

NOTES OF JANUARY 28, 2013 RYE BOARD OF SELECTMEN MEETING
Final Revision B – Provided by the Rye Civic League

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

Present from Town Hall Space Needs Committee: Ned Paul, Phil Winslow, Paul Goldman, Curtis Boivin

Also present: Joey Cresta, Portsmouth Herald

Approval of Minutes

The minutes of the January 14, 2013 meeting were approved with minor changes.

Public hearing on the sale of Town land near Foyes Corner

Editor's note: This was the second of two hearings. See notes of January 14, 2013 and November 14, 2012 meetings for further details. At the November 14, 2012 meeting, Selectman Musselman stated that the purchase price for the land was \$7500.

Mike LaBrie described the land located near Foyes Corner. Four parcels are being consolidated into one for development and taxation parcels. The parcel being acquired is 499 square feet. There were no public comments or questions.

Public hearing on Growing Green Initiative Grant

James Raynes, Chairman of the Conservation Commission, spoke about the three year, \$28,400 grant from the State Conservation Committee. Acceptance of the second year of the grant, in the amount of \$5965, is being sought. This grant will be used for educational purposes in conjunction with the local schools, including the Junior High School, which will be maintaining a garden at the Goss Farm.

There were no public comments or questions. The Selectmen unanimously approved acceptance of the grant.

Presentation of Town Hall Space Needs Committee

Ned Paul conducted a slide presentation. He stated that the goal was to go through the final report of the Committee and obtain approval. *Editor's note: The Space Needs Committee report had already been accepted at the November 26, 2012 meeting.*

Mr. Paul described the Town Hall as a "crown jewel" which had come into disrepair. The Great Room (*Editor's note: also called the Great Hall, or the auditorium*) had been butchered to make room. Evaluation of the structure has revealed that it is solid. The stairs are hidden; these could be beautiful. The wiring is dangerous, there is chipping paint and the building is not ADA compliant. The employees are strapped for

space. Recent investments have been made. The recent geothermal system upgrade was done so that it could be improved. There is a new roof and a small solar panel.

Mr. Paul stated that the Space Needs Committee came about because of 2012 Warrant Article 27. He read that article and the charge of the Committee. This public meeting is a part of the charge: achieving consensus. While every nook and cranny of the Public Safety Building was viewed, the Committee decided against that location for security reasons. The existing site was determined to be the optimal location to meet the needs for 30 years, including providing space for the Recreation Department. They also recommend that the Old Police Station be evaluated. It could be refurbished for Town needs. Access to the meeting room in the basement of the Public Safety Building should also be provided. There is also a need to address records retention. If records can be made electronic the space needed can be reduced.

Selectman Jenness stated that there are actually three warrant articles. *Editor's note: these are 2013 Warrant Articles 4, 5 and 8.*

Marty Klenke spoke up, stating that he attended a few meetings of the Space Needs Committee. He knows that the Rye Civic League has done a good job presenting information. Ned Paul commented that 33 percent of the report involves taking public input into consideration.

Selectman Mills asked Mel Low what his view was. *Editor's note: Mr. Low was on the Space Needs Committee and is a former Selectman.* Mr. Low stated that he agreed 100 percent. There were arguments about other sites but the existing site is the best one. The public doesn't know. They are still "ticked off" about the Public Safety Building.

Curtis Boivin, also a member of the Space Needs Committee, spoke about ADA requirements and the federal mandate. He expressed concern about a situation similar to Wolfeboro. Kensington's Town Hall has been closed down, with everyone in temporary trailers. This could easily happen in Rye. It would be easy to slip and fall on the staircase. The Town needs to be proactive.

Selectman Musselman asked about the "other 90 percent."

Paul Goldman, a member of the Space Needs Committee and Chairman of the Budget Committee, spoke about low turnout at Budget Committee meetings. This is a systemic issue. People don't attend a lot of meetings.

The discussion then turned to how to get the word out. Selectman Mills suggested that the Committee send a letter to the editor. Mr. Low stated that there is also the Town newsletter. Selectman Musselman suggested that photographs of the storage and wiring be provided.

Mr. Klenke stated that most people think that the building has been there for 80 years and ask why another 10 years would not be a problem. He suggested pictures. People have to say that this must be done.

Phil Winslow, also a member of the Space Needs Committee stated that, last time around, everyone was surprised. There had not been a lot of planning.

Selectman Jenness stated that nothing has ever been done the first time around.

Mr. Winslow suggested that signs be made up, encouraging a yes vote on the warrant article. Selectman Musselman stated that taxpayer money could not be spent on this.

Selectman Musselman stated that everyone should recognize what the Committee has done. This was a huge effort by dedicated people that established a new direction.

The Town is in a better place this year than last. The building is smaller and cheaper. They are now looking at the Old Police Station. There is now focus. The Great Hall has been determined to have great value. He believes that a community consensus has been achieved. This has been a hard job, but a way was found where everyone can “row” together.

Selectman Mills suggested that a shorter version of what Mr. Paul had presented be available for the Deliberative Session. Mr. Paul agreed. Mr. Mills also suggested an open house at the Town Hall. The trap door under the stage could be opened so everyone can see the wiring.

Mr. Paul commented that millions of dollars would not be spent at this point. Selectman Musselman continued, asserting that only schematic designs would be provided showing what the Town Hall might look like. They thought about other technical issues to move the project forward, but agreed to limit it to the schematic design.

Selectman Musselman moved to approve the report, with Appendices. The motion carried unanimously. *Editor’s note: Victor Azzi had, at several meetings of the Board of Selectmen, complained that documents that he had written had not appeared as appendices to the Space Needs Committee report. At the November 26, 2012 Board of Selectmen meeting, Space Needs Committee Chairman Ned Paul had referred to certain documents submitted by the Concerned Citizens not being included as they were somewhat dividing and not “PC,” an apparent abbreviation for “politically correct.” Terms such as “flawed” were used, Mr. Paul said. See page 4 of the notes of the November 26, 2012 meeting.*

Selectman Musselman then described the two alternatives contained in the warrant article. One involves an addition off of the back. Some might say that this is 20 feet, others 26.8 feet. *Editor’s note: The warrant article refers to “one-third the length of the existing building,” in an easterly direction, i.e. in line with the existing building, as a limit.* Selectman Musselman continued, stating that they would let the architect deal with that issue. The second option involves an annex, with a new footprint. Selectman Musselman stated that the warrant article is carefully crafted to take into account all concerns. He acknowledged that the one-third is not the width. This would probably mean that the building would need to go in another direction, or that a separate building would need to be looked at.

Editor’s note: The building width is approximately 34 feet. With two floors and a maximum length of 26.8 feet, a footprint for further expansion of 911 square feet would be the maximum for a straight back extension. When added to the 6168 square feet of the existing Town Hall (excluding the belfry of 250 square feet), only approximately 8000 square feet would be provided with this expansion if it is two stories. With three stories, approximately 9000 square feet could be provided. However, three floors may not be feasible as digging a basement might undermine the existing structure, and the height of the existing building would make a third floor difficult to fit in. Furthermore, such a small third floor would result in little gain because much of the space would be occupied by stairway and elevator access. In any event, these space figures fall well under the 10,500 square feet, plus or minus 10 percent, which the Space Needs Committee came up with for the total space need. This appears to dictate an “L-shaped” building or an

annex, unless some of the space need is met at another building, such as the Old Police Station.

Mr. Musselman spoke about Article 5, \$9800 for the Trolley Barn, a.k.a. Old Police Station. This is bare bones. Environmental concerns are a non issue as revealed by all of the records. Environmental concerns at that facility are part of the lore in Rye. This is a separate warrant article as the issue has not been considered before by the Town Meeting. Eventually this will be one effort.

Along with Article 8 on records and document management, these three warrant articles parrot the Committee's report and the public discussion.

Paul Goldman stated that the concept of a Facilities Master Plan is a good one. This is in keeping with the Capital Improvement Program ("CIP") plan.

Selectman Musselman stated that caution should be exercised with respect to other sites. Although the Public Works complex would be included, they are not proposing a waste facilities study. Money will need to be spent to find out what is needed in that area. In some cases there is confusion as to where they are. Selectman Musselman then turned to Lee Arthur, Recreation Director, and said that that was the case with Recreation. He told her not to take it personally. *Editor's note: The CIP plan has a \$3.5 million Recreation Community Center planned for 2014. However, in discussions before the Space Needs Committee, Ms. Arthur and representatives of the Recreation Commission recognized that it would not proceed according to that schedule. They provided no detailed support for the \$3.5 million. They emphasized that space would need to be provided in the Town Hall for Recreation.*

Proposed RFP relating to the Solid Waste District

Selectman Musselman stated that he would recuse himself from this discussion as this is what his firm does.

Public Works Director Dennis McCarthy stated that they are looking at the contract for the ten towns in the waste disposal district. The contract is up in 2015. It's no secret that Hampton, which has a 40 percent share, wants out of the district. The vote to exit would be a weighted one, so Hampton would need at least one other community to go along. Payments of \$.67 per ton are made to the district to fund it. There are two household waste disposal days, the larger of which is typically held in Hampton. This would need to be changed if they exit.

The intent is to put this out to bid, Mr. McCarthy continued. The towns do not want to renegotiate with Waste Management.

Selectman Jenness asked what the Board of Selectmen should do now. Mr. McCarthy said that nothing needs to be done yet. A good time for Hampton to withdraw would be when the contract ends.

Parking enforcement job summary

Police Chief Kevin Walsh addressed this issue. The job description is crafted to reflect what the personnel do. These are part time jobs. One person works with nonpayments and the court. The other accounts for deposits. The auditors had recommended that these be separate people.

Selectman Mills asked whether there was an age limit on the position. He joked that Mel Low had expressed interest. Chief Walsh responded that the job requires filling up the mopeds. The tanks can be heavy. Selectman Jenness commented about a reference to exposure to toxic chemicals. Chief Walsh responded that this would be rare, but ongoing police business sometimes requires dealing with this.

Selectman Mills requested that the story about the former chief's friend be related. *Editor's note: the friend had apparently been hired as a parking enforcement officer.* Town Administrator Magnant joked that the spelling of the person's last name should be provided for the Portsmouth Herald. *Editor's note: Joey Cresta of the Herald was in the audience.* Chief Walsh related that the person had not made it ¼ or ½ mile before having a problem. Selectman Mills continued the story, stating that the person had "nailed a telephone pole," and was done for the summer.

The job description was unanimously approved.

Fire Department, acceptance of \$500 donation

Fire Lieutenant Gallant spoke about this issue. Selectman Mills asked whether the money would all be spent in 2013. Lieutenant Gallant confirmed. Acceptance of the donation was unanimously approved.

Fire Department, approval of \$540 donation in memory of Frank Smith

Fire Chief Sullivan stated that the money had arrived from San Mateo, where Mr. Smith had a connection. He joked that Lieutenant Gallant wanted to spend the money on a vibrating recliner. Acceptance of the donation was approved unanimously.

Heritage Commission, acceptance of \$1100 for Town Hall

Selectman Musselman stated that, last time, he had thought that a list of individuals and amounts was needed. Then he said, oh I get it, never mind. Acceptance of the donations was approved unanimously.

Goss Farm, acceptance of \$1200 from Mae Bradshaw

Acceptance of this donation was approved unanimously.

Heritage Commission, donation of \$50 from Priscilla Jenness

Selectman Jenness commented that each of the Heritage Commission members had made a donation. The donation was accepted 2-0, Selectman Jenness abstaining.

Sign at Webster at Rye for Art in Bloom event

This sign was approved unanimously.

Signs for Rye Little League

The sign requests are for Foyes Corner, Parsons Field and Dow Ln. at Washington Rd. All signs are for the period from January 24 to February 4. Selectman Musselman stated that he noticed that the sign at Foyes Corner was already up. Selectman Mills noted that the sign on Dow Ln. was on the Swist Property. Mr. Swist is a call firefighter, he said.

Selectman Musselman noted that the sign at Foyes Corner is on Sagamore, in the Town right of way, and can be approved. *Editor's note: Route 1A, which enters and then exits the roundabout at Foyes Corner, is a State road.*

Phil Winslow spoke as Chairman of the Historic District Commission. He stated that some signs in the Historic District are on telephone poles. That is illegal. There is one there now.

Selectman Musselman stated that signs are supposed to be erected after they have been approved. Approval for a lot of signs, for example for yard sales, is not being sought. The Historic District Commission might be concerned about this.

Mr. Winslow responded that they are chasing these one at a time.

Selectman Mills stated that the "lady" who removed the signs just left. *Editor's note: This is an apparent reference to Jane Holway, who had just left the meeting.*

Dennis McCarthy commented that there was also a sign at the transfer center. Approval is typically sought from the Board of Selectmen for these.

Selectman Jenness commented that the transfer center should be added to the approval.

Selectman Musselman joked that the signs would need to be taken down and put back up. He commented that the size restrictions on signs would apply to both signs. Foyes Corner is not the Town's issue.

The motion to approve the signs carried unanimously.

Ambulance billing rates

Fire Chief Sullivan addressed this issue. They have done a survey of other towns. The current rate of \$389 is slightly above the Medicare rate, and one of the lowest on the seacoast. A private provider in Manchester had wanted to raise its rate from \$1600 to \$2400. A lot of providers bill way above the Medicare rate. Some insurers may pay these.

Selectman Mills commented about the "free" ambulance from cell tower money. Chief Sullivan asked whether they could get a "free" ambulance next year. Selectman Mills said that he had not said that. *Editor's note: The Selectmen had recently rejected Chief Sullivan's request for a warrant article providing for a second ambulance. The ambulance revolving fund is supported in part by money that the Town receives from cell tower rentals.*

Selectman Musselman asked about the cost per trip and whether the ambulance charge was covering costs. Chief Sullivan affirmed, except that the full-time salaries are in the Fire Department budget. Selectman Musselman clarified that he was talking about the costs, excluding capital costs. Chief Sullivan continued to affirm.

The motion to approve continuation of the prior ambulance fee was confirmed unanimously.

Lee Arthur, Recreation Survey results

Ms. Arthur stated that the Master Plan is being updated. The survey was due August 15. They looked at 24 facilities in Rye. There is feedback relating to the programming. She asked that the comments compiled by Marty Klenke be distributed to the departments which they affect. For example, there were 300 comments relating to the beaches. There are other comments relating to the Conservation Commission, the Rye School Board and Public Works. She said that the residents are really pleased. Mr. Klenke interjected that there were a lot of favorable comments. The beaches are a big hit. There were comments relating to parking, services, and dogs.

Selectman Jenness stated that there were a lot of comments. She asked whether a consistent pattern had emerged. Mr. Klenke stated that there were comments about parking enforcement and restroom cleanliness. The recreation house and trailer got low marks. Overall the comments were pretty positive. Selectman Jenness said that she thought so too, except with regard to the dogs. Mr. Klenke commented that there were two sides to that question.

Selectman Musselman referred to comments about trails. Mr. Klenke responded that these encompassed both bicycle and walking trails. Paths along the side of the street were preferred to those through the woods. Selectman Jenness referred to comments about the lack of maps. Selectman Musselman stated that a printed map is needed showing conservation areas, trails and parking. He asked about the next step.

Ms. Arthur stated that the Master Plan would be updated. They want permission to send the information to the departments so they can see what the public is thinking.

Selectman Musselman suggested that, prior to a capital facility being proposed again, that the Master Plan be run by the Board of Selectmen. He said that there would be no expenditures on capital items before the Board of Selectmen decided to move forward.

Mr. Klenke stated that the CIP sheets are part of the Master Plan.

Mr. Raynes, Chairman of the Conservation Commission, stated that the Goss Farm and the Town Forest should be posted for no hunting. It has been published that Rye has an abundance of deer. This is causing problems as hunters are coming into Rye. However, herd thinning is needed in Garland Woods, near the Airport, and at "CV Acres." Selectman Mills stated that he should start with the Police with regard to no hunting. Mr. Raynes stated that he is starting with "you" first.

Discussion then turned to another item related to trees. *Editor's note: there is a warrant article to authorize the cutting of less than 10 trees for a parking lot at the Recreation Area.* Ms. Arthur stated that an assessment of the Little League field had been done by the insurer, Primex. Various recommendations were completed, except that involving an arborist. Urban Tree was called in. There are two dead maple trees, and four dead pine trees. Removal of these is recommended. There is also dead limb removal and pruning needed, as well as some stump grinding.

Selectman Musselman asked whether this was in the budget. Ms. Arthur responded that there was \$2500 for this type of work. They would need to reallocate some money.

Selectman Mills suggested that she come to Saturday's Deliberative Session and make a presentation to increase the budget. Selectman Musselman interjected: "for \$6000?" Budget Committee Chairman Paul Goldman stated that, process wise, this would need a new vote by the Budget Committee and the Board of Selectmen if there was a change to the bottom line. Reallocating between line items was not a concern for the Budget Committee.

Ms. Arthur commented that, within the past 10 years, there have been microbursts in the area where the public is. Selectman Mills asked whether the issue was pine trees. Ms. Arthur confirmed, stating that there were a lot of these, some 70 feet high. She indicated that they would reallocate funds. Selectman Mills suggested that they pass on the stumps and do the pine trees. Ms. Arthur agreed, and suggested that they could also minimize pruning.

Selectman Musselman stated that, with a \$9 million budget, that level of discussion regarding the budget at the Deliberative Session would be inappropriate. Someone would ask why it needed to be done now.

Selectman Musselman asked whether Jim Raynes, Conservation Commission Chairman, was having heartburn. Mr. Raynes responded that, for the sake of harmony, he would keep this to himself. Then he continued anyway. He stated that they should have a forester come in and do this correctly.

Ned Paul commented that the purpose was to keep the insurance company happy.

Selectman Musselman stated that there were comments about "dog poop" in the Town Forest. He wondered when Mr. Raynes would get to that issue. Mr. Raynes responded that he would restrict dog walkers first.

Alex Herlihy letter relating to Town Hall warrant article

Selectman Jenness read the letter into the record as Selectman Musselman stroked his moustache vigorously.

At the conclusion, Selectman Mills stated that any committees would be premature. This must go through Saturday's Deliberative Session and then the vote in March. Selectman Jenness noted that the letter ignored the fact that one Board of Selectmen cannot bind another. There could be a different Board after the election. She stated that she doesn't know who would be on the Committee. It won't be the same exactly. Selectman Musselman commented that it could not be assured that people would be willing to serve.

Selectman Jenness stated that she was sure that there would be representatives from the Historic District Commission and the Heritage Commission. There would be people with construction and financial expertise. The warrant article dictates the charge. She is sure that the process will be open. It certainly was the last time around.

Paul Goldman stated that he would speak to the process and the comments that "Craig" made earlier. When there is consensus and they move forward that will give insight to the Committee. It went pretty well last time. What is in the warrant article in its final form will be a driver.

Ned Paul commented that he had concerns about expertise and public opinion.

Selectman Musselman commented that it was the same sort of topic as earlier. Mae Bradshaw had wanted the meeting here at the Library so they could get a lot of people to attend.

Selectman Jenness stated that, if there were changes to the warrant article at the Deliberative Session they would need to reopen the issue.

Public Service New Hampshire plans

Town Administrator Magnant stated that he had met with PSNH representatives regarding the grid in Rye. There are plans that involve shutting down the electricity on Central Rd. Selectman Mills laughed. *Editor's note: he lives on Central Rd.*

Public Works Director McCarthy stated that the plans encompass a number of power shutdowns. They want to increase a 416 volt line to 12,500 volts. This compares to lines in Portsmouth, on Lang Rd., that are 34,500 volts. With extra power in the center of town, when a section is lost the feed can be made to come from a different direction. They have evaluated 132 poles and replacement of 57 transformers is being considered. A couple of step down transformers on Washington Rd. and Lang Rd. will be needed. Scenic road approval to clear trees that are hazardous to the wires will be needed. The voltages are still more tree friendly than a higher voltage might be. The new setup will be more reliable near where Selectman Mills lives.

Selectman Jenness asked whether the electricity would be off for long when the temperature was below zero. Mr. McCarthy responded that the planned work would occur in the spring and summer. The power would be off for only a few hours.

Selectman Musselman interjected that this is good news. The PSNH assessment would be going up.

Selectman Mills asked what the truck with wood that went by his house was for. Mr. McCarthy responded that it was going to the Goss Farm Barn. He had told them not to drive by Selectman Mills' house, he said.

Mr. Magnant stated that he believed that these plans were a direct result of the Board of Selectmen having called them on the carpet. *Editor's note: see notes of May 29, 2012 meeting.*

Legal opinions on Petitioned Warrant Articles

Selectman Musselman stated that the Selectmen had received legal opinions relating to the Petitioned Warrant Articles. The primary issue is with the CIP article.

Peter Crawford asked whether he could receive a copy of the legal opinions, so that the article proponents would not be "blindsided" at the Deliberative Session. The response was that a copy could not be provided as the opinion was marked "confidential from counsel." Selectman Musselman further responded that releasing the opinion would require that the Board of Selectmen consider the issue of releasing it and vote to do so. They just got the opinion and would not be meeting again prior to the Deliberative Session.

Cecilia Azzi referred to concerns last year relating to the article involving the election of ZBA members, and also to no money having been attached to certain warrant articles. *Editor's note: Town Counsel Michael Donovan had expressed an opinion that,*

notwithstanding the decision by the voters to switch to an elected ZBA, the vote should not be considered effective for another year, thus permitting the Board of Selectmen to appoint two members to three year terms during early 2012. Also, the Board of Selectmen had not implemented video coverage of meetings, despite the approval of 2012 Warrant Article 20, citing a lack of funds provided by the Warrant Article. This led to a 2013 Selectmens' Warrant Article providing funding.

Selectman Mills responded that legal opinions had not been available beforehand with regard to those issues.

Selectman Musselman continued, stating that the assessment process warrant article has no money attached to it. There is nothing that can be done, as money cannot be added at this point.

With regard to the CIP article, 3 or 4 of the issues are not appropriate. The public hearing is fine. The Conflict of Interest Warrant Article has implications that will be discussed at the Deliberative Session.

Victor Azzi stated that this is the second year in a row that this sort of thing has happened. He will frame his question in general terms. There is some mismatch in terms of the Board of Selectmen doing what they think is right vs. what the citizens think is right. Shouldn't the taxpayer paid legal counsel provide his opinions in a timely fashion? Now he is hearing that people won't hear until 10:00 a.m. on Saturday morning that something is wrong.

Selectman Musselman stated that last year he pleaded to get something out in November. Mr. Azzi asked whether, if the Warrant Articles are provided in November, whether they will get an opinion from legal counsel. Selectman Musselman responded that they would, although it would involve spending taxpayer money on a citizen prepared warrant article. Mr. Azzi requested that dates be provided so that they could be built into an overall schedule. Mr. Musselman stated that this could not be done by law. They could say that complex warrant articles should be provided by November 1. Now everyone is stuck.

Selectman Jenness stated that she believed that citizens would do research and determine what is needed. Selectman Mills asked whether warrant articles could be amended to add money. Selectman Musselman stated that Town Attorney Donovan had said that this could not be done.

Mr. Crawford stated that he believed that the Board of Selectmen could confer with counsel by telephone without having to schedule another meeting. At that point, the Board of Selectmen could vote to release the opinion, and this could be done prior to the Deliberative Session. Selectman Musselman stated that they would look into this.

Selectman Mills asked Mr. Crawford what had happened with regard to the appeal to the Attorney General on the ZBA issue that he and Mae Bradshaw had been involved with. Mr. Crawford responded that the matter was moot as Benjamin King had resigned.

Editor's note: Mr. King was reappointed by the Board of Selectmen at the March 26, 2012 meeting. At that meeting, an opinion letter by Attorney Donovan had been read, stating that the Board of Selectmen could lawfully appoint persons to fill two expiring terms, notwithstanding the Town's vote, on March 13, 2012, to elect the ZBA. When the Board of Selectmen was about to fill the second position at its April 9, 2012 meeting, Mae Bradshaw interrupted, provided a letter, and asserted that filling open ZBA positions by

appointment was not lawful. Subsequently, Mr. Crawford wrote a letter to the Board of Selectmen taking the same position, citing slightly different reasoning. The second open position was never filled. Benjamin King resigned without ever having attended a ZBA meeting after his reappointment. Alternates have been serving while the unfilled regular terms remain unfilled. The March 2013 ballot has three open ZBA positions to be filled: the two terms that expired in 2012 (to be filled for the remaining two years) and an additional term expiring in 2013 (to be filled for three years).

Selectman Mills then stated that Frank Drake and Shawn Crapo were still on the ZBA. *Editor's note: These individuals' terms expire in 2014.* Mr. Crawford responded that he and Ms. Bradshaw had gotten everything that they wanted, as three positions would be filled by election in 2013.