it starting on an 1893 map. It is not indicated by name, but it is in the same location in multiple plans, including the 1995 plan, where it is referred to as the “former Old Ferry Landing Road.” He believes that the road is still there and is a public way. Mr. Winebaum also referred to a 1970 warrant article, which relocated a portion of the road in the area of Frontier Rd., but did not discontinue it.

Mark Galvin made a reference to a road on an 1864 map - a government coastal survey map. He stated that much of the land at that time was wet, and that he believed that the road was located on the high ground.

Jeff Marple, a New Castle resident, who also owns property on Brackett Road, spoke. He used to be one of the owners of the golf course, and in the late eighties they went to the Town, as they were afraid that somebody would drive on one of the greens via Old Ferry Landing Rd. They went to the Board of Selectmen in the late 1980s and offered to allow access to the beach in return for Old Ferry Landing Road being discontinued. He is sure that the Wentworth owns the land, as it was a King’s grant. That road was never chained and barred. While there was discussion with the Selectmen, there was never a final agreement. *Editor’s note: A town vote is required to discontinue a road. See N.H. RSA 231:43.*

Attorney McEarchern stated that recent plans show Old Ferry Landing Rd. terminating in the middle of the golf course. It went to a 1632 house on recent plans. He referred to Town’s minutes in 1995, indicating that a decision had been made to erect a sign saying “no overnight parking,” and a “no camping sign.” These signs were placed on land that the Wentworth owns the fee to. *Editor’s note: owning the “fee” is a term dating from English law. It essentially means that the land is owned and may be passed to heirs.*

Mr. Azzi stated that he had attended several Board of Selectmen meetings where Selectman Jenness, citing the historical importance of the site as well as the interests of the Sanders family, wanted to erect a specially-crafted historical sign, or signs, honoring and memorializing the Sanders family role in settling that area. Selectman Jenness stated that that had occurred about 2002. The Sanders family had done research.

Attorney McEarchern stated that he was unsure as to what exactly the signs had said.

Peter Crawford asked what happened to the signs and whether they had been returned to the Town.

Michael Magnant responded that he had asked DPW to take the signs down.

Peter Crawford stated that he had been in attendance at the August 27th meeting, and that was not quite the process that had been envisioned. He explained that the matter had been tabled until a promised letter had been received. In addition, Selectman Mills wanted to bring the owner in for a meeting. There was discussion about the corral fence and the request to take the signs down. However, nothing happened at a subsequent meeting. Attorney Donovan apparently looked at it, and the signs were taken down without further action at a Board of Selectmen's meeting. That is a concern.

Selectman Musselman explained what took place. The letter never arrived. Instead of the Wentworth approaching the Board of Selectmen for any approval, they filed for a building permit for the fence. This was a different set of circumstances, and the Selectmen received legal advice that they could not, based on the presence of prescriptive rights, turn down that request. That was their legal advice – “sorry.” They felt that if they denied the request, they would clearly lose in court because they did not have the authority to send the matter to one of the Land Use Boards. They are going to go back to work and see if there are other mechanisms that could be put in place. This could be easily resolved if public access to the waterfront could be provided. They need to find out what kind of leverage they can gain. He did not think it was appropriate to have, or even to suggest, public access in front of a golf tee.

Sam Winebaum stated that the parking would have to be restored as well.

Attorney King had a few final words. He stated that the Wentworth was willing to work with the Town, to work with the concerned citizens here tonight, to develop a solution to this issue. He respectfully suggested that the Board took no action tonight, and to the extent that the Board would be contemplating any action, should consult with its legal counsel. He also would be happy to speak with Michael Donovan about this issue and course of action.

Selectman Mills asked “Ben” not to call Michael until he received their approval.

Mark Galvin spoke regarding the building permit that had been issued. He had contacted the building inspector, Peter Rowell, to find out why there had not been a site plan approval in conjunction with the request for a building permit for a fence. He had asked Peter how he could have issued a building permit for a non-residential use without having a site plan. Their answer was that they had not felt that there had been a change in use that would require a site plan. He had then asked who made that determination. The response was that it would have gone to the planning administrator. *Editor's note: Kim Reed is the planning administrator.* In this case, Mr. Galvin continued, the planning administrator should have recused herself, as she is a member of the Club [Wentworth]. There is an inherent conflict. He felt the Wentworth should be held to a higher standard.

Letter regarding the run for the fallen

Selectman Jenness read from this letter, which expressed thanks regarding the second annual run for the fallen.

New business: Question regarding progress on Conflict of Interest Warrant Article

In response to a question as to whether there was any new business, Mae Bradshaw asked what progress had been made relating to the warrant article requiring institution of a conflict of interest policy. Selectman Jenness stated that plans were being set in motion for this. The process will go through Town Clerk Beth Yeaton. Ms. Bradshaw indicated that she had spoken with Ms. Yeaton regarding this issue and had been informed that the matter was still with Town Counsel. Ms. Bradshaw stated that she had offered to draw up the document. She asked why it should take this long to have a simple document drawn up. She doesn't want to publicly expose the problem, but issues regarding the policy are arising all of the time.

Selectman Jenness responded that it is in the works and will be in place by next March. Finance Director Cindi Gillespie stated that every employee except one had signed the policy. One has refused. She asserted that the person could not be forced to sign. Selectman Mills stated that it was too late once a person had been hired. One of the Selectmen asked whether Ms. Bradshaw was proposing that the person be fired. After Ms. Bradshaw indicated that that might be necessary to enforce the policy, Selectman Musselman stated that he knows that that cannot be done. However, this will now need to be added to the list of issues on which legal advice must be obtained. The Town will need to spend money to demonstrate that employees may not be fired to enforce the policy.

Ms. Bradshaw responded that Attorney Donovan had been sitting next to the Selectmen at the Deliberative Session. If there was any issue, he should have mentioned it then.

Selectman Jenness stated that they had gone through the warrant articles to check on progress. They are doing what they could, when they could. This has been looked at several times.

Ms. Bradshaw stated that the warrant article states that current employees have one year to sign. For others, in the absence of an effective date, the policy should have been implemented forthwith.

Selectman Musselman said "let's get it done."

Adjournment

Whereupon the meeting adjourned. The non-public session was canceled according to the Selectmen.