

NOTES OF NOVEMBER 26, 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.

Announcement regarding geothermal system and PSNH rebate

Selectman Jenness announced that the Town had received a check for \$2475 from PSNH as a rebate relating to the geothermal system installed at Town Hall. Selectman Musselman asked whether the Town Hall was being warmed tonight exclusively by the geothermal system. The response was yes. *Editor's note: The geothermal system was installed last summer, with most of the cost paid for by a federal grant. The existing boiler and forced hot water radiators were retained to provide additional capacity for cold days.*

Approval of minutes

The minutes of the November 16, 2012 tax rate setting meeting were approved without changes. Selectman Musselman told Ms. Gillespie not to let the absence of changes go to her head as the minutes were short.

Petition to Alter Highway Layout – Old Ferry Landing Road

Editor's note: This issue was tabled at the October 22, 2012 meeting, pending responses to questions regarding soil deposited on the site. This is a very complex issue. See the notes for the September 10, 2012, August 27, 2012, June 25, 2012 and May 29, 2012 meetings regarding the Schliepers and the Cavarettas. It involves the relocation of Old Ferry Landing Road, a Class VI road near Foyes Corner. The road is presently in disrepair, with piles of rubble dumped in it. The Cavarettas want the road to be relocated to facilitate construction on their property, which is adjacent to the road. They are planning on subdividing the property and selling a portion. The issue of a different section of this road, which runs through the Wentworth-by-the-Sea Country Club, came up at the November 14, 2012 meeting during discussions about Sanders Poynt.

Attorney Pelech, representing the Cavarettas, briefly discussed the matter. He stated that affidavits have been provided. The testing of the soil has revealed high arsenic levels, but no VOCs, as might be expected if the soil had come from a gas station. The high arsenic level is indicative of soil from the golf course. *Editor's note: VOC stands for volatile organic compound.* Attorney Pelech stated that Town Attorney Donovan had prepared the motion. A question arose as to the address of one of the persons who had prepared one of the affidavits. Attorney Pelech stated that it was Mr. Hrycuna, 182 Eaton Rd., Auburn, NH 03032. Telephone 483-8611.

A discussion ensued as to whether there was a difference in the area of the road after the relocation as compared to before. Corey Caldwell, an engineer working for the Cavarettas, responded that it had not been possible to take measurements due to the fill piles. He showed a plan to the Selectmen and stated that there should not be a significant

difference in the areas. He also indicated that there was 12 feet from the pavement to the property line.

Selectman Musselman suggested that an item (c) be added to one of the motions providing that the adjacent property owners take no action to limit access by pedestrians or bicyclists to Old Ferry Landing Rd. The revised motion was read. Item (a) refers to relocation of the road based on a May 22, 2012 plan. Item (b) provides that all expenses, including attorneys fees, be paid by petitioners (i.e. the Cavarettas). The amended motion to approve the relocation of the road carried unanimously.

A second motion to assess zero dollars as the damages from the altered layout carried unanimously.

Seacoast Science Center presentation

Brian Fitzgerald, a Rye resident and member of the Board of the Seacoast Science Center, spoke. He was accompanied by Wendy Low, President of the Center.

Mr. Fitzgerald spoke about the Center's programs including videos and displays of marine mammals. He stated that the Center has one of the largest marine mammal exhibits north of New Bedford. Over the past year, more than 26,000 school children have viewed the exhibits, 1000 have attended day camps, there have been 3000 attendees at concerts by the sea, and 1000 runners have come to the Center. 125 Rye families are members of the Center, and 32 of their volunteers live in Rye. The Rye Elementary School, Rye Junior High School and Rye Country Day School have several programs using the Center. Over the past year, there have been 55 police detail slots at the Center, providing over \$18,000 in revenues for the Town.

Selectman Mills asked whether the after school programs using the Center were under the auspices of the school or the Recreation department. Steven Borne, a Town resident, interjected that it was both, and that the kids love the Center.

Ms. Low stated that the programs for students in Rye are free to Rye students.

Selectman Musselman stated that the question last year about a web site link had thrown the Selectman for a loop. A policy was adopted by a split vote. At one of the prior meetings a question arose as to whether it might be appropriate to offer scholarships so that kids from Rye schools who are unable to afford it could attend programs. Ms. Low responded that there were two funds designed to meet those needs. They just need to be told. Selectman Musselman asked whether the availability of these programs could be publicized through the schools. Ms. Low agreed.

Mr. Magnant jokingly suggested that, if the Center wanted to compete with New Bedford, that they should offer Portuguese Sweet Bread.

2013 Selectmen's Meeting and Holiday Schedules

After Selectman Musselman asked whether the holidays matched the federal schedule, the schedules of both the Selectmen's meetings and the holidays were approved unanimously.

Pole petition

Public Works Director Dennis McCarthy stated that PSNH was looking to take a guy wire off of an oak tree and attach it to a pole. He indicated that this should not be an issue except for the property owner, who might not want a pole in his yard. Mr. McCarthy confirmed that the tree, which appeared in photographs to be leaning, perhaps due to the guy wire, would remain.

Selectman Jenness stated that the tree would be happy.

Selectman Musselman interjected that that would not be a compelling reason to approve the petition.

A motion to permit the guy wire on pole 43/23S on Sagamore Rd. was approved unanimously.

Town Hall Space Needs Committee Report acceptance

Selectman Musselman stated that he thought that the report had been well done. The Committee did their best to work together and take everyone's input into account. Selectman Musselman then asked whether there was public input.

Peter Crawford, a Town resident spoke, indicating that he was in 90 percent agreement with the report. He stated that concerns regarding the records retention issue, the old police station, and the facilities master plan were all incorporated in the report. However, perhaps inadvertently, a cost estimate for the two building option was omitted, although one had been done. The report explains that there are options of having either one or two buildings, but there is only an estimate for the single building option.

Mr. Crawford continued by explaining that the Heritage Committee had voted to conclude that any extension of more than 20 feet would not be subservient to the existing building. He continued, stating that he had attended that meeting and there was a range of opinion on the issue. Some thought that the limit should be 10 feet, others thought that it should be two thirds of the length of the existing main building, which is 58 feet. That would permit an extension of 35-40 feet.

With an extension of that length, a building of 9500-10000 sq. ft. could be accommodated if a basement were included. At the high end of the 9500-11500 square foot range (i.e. 10,500 sq. ft. plus or minus 10 percent) it would not be possible to fit the expansion into a suitably subservient addition. None of the persons on the group of Concerned Citizens with which he has been working believes that burying a portion of the building in the side of the hill would be appropriate.

If the Recreation Department is to be included in the building, fitting everything into one building might be difficult. Two buildings would be very attractive, however there may be issues with access between the buildings for Town employees and the public.

Mr. Crawford stated that he believes that the Selectmen should propose a warrant article to proceed only with the schematic design, and provide designs for two options. Issues including the location of the Recreation Department and the space required for records (which will come out of the Records Retention Committee process) will need to be incorporated into the design process. He also expressed concern that the architect not pick the high end of the range as a design point. Cost and aesthetic issues should drive the process towards the lower end of the range.

Mr. Crawford suggested that the initial warrant article provide only for completion of schematic designs. At least two such designs, with cost estimates, should be done so that the Town residents could choose. A special Town meeting could provide for this and prevent a one year delay before the next step could be taken.

Victor Azzi, a Town resident, then spoke. His views are a bit different from Mr. Crawford's. He is a "concerned citizen" with small Cs.

Mr. Azzi continued, stating that he agreed that additional space should be provided behind the existing Town Hall. The Town should appoint a building committee.

He has some issues with the report. Although he is personally convinced that the best solution is on the Town Hall site, there are not convincing arguments as to why the solution could not be elsewhere. He agrees that the Public Works area, Old Police Station and Recreation fields are not suitable. Some in Town might say that the Public Safety Building would be adequate. While he is not personally arguing that it should be located there, the excuses are not convincing. They should be prepared to discuss this at or before the Deliberative Session.

A lot of information is not in the report. He had been assured that it would be located in the Appendix. It is not there. The report is not complete.

Selectman Jenness asked whether Mr. Azzi had a list of what he believed was not included. Selectman Mills asked whether this had been submitted in writing. Mr. Azzi confirmed that the list had been provided in writing.

Ned Paul, Chairman of the Space Needs Committee, interjected that some information from the Concerned Citizens, including the storage analysis, had been included. He apologized for not including one of the cost analyses. He continued, stating that some of what was received was somewhat dividing and could not be used. It wasn't "PC," he said. Terms such as "flawed" were used.

Mr. Azzi stated that the cost analysis was not complete. In one case an average of two figures was used in lieu of determining which figure was accurate. Selectman Musselman stated that this was a volunteer committee. No cost estimate should have come out of it.

Paul Goldman then spoke, indicating that he was a member of the Space Needs Committee. He stated that the Committee discharged its responsibilities. Details regarding the space will be obtained after a subsequent warrant article is voted. Their responsibility with respect to the space needs (with a plus or minus tolerance) and the location was discharged. Other issues were beyond the scope. A number of good things came out of the process, such as the Facilities Master Plan, but these were beyond the scope.

Alex Herlihy, a Town resident then spoke. To emphasize his point, he had been waiting in the adjacent hallway to underscore the lack of space. He said that he agreed with Mr. Crawford's suggestion regarding a special Town meeting. He supports the need for more space and agrees with a vote this coming year and then a subsequent one to continue the process 6 months thereafter. He wants this to pass by more than 12 votes. The Public Safety Building was approved with only that margin, and only because of something that had appeared in the Herald the day before.

Selectman Musselman interjected that the chance of passage was zero unless there was a consensus.

Mr. Herlihy continued, urging the Selectmen be more conservative due to the recent increase in the tax rate.

Mr. Azzi clarified that he was not saying that the Space Needs Committee should have developed a Facilities Master Plan. However, someone needs to look at this. Selectman Musselman nodded in apparent agreement. Mr. Azzi continued, stating that the facilities should not be vying or competing. He discussed what had been happening with the Recreation Department with its plan for a \$3.498 million building at the same time as the Committee was trying to accommodate them in the Town Hall.

Selectman Musselman stated that they would need to take the bull by the horns on that issue.

Steven Borne, a Town resident, spoke up to support Mr. Herlihy and Selectman Musselman. People have to be convinced or they will meet with resistance. A picture of a complete plan needs to be painted. How will the investments be laid out? It should be presented as: here's the next investment, here's the next step after that one, and here's the effect on the tax rate.

Selectman Musselman moved to accept the report, which motion carried unanimously. Selectman Jenness stated that it was extremely gratifying to see people come together.

Conflict of Interest Policy

Selectman Jenness read the proposed document that persons subject to 2012 Petitioned Warrant Article 26 will be required to sign. *Editor's note: Article 26 requires that "each employee, elected official and appointed member, or alternate of a Town board, committee or commission, sign a form" prohibiting participation in matters constituting a conflict of interest.* The document read by Selectman Jenness requires a declaration under oath that the person signing would not engage in matters which constitute a conflict of interest, and acknowledges that the person signing has a responsibility to disclose any conflicts of interest in writing.

The motion to approve the document carried unanimously.

Selectman Musselman then raised the issue as to what would occur if someone refuses to sign the document. He suggested that this question be referred to Town Attorney Donovan for a determination.

Mae Bradshaw, a Town resident, stated that Article 26 includes the words "shall the Town require..." Thus, the Board of Selectmen is required to enforce this article. The burden is on them to do so.

Peter Crawford, a Town resident, stated that he had located an RSA that appears to have been the basis for the warrant article, inasmuch as both refer to a one year period for compliance. *Editor's note: This is RSA 31:39-a.* The RSA appears to permit termination of an employee who refuses to sign, he said.

Selectman Mills asked what the date of the RSA was, inasmuch as it would not be fair for the policy to apply to persons already holding their positions when the law was adopted. Mr. Crawford responded that this was a good point, he did not know the answer, but would research the question. *Editor's note: The RSA was adopted in 1981.*

Boundary line agreement

Selectman Jenness stated that this matter arose out of an action to quiet title that was settled in February 2007. The Legislature had needed to approve this. Conservation Commission Chairman Jim Raynes stated that he had refused to hire a person named “Verra” for the survey as he was going to “rape” them. They paid \$20,000 to settle the matter, which involved a 1991 purchase. The Attorney General had said that they needed to fight this.

Selectman Musselman asked Mr. Raynes whether he was in agreement with the settlement. Mr. Raynes stated that he was, however, he was not going to spend another nickel.

The motion to approve the settlement was unanimously approved.

Letter of resignation from Planning Board by Tom McCormick

The motion to table this matter until the next meeting carried unanimously. Selectman Jenness stated that things could change.

Letter from Bonnie Delcourt regarding bringing her hawk to Parsons’ Field

Ms. Delcourt, a Portsmouth resident who lives on Lang Rd. was in the audience. She stated that the bird’s name was “Fearless.” She wanted to bring the bird to Parsons’ Field to hunt.

Selectman Jenness asked whether the bird could be trained to be selective.

Selectman Musselman asked whether the bird will attack cats.

Ms. Delcourt responded that she did not know the answer to the latter question, however, the bird likes chipmunks.

Selectman Musselman asked whether there was a restriction on this hunting on conservation land. Conservation Commission Chairman Raynes responded that there was a restriction for deer, but that this would be OK.

A long discussion followed regarding whether the Recreation Area or behind Goss Farm might be more appropriate as it is less visible to the public and less likely to generate a public reaction.

Selectman Musselman asked what the times were when the bird was to be allowed to hunt. Ms. Delcourt responded that it was September to March. She did not dare take the bird into the woods because of hunters.

Selectman Mills stated that Mr. Raynes seemed to have a special relationship with the owners of the conservation land behind his property, the Philbricks. Perhaps Mr. Raynes could speak with them.

Selectman Musselman stated that it would not be appropriate to have a motion to approve this as the hunting did not appear to be precluded.

Letter from Jane Ayotte regarding the Recreation Department

This letter praising the Recreation Department and its programs for those over 55 was read into the record.

Letter from Matt Burke, Rye Youth Softball Pink Sox, regarding bake sale

The bake sale at the Recycling Center, December 1, 2012 from 8:00 a.m. to 1:00 p.m. was unanimously approved.

New business: Tax rate and assessments

Steven Borne, a Town resident, asked why the Town and State portions of the tax rate were not being lumped together. Selectman Musselman responded that these needed to be broken out separately. The donor towns are not gone, but currently the state portion of the tax goes out one door and back in another.

Peter Crawford, a Town resident, indicated that perhaps the Selectmen should add the two together and provide a total figure. The Herald had recently reported a 9 percent increase in the school portion of the property tax, however this was misleading because the State portion increased hardly at all. Inasmuch as the State portion comes right back to the Town, the two should be considered together. If that is done, the increase is only about 6 percent, still high, but not as bad.

Mr. Borne asked about the \$651,000 transferred from the unfunded balance and why the Town continually seems to have \$500,000 left over to offset against the next year's taxes.

Selectman Musselman responded that there were a number of reasons. First, there is a legal set aside. It is rare that all of that is consumed. Second, they try to be conservative when estimating the amount of abatements. Cindi Gillespie stated that revenues are also estimated. Those estimates also tend to be very conservative. Selectman Mills stated that automobile registrations are estimated, currently about \$1.010 million. If these are higher than estimated, that will help the budget. Selectman Mills stated that there are no "slush" funds. For example, the PSNH check will go into the general fund. Selectman Musselman stated that every New Hampshire town goes through the same process. North Hampton is writing up its reserves. Rye does not believe this is appropriate.

Joe Cummins, a Town resident, stated that he agrees with the comments regarding the recapture. It seems that \$500,000 has been left over each of the last 5 years. Selectman Musselman agreed that some amount had been left over each year. Litigation costs are not as big now.

Jim Raynes asked whether this was the part of the meeting where people could say that KRT did a lousy job. *Editor's note: KRT did the recent revision of the assessments, which generated a lot of opposition from people in Town. See in particular the notes on the November 5, 2012 work session on the issue.* Mr. Raynes stated that he had talked with the guy from KRT and felt it was a waste of time. Selectman Musselman stated that Mr. Raynes could file for an abatement. Mr. Raynes stated that he had never seen anything so far off.

Sam Winebaum, a Town resident, stated that he had spoken with Assessor Norm LeBlond a second time. Mr. LeBlond was more helpful this time than he had been the prior time. However, he could not believe what Mr. LeBlond said. The assessment of his land was up 40 percent, while that of an immediate neighbor was down 8 percent. He is right next to a neighborhood boundary. It is crazy that the changes should be so sudden.

Also, the reduction in the nearby parcel by 8 percent was apparently due to the sale of a lot on Central Rd. that has a water tower adjacent to it. Nobody ever wanted that land. *Editor's note: The implication is that the one sale affected the assessments of all of the other properties in the same neighborhood.*

The determination of neighborhood boundaries is very crude. On the other side of his property the factor applied is 1.0, his factor is 1.5. The factors should go down by steps of .1 so that everything blends in.

Joe Cummins, a Town resident, asked whether a person winning an abatement could get attorneys fees and costs. Selectman Mills stated that people typically bring appraisers, not attorneys. Selectman Musselman stated that he did not believe that fees and costs had ever been reimbursed.

Mr. Winebaum stated that Assessor LeBlond had told him that the contract with KRT stated that they would be holding the hearings. Mr. Magnant stated that that was not the case. However the contract provides that, if a matter reaches the BTLA, KRT may be required to defend the Town. *Editor's note: The BTLA is the Board of Tax and Land Appeals.*

Peter Crawford, a Town resident, spoke in agreement with Mr. Winebaum. He stated that a colored neighborhood map was now available in the Assessor's section of the Town website. All of the properties from the coast at Jenness Beach inland about ¼ mile to Mr. Winebaum's property is the same color. That's crazy as oceanfront property is clearly more valuable. On the other hand, Mr. Crawford said, he lives 3 or 4 houses in from a neighborhood boundary. On his side the factor is .9, on the other side 1.15. But there are other increases in the factor as one proceeds towards Wallis Sands Beach. He doesn't understand how these neighborhood boundaries were arrived at. It is probably too late to redo for this year, but the Town may need to redo the process again next year. More neighborhoods may be needed. This sort of model may work for inland towns, but it seems ill-suited for Rye where proximity to the beach is everything.

Selectman Mills asked Mr. Crawford how much his assessment had gone down. Mr. Crawford responded, but stated that the reduction in the ratio to 95 offset the reduction in his assessment. A lot of people don't realize that an additional 5 percent needs to be added to their assessments to come up with what the Town is saying the market value of their property is.

Selectman Mills then asked Victor Azzi how much his assessment had changed. Mr. Azzi responded that he had been too busy with the Space Needs Committee to look.

Mae Bradshaw stated that their property was up \$300,000 and they would probably be hearing from them. Property on the Ocean is assessed at less than that on the Harbor. The further from the water the higher the tax rate.

Selectman Mills stated that he hoped everyone would be filing for an abatement.

Alex Herlihy, a Town resident, stated that he wasn't complaining as his property had gone down. He referred to Joey Cresta's article and its assertion that KRT was complaining about the mess that was there before.

Joe Cummins, a Town resident, stated that there was not evidence that the previous assessments under the former assessor, Howard Promer, were so much of a mess as there were not so many abatements.

Selectman Musselman responded that there were two issues. First, the actual sales of properties did not compare well enough to the assessments. Second, the records

were inadequate as to the various multipliers that had been applied. The DRA did not expect that the interiors of houses be visited and this was not done. They cannot set the tax rate until the DRA agrees with the forms submitted. Selectman Jenness stated that there is a five year rotation on interior visits. One quarter of the houses will be visited in the coming year.

Revocation of SAFER grant

Fire Chief Sullivan spoke to this issue. On July 30, 2012, the Board of Selectmen had voted to accept this \$343,000 grant. They had proposed paying the new call firefighters added as a result of the program through the use of gift cards. The New Hampshire Department of Labor had a problem with that. Then they spoke to the organization administering the grant, which had a different problem. Furthermore, the current call firefighters would receive zero benefit from this program. Given this, he doesn't see any benefit to the Town. He doesn't waste his own money or the Town's money and he doesn't want to waste federal money either.

Selectman Jenness asked whether the issue was becoming divisive. Chief Sullivan stated that he believed that it was, particularly for the call firefighters. The regular firefighters did not have as much of an issue with the program.

Selectman Musselman asked about the difficulty of maintaining the call firefighter force and whether that had not been the reason that the Town had gotten into this program. Chief Sullivan responded that 4 call firefighters had been hired since then, and this was no longer as much of an issue.

The motion to rescind the acceptance of this grant was approved unanimously.

Chief Sullivan stated that the country would not be as much in debt if others took the same attitude with respect to grants.

Non-public session

The Selectmen then voted to go into non-public session.