

NOTES OF JANUARY 14, 2013 RYE BOARD OF SELECTMEN MEETING

Revised Final Revision C – Provided by the Rye Civic League

NEXT MEETING: JANUARY 28, 2013. WILL INCLUDE PUBLIC SESSION ON TOWN HALL

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

Approval of Minutes

The minutes of the December 6, 2012 Work Shop and non-public session of the same day were approved without changes. The minutes of the December 10 and 26, 2012 meetings were approved with minor changes. The minutes of the two non-public sessions on December 26, 2012 were approved without changes.

Public hearing on the sale of Town land near Foyes' Corner

Editor's note: In the past few years, the State put a roundabout (i.e. traffic circle or rotary) in place at Foyes' Corner, resulting in at least one of the roads following a different course. Pioneer Rd. and Sagamore Rd. north of the roundabout are State roads (Route 1A). The short stretch of Elwyn Rd. in Rye, west of Foyes' Corner, is a Town road. Sagamore Rd. south of the traffic circle is also a Town road. The Serenity Market and Café north of Elwyn Rd., and just west of the roundabout, is located on land owned by Bluestone. See notes of November 14, 2012 meeting for further details. At that meeting, Selectman Musselman stated that the purchase price for the land was \$7500.

Mike Labrie of Bluestone Properties of Rye, LLC opened the discussion by showing a map of the land that Bluestone was to purchase. Mr. Labrie explained that he had acquired some land in the area of the traffic circle in a land swap with the State at the time that the traffic circle was put in place. He explained that the abandonment of the roadbed to Bluestone would be appearing on the Town ballot this year. The purchase relates to a strip of land on the other side of the old roadbed. Bluestone has acquired another piece of land south of this strip. This land acquisition will provide one neat parcel that can be further developed.

There were no public questions or comments. Selectman Jenness noted that the Selectmen believe that this is a fine idea. The next public hearing will be on January 28, 2013.

Arthur Ditto, report from the Technical Advisory Committee of the Rockingham Planning Commission

Mr. Ditto explained that the State is starting a revision of its ten year plan. The current plan has no projects in Rye. For the new plan, there is a discussion of 3 projects involving Rye that have been scheduled for 2020 as a place holder. These include widening of the shoulders on Route 1, including from Breakfast Hill Rd. north to the Rye Town line with Portsmouth.

Due to pressure from some people, a bike and pedestrian advisory committee is being reestablished. Also, the New Hampshire Coastal Byway Corridor Management Group has received funding through a scenic highways program. Selectman Musselman stated that Rye should be involved.

There is also a “complete streets” program involving all aspects of pedestrian traffic, turning and similar issues. *Editor’s note: such a program would also include runners and bicycles. Streets are for the use and benefit of everyone and not just vehicles.* Like here, they are looking at 3 foot shoulders when widening is done.

Selectman Mills asked about the intersection between Lang Rd. and Route 1, and whether there was any word on work there. Mr. Ditto replied that he was not sure, but he believed something was done when the Service Credit Union building was put in place.

Editor’s note: This work is currently ongoing.

Mr. Ditto continued, stating that there is also work planned for 2013 for the Sagamore Rd. bridge in Portsmouth, and for the bridge from Rye to New Castle in 2015.

Selectman Musselman asked why the latter bridge needed to be a lift bridge. Not many boats use that channel. Police Chief Walsh confirmed that he wasn’t aware of any recent openings of the bridge. Selectman Musselman stated that he is aware that the bridge is exercised periodically. However, he believes that only when a buoy tender goes through does the bridge need to be lifted. It would be a lot less expensive to get a smaller buoy tender.

Selectman Mills asked whether a position had been taken on bicycles riding single file or two abreast. Mr. Ditto responded that he had not heard of this. The first step is to provide enough space.

Parson’s Field access point

Town Administrator Magnant introduced the issue. There’s a possible encroachment by a homeowner adjacent to 467 Washington Rd. There is a 17 foot lane there, a portion of which is being used to park vehicles. There is also a question as to whether a stone wall, or part thereof, was removed. The Building Inspector had spoken with the homeowner last Friday. They are aware that the lane belongs to the Town and will discontinue parking there. The homeowner did not admit that any part of the stone wall had been removed, but if that had occurred, the homeowner agreed that it would be replaced.

Jim Raynes, Chairman of the Conservation Commission, provided additional background. There is a driveway providing access to Parson’s Field, but due to the amount of traffic, they wanted to open up the 17 foot right of way for pedestrians. He doesn’t want to see something like the Wentworth, with someone in ten years saying it’s their land. He would also like to see the stone wall restored. *Editor’s note: For information on the Wentworth Country Club and the dispute regarding access to Sanders Poynt, see the notes of the November 14, 2012 meeting.*

Selectman Musselman stated that the Historic District Commission had taken photographs of the Historic District this past fall. These photographs might include one of the wall or walls.

Selectman Jenness asked whether Mr. Raynes recalled there having been a wall there. He responded that he did, and they should have photographs in their records.

Selectman Jenness asked whether it wasn't illegal to remove a boundary wall. Mr. Raynes stated that he thought it was.

Timbers on Jenness Beach

Mr. Magnant stated that this involved a request from the Beach Commission. As this may be an issue of "history," he thought that the issue should be raised with the selectmen.

Mike Labrie, Chairman of the Beach Commission provided the details. The timbers had come in on an offshore hurricane. There are six of them, approximately 12 by 12 by 30 feet. *Editor's note: although not stated, he must have meant 12 inches.* These could become half ton battering rams in a storm. During the recent storm a pair of the timbers floated out a couple of hundred feet, but came back in. The timbers have now been stacked up at Sunrise Ln. He understands that, if the timbers are cut into 8 foot lengths, Public Works would accept them. Gregg Bauer has agreed to do this for free, but he suggests that some Beach Commission funds be provided to pay him.

Mr. Magnant asked whether a citizen might want to cut them up for firewood. Mr. Labrie responded that they may have creosote. They look like they may have come from a wharf.

Selectman Mills stated that this used to be a responsibility of Public Works. He's surprised that this has been an issue for two years.

Selectman Musselman asked whether the timbers were on private property. Mr. Magnant responded that it depended on whom you asked.

Selectman Mills asked Public Works Director Dennis McCarthy whether it would be a problem for Public Works to cut up the timbers. Mr. McCarthy responded that it was difficult stuff to cut, but it could be done.

Selectman Mills stated that this cleanup typically comes out of Public Works funds. Ms. Gillespie disagreed, stating that there are funds in the Beach Cleaning account. Selectman Musselman agreed that the funds should come from there.

Ms. Gillespie asked Mr. Labrie to send her something.

Selectman Jenness stated that there appeared to be agreement as to how the issue was to be resolved.

Petitioned warrant articles

It was revealed that five petitioned warrant articles had been submitted, on the Capital Improvement Plan ("CIP"), Conflict of Interest, Posting of agendas, and Reasonableness of New Assessments. There is also a Building Code amendment.

Selectman Jenness stated that usually these go on the warrant as worded, unless there is something illegal. They are given to Town Clerk Beth Yeaton to check signatures to make sure there are a sufficient number.

Town Moderator Bob Eaton commented that he sees only 3 on the draft warrant that was passed out, Articles 19 to 21.

Mr. Magnant responded that one had come in after the deadline for Building Code amendment articles, and one had been disqualified as there were only 24 signatures. However, a citizen named Mills came by the Town Clerk's office and stated that the

petition had been signed with a nickname. The Clerk did not see the person, who will be coming back in to identify the signature.

Selectman Jenness asked whether that was the warrant article concerning reassessments. Mr. Magnant confirmed. Selectman Jenness suggested that they hold that one in abeyance.

Selectman Jenness stated that the Building Code article should have been submitted 90-120 days before the 2013 Town Meeting. This one was submitted too late per the RSA.

Selectman Mills stated that that article went to Michael Donovan. He cited RSA 675:4 and attached a deadline calendar. Mr. Magnant referred to RSA 39:3 with respect to the other 3 warrant articles, and the other one, pending confirmation.

Peter Crawford, a Town resident spoke. He stated that there were some typographical errors introduced in transcribing from the petitions to the document passed out before the meeting. After further discussion it was agreed that he would provide a marked up copy to Ms. Gillespie after the meeting. Mr. Crawford stated that he had only briefly read through the document, and that it should be thoroughly checked as there may be other transcription errors.

Selectman Musselman stated that amendment of the Conflict of Interest definition would be needed. If it is passed as is he would need to resign as a selectman. He does work with both Portsmouth and New Castle. Rye and New Castle could get into a donnybrook over some issue. Police Chief Kevin Walsh spoke up to indicate that, if the definition stands, there is a part-time police officer who might be forced to resign due to a conflict of interest issue.

Mr. Crawford responded that the intent had not been to trap particular individuals. He did not even know about Mr. Musselman's conflicts. However, the language is taken from a state statute. He said that the language could be addressed at the Deliberative Session.

General discussion of warrant articles

Mr. Magnant indicated that additional changes would be made to an article on surf camps.

There was a discussion on which persons would address each warrant article:

1. Articles 4 and 5 on the Town Hall and Old Police Station (now referred to as the 1899 trolley barn building) would be addressed by Selectman Musselman.
2. Article 7. Selectman Mills will address this article on the Highway Equipment Capital Reserve.
3. Article 8. Selectman Jenness will address this article on Municipal Records.
4. Article 9. Selectman Jenness will address this article on on-line streaming
5. Article 11. Selectman Mills will address the article on abandonment of the old Elwyn Rd. roadbed.

6. Article 12. Selectman Musselman will address this article on the relocation of Old Ferry Landing Rd. through the Cavaretta's property near Foyes' Corner.
7. Article 13. Selectman Mills will address this article relating to the cutting of trees for a parking lot at the Recreation Area.
8. Article 14. Selectman Mills will address this article amending the skateboarding ordinance to require that bicycles travel single file.
9. Article 15. This article will be altered. This is an amendment to the Beach Ordinance requiring permission for organized events at the beach.
10. Article 16. Selectman Jenness said that this was a housekeeping article. It relates to no parking streets near Jenness Beach.

There was further discussion on Article 18, relating to solar and wind energy exemptions. Mr. Magnant stated that Town Counsel Donovan opined that the proposed article should be split into two articles, as some voters might be in favor of one exemption but not the other. He further stated that, while the Energy Committee believes that a wind energy exemption is in effect, the Town searched through warrant articles and found no record of such an exemption having been passed.

Selectman Musselman stated that people are being driven berserk by wind energy issues and the noise from wind turbines. While there may not be the potential for giant turbines, except offshore, small home systems are a concern. He believes that the exemption for solar energy should be increased from \$15,000 to \$35,000. A question arose as to business vs. residential use. Selectman Musselman stated that if, for example, Tate and Foss wanted to install solar panels that should be permitted. *Editor's note: Tate and Foss has a real estate office near the center of Rye.*

Bob Eaton stated that, with respect to the petitioned warrant articles, he will ask proponents to speak to them, but would also permit the selectmen to address them.

Selectman Musselman indicated that a phrase should be added to the article on the CIP. He doesn't know about the Conflict of Interest article. Legal input will be needed.

Mr. Eaton asked about the one on the website. Mr. Musselman stated that it doesn't matter, the Board of Selectmen cannot take a position.

With regard to the article on reassessments, Selectman Musselman stated that he would comment. He does not have a problem with this. They would have done this anyway. Selectman Mills stated that he most definitely would comment. *Editor's note: Selectman Mills has been vigorously opposed to the new assessments. See in particular the notes of the November 5, 2012 Work Session on the issue.*

Further discussion on Article 4, Town Hall

Mr. Eaton stated that the phrasing was unclear surrounding the mention of trolley barn and recreation. There should be another word after "recreation." *Editor's note: That sentence reads "[f]ollowing the completion of the space needs programming study of the Town Hall, trolley barn, and recreation, a Rye Town Facilities Master Plan shall be prepared identifying all Rye Town facilities and existing conditions, any potential additional functions or facilities that may be considered for each of the Town's public properties, and recommendations regarding future Town decision-making processes for*

each property as appropriate.” Selectman Musselman suggested the word “activities” be inserted after “recreation.”

Victor Azzi, a Town resident, spoke. He noted that something is wrong with this language, in that the programming of needs, buildings and activities are all being discussed in it. These are discordant things. “Programming” is a term that speaks to the addressing of needs, not buildings. A fairly lengthy discussion ensued, after which Selectman Musselman suggested that it be left as “recreation activities.” Mr. Eaton stated that it would be a long deliberative session.

Selectman Musselman then referred to the word “all,” which appears in the above sentence. He asked Mr. Azzi whether he was OK with altering that. Selectman Musselman stated that he did not want to address the transfer station.

Cecilia Azzi, a Town resident interjected that the intent of the last paragraph of the warrant article was to address all buildings. Selectman Musselman responded that, with this scope, at this fee, he is not proposing that.

Victor Azzi stated that, in his view, they must start somewhere. There should be a complete record of all existing conditions, including buildings and properties owned by the Town. With that as a baseline document, the changes that are considered and planned will be identified on the Facilities Master Plan as the Town agrees to include them. Public Works should be shown on the plan. The future plans for Public Works, such as the Salt Shed, do not need to be shown on the Facilities Master Plan until those plans evolve and are approved.

Selectman Jenness stated that she was not sure that changing anything now was appropriate.

Selectman Musselman, using a double negative, stated that, as now worded, it cannot be read that it doesn’t focus on Town Hall, the Trolley Barn (i.e. Old Police Station) and Recreation, but that it includes all facilities.

Mr. Azzi said that clearly the Town needs to know that the focus of this study is the Space Needs of the Rye Town Hall Offices. He further responded that he likes the use of the “Trolley Barn” designation. Selectman Musselman agreed, stating that the most awful windows and doors should be removed.

Selectman Musselman moved that they adopt this article as discussed. Selectman Mills cautioned that any alteration would require that the Budget Committee approve the article again.

Mr. Eaton then left.

Correspondence re Firefighter Paramedic MacGlashing

The letter from Fire Chief Sullivan was addressed. A 52 year old member of a pickup ice hockey game had collapsed. Firefighter Paramedic MacGlashing, who was a participant in the hockey game, arranged for a defibrillator to be brought. Advanced Life Support from the Rochester Fire Department was brought in and Firefighter Paramedic MacGlashing continued support while the victim was transported to the hospital.

Selectman Mills asked how the victim was doing. Chief Sullivan stated that he had been brought out of an induced coma and was doing fine.

Letter on New Castle to Rye Route 1B bridge

Mr. Magnant stated that he did not volunteer for this, but that the letter had come in inviting him to join the committee relating to the bridge, which is posted for 15 tons. However, he said, if there is an engineer on the Board of Selectmen who wanted to participate, that person could join the committee instead. *Editor's note: Selectman Musselman is the only engineer on the Board of Selectmen.* Selectman Musselman responded that because of the possibility that there might be railing about wasted money, he shouldn't be the one involved. *Editor's note: This is possible reference to Selectman Musselman's earlier comment about work that he does with the Town of New Castle.*

Letter from the Favaras on drainage near Ocean Blvd. and Gray Court

This letter was read. It referred to pooling of water on the Favara's property. It stated that initially "Dennis Murphy" had asserted that the property owners should wait for low tide to see if water on their property would drain. Public Works Director Dennis McCarthy indicated that the reference was apparently to him. The letter continued, stating that the water had turned to ice. As of December 31, 2012 the property owner had been told that nothing could be done to help. When help from Public Works was requested to break up the ice they were told that this was not possible as it was on private property. On January 4, 2013, Public Works sanded and salted the area. The letter stated that there is no plan to address the issue. If the drain is on private property, then arrangements should be made to remove it, the letter stated.

Mr. McCarthy addressed the issue. This is a property that used to have a hockey pond in its back yard. There is a Town culvert there that ties into the state culvert. It won't flow unless the state culvert flows. There is nothing wrong with the drainage on the homeowner's property. They finally got the state to bring in an eductor truck. The State only owns one such truck.

Mr. Magnant stated that Public Works had been "turning into a pretzel" trying to solve the problem, and has been working on it every day.

Mr. McCarthy stated that they are now getting it to flow. One to three telephone poles were put through the drain line. Fairpoint had installed these. Everyone is working on the problem together: Public Service (i.e. PSNH), Fairpoint, the Town and the State. Recently, the state had admitted that it is their drain line along Ocean Blvd. from Perkins Rd. north to Jenness Ave. *Editor's note: see notes of July 9, 2012, September 10, 2012, September 24, 2012 and October 11, 2012 meetings. Drainage problems in the area had resulted in a sinkhole earlier this year. Initially the State denied assistance, but after the intervention of State Senator Nancy Stiles, the State had acknowledged that their drain line was involved.*

Mr. McCarthy stated that the Rye Water District had brought in listening equipment that they used while the drain pipe was being jetted. They stated that they can hear the jetting at one of the poles. The pole has been undermined and a parking sign nearby has dropped three feet. The pole is all new. It's a big pole, supporting three phase power.

Selectman Jenness asked how a pole could be put through a pipe without it being known. Mr. McCarthy stated that this could happen. The edge of the pipe may have been hit.

Selectman Musselman related a story about someone that he knew having attended hockey games there and placed the teeth of one of the players in her pocket during the game.

Selectman Musselman stated that he could not imagine what else could be done. He asked whether the pipe was public or private. Mr. McCarthy stated that he believed that it was public as it drains a significant area.

Encumbrances

Ms. Gillespie stated that there was a new list. Two items had been paid in 2013 and there was a \$5280 error on another. Selectman Musselman asked whether the encumbrances could be adjusted in arrears. Ms. Gillespie stated that they could. The motion to approve the new encumbrance figure of \$68,302.21 was approved unanimously.

Pole petition (3-1R on Ocean View Dr.) (tabled from 12/10/12 meeting)

Mr. McCarthy stated that they are still trying to see if this pole is needed. The matter was tabled until the second meeting in February.

Status of Conflict of Interest Forms

Selectman Jenness stated that letters had been sent to the various boards, committees and commissions “way back” in December. This is in keeping with the warrant article. They now have a tally. A lot of the forms have since been signed, so the list is no longer accurate. They are down to the last few and these are coming in.

Victor Azzi stated that this seems to be a work in process. He asked whether anyone had refused to sign up to this point in time.

Selectman Jenness responded that there were no refusals among the boards, committees and commissions. Selectman Musselman interjected that one employee had refused to sign. Finance Director Gillespie corrected Selectman Musselman, stating that “she” had now signed the form.

Selectman Jenness stated that there would soon be a completed list.

Editor’s note: The issue of the conflict of interest forms arose at the November 14, 2012 meeting after Mr. Galvin, a Town resident, stated that the Town’s planning administrator should have recused herself from the Sanders Poynt matter involving the Wentworth by the Sea Country Club. The planning administrator is a member of that club, he said. Later in that meeting, Mae Bradshaw, a Town resident, asked why the forms, that were required by 2012 Warrant Article 26 (that passed 1129-170), had not been created and distributed. Ms. Bradshaw stated that she had been told that the matter was still with Town Counsel. A discussion arose as to whether an employee could be fired for refusing to sign. Ms. Bradshaw asserted that that might be necessary to enforce the policy. Selectman Mills asserted that this could not be done. Selectman Musselman stated that he did not believe that this could be done, but asserted that Town Counsel would now need to be paid to research the issue. See the notes of the November 14, 2012 meeting.

Non-compliant FEMA properties

Editor's note: This issue involves properties in Rye which do not comply with FEMA regulations relating to flooding vulnerability. Rye residents have been in danger of losing their access to federal flood insurance over this issue. Potentially, this could have a devastating effect as such insurance is required in many cases in order to obtain a mortgage. For background, see the notes of the May 14, 2012 and May 29, 2012 meetings.

Mr. Magnant stated that they are down to the last three properties, which are the most difficult. All of these homeowners have hired attorneys and engineers. They hope to bring 2 of the 3 into compliance. Selectman Musselman stated that, a year ago, he would not have thought that the list of 22 could be brought down to 3. Mr. Magnant, Building Inspector Peter Rowell, Planning Administrator Kim Reed, and Town Counsel Michael Donovan have done a lot of work to make this happen.

Someone asked how the situations had been corrected. Mr. Magnant stated that some residents have poured concrete in their basements to ensure that the Town is protected with regard to flood insurance.

Victor Azzi's statements regarding the Space Need Committee report

Mr. Azzi started by providing the history of this Committee. There was a specific charge, dated July 9, 2012, providing that the Committee would cease to exist on November 1, 2012, upon delivery of its report. A draft report was provided on November 15, 2012. The Town's web site still has the draft report.

Selectman Jenness stated that the Committee did not disband. She stated that they were asked to stay on until the Deliberative Session.

Mr. Azzi thanked Selectman Jenness and stated that that was different from what people had been told. He asked whether the draft was now a "final" report.

Selectman Jenness responded that it would be once the report had been accepted by the Board of Selectmen. They will plan to do that at the meeting on the 28th. *Editor's note: see notes of November 26, 2012 meeting. The Board of Selectmen voted to accept the report at that meeting.*

Mr. Azzi continued, stating that pieces are still not included in the version on the Town's web site, as they were promised to be, several times, by the Chairman of the Space Needs Committee and by the Selectmen. Ms. Gillespie asked when he had last looked. Mr. Azzi responded that it was 3 hours earlier. Ms. Gillespie indicated that Kim had been updating the web site on Thursday. *Editor's note: This is an apparent reference to planning administrator Kim Reed.* Selectman Musselman stated that this would be fixed.

Mr. Azzi continued, stating that, even in the minutes of the December 10, 2012 Board of Selectmen meeting there is a reference to his attached letter and to his three part document being attached. However, these minutes, which were approved earlier in this meeting, do not include these documents. If something has been promised it should be done.

Ms. Gillespie responded that she had been following up the prior week. Also, the books from the library had been returned and were being updated. *Editor's note: A book of Space Needs Committee material was put together and made available at the Library. Subsequently, Ms. Gillespie asserted that, at one location on the Town's web site, the report had been updated, at the other, it had not. Still later, she agreed that it had not been updated in the manner promised; namely, that Mr. Azzi's work would be cited and included in the Appendices of the Final Report.*

Mr. Azzi then asked whether the Committee was going to expire once it submitted its final report. Is the Space Needs Committee being referred to elsewhere as the Building Committee?

Selectmen Musselman and Jenness both responded "no."

Selectman Mills asked who had referred to it in that way.

Mr. Azzi stated that in e-mails, and copies in hand, that he had interchanged with Selectman Musselman it was referred to in that way.

Selectman Musselman, acknowledging that he may have called it that, stated that he did not intend anything by that reference.

Mr. Azzi asked what would happen if the Town accepts Article 4.

Selectman Musselman stated that there would be a new Board of Selectmen that structures the Building Committee. He does not think that a permanent Building Committee would be appointed at that time. There might be Committee oversight over the schematic design.

Selectman Jenness stated that, if the \$60,000 is voted down, a new approach would be needed. Mr. Azzi agreed, saying that the Town Hall issue would be moot if this article were defeated.

Selectman Musselman stated that there had been no discussion about the Building Committee. If there was any, it would have to have been here. *Editor's note: State law prohibits the Board of Selectmen from discussing issues, except as a group, and, except under certain circumstances, typically involving legal or personnel matters, the meetings must be public.*

Further discussion on warrant articles

Arthur Ditto raised an issue on the article involving the CIP Committee. He asserted that the article is incorrect in that the Rye Water District is not obligated to submit its projects for the CIP Plan. *Editor's note: Mr. Ditto is one of the three members of the Rye Water District board.*

Selectman Musselman stated that this issue could be brought up at the deliberative session. That will be the only opportunity to amend these articles. He stated that the Board of Selectmen did not want to be involved in approving the projects of the Rye Water District.

Mr. Ditto responded that they might go along with the warrant article if the Rye Water District could approve the projects.

Adjournment

Whereupon the meeting adjourned.