

NOTES OF DECEMBER 26, 2012 RYE BOARD OF SELECTMEN MEETING
Final Revision B – Provided by the Rye Civic League

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

Presentation of award on Rye Annual Report

Town Administrator Michael Magnant opened the meeting by presenting an award from the LGC (New Hampshire Local Government Center) relating to the Town's 2011 Annual Report, that Selectman Jenness had a significant role in putting together. This year, there were 148 submissions from around the State. Rye received third place in the 5001-7500 population category, Mr. Magnant said.

Approval of minutes

Selectman Jenness stated that there were no minutes to review at this meeting. Selectman Mills commented that this must have given the other two Selectmen indigestion as there were no mistakes for them to find.

KRT Contract modification

Editor's note: the new assessments generated by KRT have become a subject of significant debate and angst. See the notes of the October 11, 2012, October 22, 2012 meetings, and of the November 5, 2012 work session. Town Administrator Magnant addressed this issue. A boilerplate contract was executed on April 9, 2012. While the DRA recommended a performance bond, due to the small size of the contract the agreement provided for a 50 percent hold back. To date, KRT has received approximately \$31,000 of a \$62,500 contract. Mr. Magnant proposed that the contract be modified so that 20 percent is retained. An additional 10 percent would be released after DRA approval and the USPAP report. *Editor's note: USPAP stands for Uniform Standards of Professional Appraisal Practice.* The final 10 percent would be released after all abatement issues have been resolved at the Board of Selectmen level, but not the BTLA level. *Editor's note: BTLA stands for the New Hampshire Board of Tax and Land Appeals, the next step for a taxpayer appeal from a Board of Selectmen decision regarding an abatement.*

Selectman Musselman asked whether there was a signed contract and whether there was a concern that KRT would not defend cases unless additional money was paid. Mr. Magnant confirmed that a signed contract existed and that he did not believe that they would not defend cases.

Selectman Jenness said that the Board of Selectmen should follow the process to its end. The question will be whether the KRT abatements stand up.

Mr. Magnant indicated that the figures do not have to be 10 percent and 10 percent.

Selectman Jenness responded that she would like to see a heavier payment at the very end of the process.

After further discussion, Selectman Musselman stated that he did not intend to second a motion to approve revising the contract. Selectman Mills stated that “it’s my day.” He continued, stating that DRA letters have gone out requiring inspections of properties. He said that he suspects that the DRA, Town Assessor Norm LeBlond and KRT are “in bed together,” so he doesn’t expect changes from this.

Selectman Musselman stated that he thinks that the Town should go through the process. There have been a sufficient number of questions that they should wait and see how many abatements are requested.

Settlement of abatement appeal, 789 Ocean Blvd.

The assessment was reduced from \$925,800 to \$714,200 upon recommendation of Assessor LeBlond. This settles a case before the BTLA. Upon motion of Selectman Mills, the abatement was unanimously granted.

Solar and Wind Energy Tax Credit

Danna Truslow of the Rye Energy Committee addressed this issue. Michele Sopher of the same committee was also present. Ms. Truslow indicated that there was a 2012 amendment capping the exemption at \$15,000 of the value rather than at 100 percent of the installed cost. She requested that the credit be changed to apply to solar and wind energy. Wood energy equipment would not be included. She read the text of a proposed warrant article. The warrant article cited RSA 72:61 through RSA 72:72.

Selectman Musselman expressed a concern that the credit might apply to a multi-million dollar wind energy project. Ms. Truslow indicated that the reference to energy use at the site of the equipment would preclude this.

Selectman Jenness had questions about how the installation was depreciated and how a defunct solar installation on a rooftop would have its credit rescinded. Ms. Truslow stated that the installation is valued at book.

Ms. Sopher then explained the types of systems. Solar photovoltaic and solar hot water heating are different. The former, used to generate electricity, is more popular as the excess may be banked with the utility. New Hampshire has a rebate for smaller systems of less than 5 kilowatts. These typically cost \$20,000 to \$25,000. The lower limit is creating a problem for these systems.

Selectman Musselman stated that they would not want to discourage such use of “net metering.” He indicated that the restriction for on-site use of energy would appear to preclude this. Also, noise is a recurring problem with wind facilities and some have been shut down due to this.

Ms. Sopher responded that Rye would not see wind energy installation unless they are located offshore. There is not enough wind.

A discussion ensued as to the deadline for warrant articles. Mr. Magnant indicated that it is January 8, 2013 for petitioned warrant articles, but the Selectmen have until January 28, 2013 to submit warrant articles without a budgetary impact. After one of the Energy Committee representatives indicated that they might submit a petitioned warrant article if the Selectmen do not want to submit an ordinary warrant article, Mr.

Magnant suggested that the Energy Committee representatives get together with him and Town Assessor Norm LeBlond and work out the language of the warrant article.

Selectman Musselman stated that the property owner at the Isles of Shoals was talking about a fixed solar panel. However, he indicated that he did not believe that anything there was taxed.

Resignation of Tom McCormick from the Planning Board

Selectman Jenness introduced the issue, stating that there had been hope that he would stay, however that he felt that he needed to leave. Selectman Mills made a motion to accept the resignation with regret, which motion carried unanimously.

Sale of unused roadbed near Foye's Corner

Mr. Magnant indicated that the sale of this property, referred to as the "Cavaretta piece," to be purchased by Bluestone Properties, has been approved by the Planning Board and the Conservation Commission, as required. The next step is two public hearings, which could be scheduled for January 14 and 28, 2013. Selectman Musselman asked whether a drainage issue related to the property had been resolved, indicating that there was no sense in leaving the issue hanging if people might have questions relating to it at the public hearing. Mr. Magnant responded that he did not know whether the issue had been resolved. *Editor's note: See the notes of the November 14, 2012 meeting for the initial action relating to this sale.*

Sanders Poynt enforcement action against Wentworth

Mr. Magnant addressed this issue, relating the history of the proceedings relating to the issue. The Wentworth by the Sea County Club ("WBTSCC") had filed for a building permit. Following this, Town Counsel confirmed that the WBTSCC owned the property and a permit was issued. In addition to the fence referred to in the permit, rocks were installed adjacent to the roadway, and loam and vegetation were installed. After the public became very concerned, the Board of Selectmen referred to the issue to the Land Use Boards. The Board of Adjustment ("ZBA") heard Mr. Jesurum's appeal and decided that it had no jurisdiction. In addition, the Building Inspector issued an enforcement order requiring a site review. The period for response to that letter has expired and the WBTSCC has sent a letter indicating that it disagrees and does not plan to submit to site review. The selectmen must now decide whether to take the WBTSCC to court.

Selectman Jenness then asked the other two Selectmen to speak to the issue.

Selectman Musselman stated that the issue before the Planning Board applies more to the view, which has been blocked. They should be given an opportunity to take up the issue. The initial permit was for a wood fence. Preservation of the view is subject to the language of an agreement. There is a reasonable chance that a court will concur.

Mr. Magnant indicated that Town Counsel Donovan wants an indication that the Board of Selectmen want to proceed before he will take the matter further.

Selectman Jenness made a motion to have the Town Attorney go forward if the WBTSCC has not complied by the closing date for applications to be heard at the February Planning Board session.

Selectman Mills stated that he was against this. The WBTSCC applied and did what they thought was necessary. If he had been treated the way this owner was, he would have put up a higher fence.

The motion carried 2-1, Selectmen Musselman and Jenness voting yes, Selectman Mills voting no.

Robert Jesurum, a Town resident, then spoke. *Editor's note: Mr. Jesurum was an outspoken critic of the blocking of public access at the November 14, 2012 meeting and appealed the issuance of the building permit of the fence to the ZBA.* He stated that Rye Parking Regulation No. 11 discusses a turnaround at Sanders Poynt. He asserted that police vehicles turned around there and asked whether any of the Selectmen recalled the history relating to the turnaround.

Selectman Jenness responded that she had no idea. There is no date on the regulation. Prior to 1980 there are no minutes of the Board of Selectmen meetings available. However, there could be a mention in a Town annual report. Selectman Mills stated that if any money had been spent it would be mentioned there.

Mr. Jesurum continued, stating that work had been done to protect the fire hydrant there. Selectman Mills indicated that this was a State road.

Selectman Musselman indicated that a parking ordinance would have required Town Meeting approval, but that that might not be the case with a parking regulation.

Mr. Jesurum then asked about the meaning of non-public sessions on reputation. Selectman Jenness responded stating that anything that, if made public, might affect someone's reputation might be a reason for a non-public session.

Selectman Mills gave the example that if Mr. Magnant had become involved in a barroom fight the prior night this might be a reason for a non-public session. Selectman Musselman stated that this was not the topic for that evening's non-public session.

Encumbrances

Editor's note: An encumbrance related to amounts that were contractually committed to be expended during a particular year, from that year's appropriations, but would in fact be expended the following year.

Town Finance Director Gillespie stated that she was proposing general encumbrances of \$63,274.14, with an additional \$26,667.71 related to the Sewer Fund.

Selectman Mills stated that he understands the \$31,000 encumbrance for KRT, but asked about the one for King Information Systems. Ms. Gillespie responded that this relates to records retention. Other mentions included encumbrances for New England Printing for printing of the Master Plan, and for a telephone system for the DPW.

The motions to approve both sets of encumbrances carried unanimously.

Default budget

Ms. Gillespie addressed this issue. She stated that the default budget can only increase last years figures for contracted items. Anything beyond that must be adjusted

downward to the prior year's figures. She also decreased medical insurance numbers due to savings realized. This affects all departments. A one-time appropriation of \$159,000 was also taken out. Selectman Mills asked whether the operating budget was a reduction of \$43,390. Ms. Gillespie confirmed. The vote to approve the default budget carried unanimously. Selectman Mills commented that the \$43,000 reduction was not a great deal of money.

Warrant articles

Article A – Six wheel dump truck

Selectman Musselman noted that this article had received only one aye vote at the prior meeting and that Town Counsel had advised that this was probably an invalid vote. *Editor's note: See the notes of the December 10, 2012 meeting. Initially this matter had passed 2-1, with Selectman Mills voting no. After Selectman Mills stated that Selectman Jenness should have recused herself as her son works for the DPW, she did so, leaving Selectman Musselman's vote as the sole one in favor after Selectman Mills abstained.* Selectman Musselman moved to place this article on the ballot. Selectman Mills stated that he would not second the motion. Selectman Jenness stated that she was going to vote no as there were other big expenditures to be made in the coming year. Selectman Musselman stated that, since the dump truck was to be funded from the Highway Equipment Capital Reserve, there would be no affect on the tax rate. Article B, however, which added to the reserve, would affect the tax rate.

Selectman Jenness asked whether money from the reserve could be used if one of the existing trucks broke down and had to be replaced. Selectman Mills stated that there would be \$300,000 in the reserve if an additional \$100,000 in funding is voted this year.

Selectman Musselman noted that the motion to place Article A on the ballot had failed for lack of a second. Selectman Jenness agreed that there had been no need for a vote.

Article B – Funding of Highway Equipment Capital Reserve, \$100,000

One of the Selectmen stated that this article stands as is, with no changes. *Editor's note: This is the \$100,000 funding of the Highway Equipment Capital Reserve.*

Article C – Broadcasting of Town meetings, \$4000

Mr. Magnant indicated that there was a change to the language to refer to "meetings at Town Hall." This was a housekeeping change. *Editor's note: At prior meetings, the Selectmen had expressed concern that 2012 Petitioned Warrant Article 20 could be construed to require televising of meetings when held at other sites, such as the Junior High School. The amount provided is sufficient only for one fixed camera and microphone in the Town Hall Courtroom.*

Article D – Old Police Station Evaluation, \$9800

This article was amended to refer to the “Circa 1899 Trolley Barn,” as suggested by Selectman Musselman, to be consistent with the next warrant article. *Editor’s note: The Old Police Station had at one point been used as a trolley barn according to historical records.*

Town Hall Schematic Design, \$60,000

Selectman Musselman suggested an amount of \$60,000 for this warrant article. He then read the warrant article, which refers to the preparation of “schematic designs for the restoration of the 1839 Town Hall building, including the restoration of the Great Hall and its curvilinear staircases, and the construction of additional new town office space in accordance with the November 2012 report of the Town Hall Space Needs Committee.” It also refers to “determination of long-term recreational program needs...” and “consideration of the renovation of the ca. 1899 trolley barn to provide additional space” if Article E is approved. *Editor’s note: It appears that this reference should have been to Article D above.* It proposes two schematic designs and cost estimates, the first with an eastward extension no more than one-third of the length of the existing building, the second a new town office building located to the east of the current one. Following completion of the schematic designs, a facilities master plan would be prepared.

After reading the warrant article, Selectman Musselman noted that this was a long paragraph. He thanked Victor Azzi, a Town resident then present in the audience, as well as Town staff, for good input. Selectman Jenness stated that Mr. Azzi’s ideas had been incorporated.

Victor Azzi then spoke, agreeing that this had come a long way. He then suggested some changes. Selectman Mills interrupted, stating that these changes could be made at the deliberative session. Mr. Azzi continued, indicating that what he was suggesting were improvements. The reference to the second schematic design does not acknowledge the architectural integrity, he stated. He continued with some other suggested changes.

Steven Borne, a Town resident then spoke. He indicated that this is the first time that he had heard this language. He suggested starting with what is being done for the \$60,000, listing the four steps, then providing the details. He expressed concern with the focus on Town Hall. Selectman Musselman responded that there was a problem with including certain other facilities. There is no provision for a study of the Recycling Center, for example. That would involve the study of future solid waste facilities. This cannot be studied in 6 months and that study is not budgeted.

Mr. Azzi stated that he believed that the intention of the Board of Selectmen was to do something about Town Hall office space needs. The proposal was to provide context, and not to ignore other things. However, the question of who will be overseeing the work is not addressed. Will the Board of Selectmen oversee this or will there be a Building Committee?

Selectman Jenness responded that that is a good question. Selectman Mills stated that the warrant article may not even pass. Selectman Musselman stated that a Building Committee would be considered, and also a subcommittee including Recreation. He anticipates a similar structure to that this year. *Editor’s note: This is an apparent reference to the Space Needs Committee.*

Peter Crawford, a Town resident, then spoke. He stated that he agreed with Mr. Borne's suggestion that the language be shortened and simplified. He also stated that he agreed with Mr. Azzi on the need for a Facilities Master Plan. Mr. Crawford indicated that he had heard references to Recreation and the Old Police Station in the language of the warrant article and to the Facilities Master Plan being prepared after completion of the schematic design. He asked whether the determinations relating to Recreation and the Old Police Station would provide input prior to the schematic design phase. Selectman Musselman confirmed.

Mr. Crawford then stated that a maximum extension of 1/3 of the building length would not be sufficient to accommodate even the low end of the Space Needs Committee's recommendation of 9,500 to 11,500 sq. ft. He asked what length the 1/3 would be applied to. Selectman Musselman stated that the 1890 addition would be included, and stated that this would work out to 26 feet. He stated that no basement could be provided for. He agreed with Mr. Crawford's conclusion, and stated that an "L-shaped" building would be required to provide sufficient space. They were operating within a difficult set of constraints and wanted to heed the determination of the Heritage Commission. *Editor's note: according to the drawing of the building on page 54 of the AG Final Report (available on the Town web site, www.town.rye.nh.us by clicking on Departments, then Selectmen's Office, then Town Hall Space Needs, then Final Rye Study), the existing building is approximately 81 feet long and varies in width from 38 to 34 feet. Two stories of 26 by 34 feet would provide only 1768 sq. ft. additional, which when added to the existing building of approximately 6000 sq. ft. would fall far short of the approximately 9,500 to 11,500 sq. ft. space need arrived at by the Space Needs Committee (see Town web site, click on "Boards and Committees," "Rye Town Hall Space Needs Committee," then "Rye Space Needs Proposal").*

Article G

It was stated that there were no changes to this warrant article. *Editor's note: at prior meetings Article G had provided \$170,000 for the Goss Farm Barn. The Selectmen had voted to include this on the ballot.*

Article H

It was stated that there were no changes to this warrant article. *Editor's note: at prior meetings Article H had provided \$49,620 for an additional firefighter/paramedic for 6 months, however this had been rejected. It is unclear whether this is a reference to that article or a new Article H. See below, it appears that this designation may have been reused for the budget.*

Article I – Elwyn Rd. abandonment of old Elwyn roadbed

It was stated that this is a new warrant article. The matter has been sent to Town Attorney Donovan. A provision is being added to permit the Town to have continued access to the property for a storm drain line. *Editor's note: see above. This relates to property near Foye's Corner.*

Articles L and M

Selectman Mills asked whether they could skip ahead as Police Chief Walsh wanted to leave. Selectman Mills asked whether Ordinance Three on skateboarding and roller skates would stand as written. Mr. Magnant confirmed. *Editor's note: See notes of May 14, 2012 and May 29, 2012 meetings and reference to Article L below. Selectman Mills' reference is apparently to the amendment to this ordinance prohibiting bicycles from riding other than single file adopted at the May 29, 2012 meeting. At that meeting, it was stated that the amendment by the Board of Selectmen would be effective only until the next Town meeting.*

The discussion then turned to a new section 8 of the Beach Ordinance. That section would prohibit organized events on "any town beach" without prior approval of the Board of Selectmen and liability insurance. Selectman Musselman asked whether kayaking would be included. Mr. Magnant responded that Town Attorney Donovan had not looked at this. Selectman Musselman asked whether the "drop off" north of Odiorne was a "town beach." Mr. Magnant responded that it was not.

Victor Azzi asked whether "town beach" included all beaches in the Town of Rye. Selectman Mills asserted that it did. Selectman Jenness asserted that Town ordinances could not be enforced on state beaches. Selectman Musselman asserted that the waterfront south of the jetty at Rye Harbor is privately owned. The consensus appeared to be that the Town ordinance would be enforceable on private property. Police Chief Walsh agreed with the proposed ordinance and indicated that the form would be amended to provide for the new ordinance, if passed.

Mr. Azzi also asked about the word "camp," indicating that it had connotations that might not have been intended.

It was agreed that this article will be taken up again at the meeting on January 14, 2013.

Greenland incident report

Selectman Musselman then stated that the report on the incident in Greenland had recently come out. *Editor's note: this is an apparent reference to the incident in which Greenland's police chief was shot dead during a drug arrest at a residence in Greenland.* Selectman Musselman stated that the report made a number of suggestions, and asked Police Chief Walsh whether Rye could be doing anything differently. Chief Walsh responded that Rye was ahead of the curve and was considering strategy and intelligence information before arrests of this type. Selectman Mills referred to the Pioneer Rd. situation. *Editor's note: This is an apparent reference to a standoff there over the summer.* Selectman Musselman stated that Rye was part of a team, which was utilized there, while Greenland was not a member of this team.

Article J – Old Ferry Landing Road Relocation

It was indicated that a reference to a plan date of 12/11/12 would be added, and that the plan would be posted at town hall.

Article K1 – cutting of 10 trees at Recreation Area

Editor's note: This apparently addresses the clearing of an area for an expanded parking lot at the Recreation Area.

Mr. Magnant stated that, if 11 trees must be cut down, they could not proceed. Mr. Azzi asked what the definition of a “tree” was. Selectman Musselman indicated that they could add a provision defining trees as anything greater than 4 inches in diameter, but that would be too much detail.

Article L – Bicycling regulation

It was stated that there was no change to this. *Editor's note: see above reference to Articles L and M above.*

Article N

Discussion related to this referenced Richard Rd., Browns Ct. and Power Ave. No changes were made. *Editor's note: See notes of December 10, 2012 meeting. This warrant article apparently refers to no parking on these roads, which are all near Jenness Beach.*

Article O – Recorded votes

Cindi Gillespie indicated that this is all new language. Selectman Jenness read the warrant article, which refers to RSA 32:5, V-a and RSA 40:13, V-a. *Editor's note: These RSAs permit the Town Meeting to require that votes on budget items and warrant articles by the budget committee or Board of Selectmen be recorded, with a numerical tally included on the ballot.* Selectman Jenness stated that this article “will make Joe happy.” Selectman Mills agreed, stating that at times he tells residents that he was opposed to a particular action. The motion to include this article on the ballot carried unanimously.

Article H -- Budget

This warrant article was read. It refers to a default budget of \$8.38 million and a recommended budget of \$8.68 million, including sewer and outside details. Selectman Musselman indicated that the difference, apparently relative to last year's adopted budget, was \$49,000. Apparently referring to the difference between the recommended budget and the default budget, Selectman Musselman stated that they would be hard pressed to achieve a reduction of \$300,000. Selectman Mills indicated that each department could be given a percentage reduction. Selectman Musselman responded that they should not leave with the thought that the difference was \$50,000. Hampton had a default budget for four years running and had to deal with it.

Non-public session

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