

NOTES OF MARCH 11, 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, Cindi Gillespie.

Approval of Minutes

The minutes of the February 20, 2013 meeting were approved without changes.

Seacoast Lacrosse, request to use Parsons Field

Selectman Mills stated that the letter indicates that Lacrosse attendance is down. He asked why the Lang Corner or Recreation Field could not be used instead. The complaints are coming from use of the Parsons Field, he said. Selectman Musselman suggested that the matter be tabled, and the proponent asked to come to the March 25 meeting. *Editor's note: the proponent came later in the meeting and the issue was again addressed, see below.*

Request for lantern release, DS Cancer Foundation

Selectman Mills requested that this issue be taken out of order so that the proponents could leave. Alissa Del Tufo Shintzius spoke to the issue. They want to release lanterns on a Rye beach on April 19, 2013 from 7:00 to 9:00 p.m. to honor those that had lost their lives to cancer. *Editor's note: see notes of September 10, 2012 meeting, referring to Selectman Jenness having discovered one of these devices on her lawn.* Ms. Shintzius stated that they planned to light up the lanterns and launch them. Selectman Jenness stated that she had brought one of these to a meeting 3-4 months ago. She stated that she had found it on her lawn. Selectman Musselman said "of all of the peoples' yards." Laughter ensued. Selectman Jenness remained serious and not amused throughout. She continued by stating that the wire rim was not biodegradable and could be bad for birds and aquatic life.

Fire Chief Sullivan presented a document, and referring to the State Fire Marshall, stated that the lanterns were prohibited as they constituted an unattended fire. One had landed atop a gasoline tank at a race track in Loudon and another had caused a house fire in Ossipee.

Selectman Musselman indicated that they had not known in advance about what Chief Sullivan was going to say. Selectman Jenness stated that this was not personal. Her husband had died of cancer. Selectman Mills stated that this "state thing" throws a monkey wrench in this. Chief Sullivan stated that, if the lanterns were tethered they would be construed as controlled. This might be OK if allowed by the property owner.

The discussion then turned to which beach Ms. Shintzius wanted to release the lanterns from. She responded that she had no preference. Selectman Mills stated that Sawyers is the only beach owned by the Town. Selectman Musselman stated that the tether would need to non-burnable. Selectman Jenness asked whether some of the persons attending would be from out of town. Ms. Shintzius affirmed. Selectman

Jeness then stated that this might be a problem as the parking at Sawyers is by permit only.

Selectman Mills moved to table the issue, which motion carried unanimously.

Request to distribute literature on identity theft at Recycling Center

Bob Sheesley addressed his request to pass out literature on February 23 and March 2. He has stacks of this government (FTC) book and wants to pass them out at the “dump.” Selectman Mills corrected him, saying that it was the “Recycling Center.” Mr. Sheesley continued, stating that identity theft is the fastest growing white collar crime. Selectman Musselman asked whether this was work related. Mr. Sheesley responded that he does work with Legal Shield. However he’s not planning on selling anything at the Recycling Center.

Selectman Musselman responded that this should be acceptable as long as there is not a sticker on the document. Anything else would be canvassing for a business at a public facility. Allowing the Girl Scouts to sell cookies is about as far as they have gone. Selectman Mills and Public Works Director McCarthy stated that they did not have a problem. Mr. McCarthy stated, however, that there were other things scheduled for the 23rd. The conflict would need to be resolved. Police Chief Kevin Walsh stated that he had no objection. He would stop by to check it out.

The motion to approve passing out the literature passed unanimously. Selectman Mills stated that he got better results than the other two. *Editor’s note: see below regarding Cub Scout and Girl Scout sales on the same date.*

Fire Chief Sullivan joked that his wife’s identify had been stolen. She is not the same woman he had married 44 years ago.

Address change request from Guytons

This is a request to change an address from Ocean Blvd. to South Rd. Mr. Magnant stated that the driveway is on South Rd. Selectman Musselman asked whether there were any issues with the mail. Selectman Mills responded that there is no mail delivery in that area. Fire Chief Sullivan stated that the issue had been cleared with the 911 Bureau. The motion to change the Guytons’ address from 2491 Ocean Blvd. to 4 South Rd. carried unanimously. Mr. Magnant stated that the record should show that the Public Safety departments have reviewed the issue and approved it.

Acceptance of \$4493.60 in funds for Fire Department

Chief Sullivan stated that this a large pool involving rescue swimmer training at Hampton Harbor. The motion to accept the funds carried unanimously.

Acceptance of funds from Cibrowski Assoc. and Phil Winslow for warrant article signs

Editor’s note: These donations are apparently related to the signs authorized by the Heritage Commission for Article 4 (Town Hall) and Article 6 (Goss Farm Barn). These appeared on many lawns throughout the Town prior to the March 12, 2013

election. Selectman Mills indicated that bills for the signs were attached. Separate motions to accept \$250 from Cibrowski Assoc. and \$100 from Phil Winslow carried unanimously.

Change in mileage reimbursement rate

It was disclosed that the IRS has increased its standard mileage rate to 56.5 cents. Selectman Mills asked how much was being paid out annually, now that there are several town cars. Ms. Gillispie stated that employees sometimes use their own cars. She doesn't come into Town to get a car when she drives to Concord from her home in Rochester. Police Chief Kevin Walsh stated that the Animal Control officer uses his own car. Fire Chief Sullivan stated that the Lifeguard Supervisor also uses his own car. The motion to approve the new rate carried unanimously.

Wallis Sands Half Marathon

Police Chief Kevin Walsh stated that this will be the third year for this race. He will personally be doing the detail as this is the same day as the event for Chief Maloney. *Editor's note: Greenland Police Chief Maloney was killed in 2012 in a shootout arising out of a drug raid in Greenland.* Selectman Mills stated that there was quite a list of charities receiving about \$4000 from the event. Chief Walsh stated that he generally "kicks back" the applications if a charity is not listed, suggesting that the Board of Selectmen would not approve it. Selectman Musselman said that he did not have authority to do that, but it's OK. The motion to approve the race carried unanimously.

Pole Petition, 59 Central Rd.

Public Works Director McCarthy stated that this would be adjacent to the stone wall at the cemetery. It would be the only pole on that side of the road, the rest of the poles are on the other side. It's OK with him, but there might be an aesthetic issue. The proponent of the petition is coming in on Wednesday. He wanted to get a reading from "you people."

Fairpoint will be responsible for this pole. It is being set for PSNH. Unfortunately, the pole will need to either go here or there will need to be a "push pole" on the other side of the road. Selectman Musselman stated that both would be ugly. Mr. McCarthy stated that Portsmouth has required that there be no more push poles. A push pole would be more work for the utility and they might need permission from the abutter.

Selectman Musselman joked that all of this was being done for Selectman Mills' TV viewing. Mr. McCarthy continued, stating that it was so the Super Bowl would not be interrupted. Selectman Jenness stated that she thought he had been watching "Heidi" when the power went off. *Editor's note: At this point, Police Chief Walsh whispered in my ear that the power was being upgraded everywhere, and that this had nothing to do with the jokes. Selectman Mills lives about 1.5 miles down Central Rd. from where the pole is to be placed. See also notes of May 29, 2012 meeting. Several representatives of PSNH had come to that meeting, at the request of Selectmen Mills. Mr. Mills stated at that meeting that his power had been interrupted during the Super Bowl, and that he had*

missed most of the game. Selectman Musselman moved to authorize a pole in the location existing on the southwest side of Central Rd. The motion carried unanimously.

Petition to Alter Highway Layout, Old Ferry Landing Rd.

Mr. Magnant stated that no motion was needed, but that the Selectmen needed to sign a document. The record should show that the Town was being reimbursed for its expenses. Selectman Musselman said that he had thought that this was still in dispute. Mr. Magnant stated that a check had been received and deposited, although Mrs. Cavaretta had disputed the need to pay. Selectman Musselman asked whether this would only apply if the Town approves the warrant article. *Editor's note: Warrant Article 12 which asked the Town to abandon the old roadbed passed in the election the day after this meeting.* Selectman Musselman and Mr. Magnant discussed the issue further and both agreed that, if the warrant article was voted down, the Town would own both locations.

Appointments to the Historic District Commission

The appointments of Tom King (as an alternate) and Paula Merritt (as a regular member) to the Historic District Commission were unanimously approved. Selectman Jenness stated that Chairman Phil Winslow had written a letter recommending both.

Cub Scout Fundraiser and Girl Scout Cookie Sale, both on March 23 at Recycling Center

Correspondence had been received from Jim Horgos, Cubmaster Pack 181, and from Kim Reed for Girl Scout Troop 12241. Both sought to conduct sales at the Recycling Center on March 23. *Editor's note: Kim Reed is the Town Planning and Zoning Administrator.* Selectman Mills asked whether, since the Cubs were first whether they wouldn't "go with" that first. Selectman Jenness stated that the Girl Scouts have a two week window during which they sell. Public Works Director McCarthy, in apparent jest, asked whether it would be appropriate to allow the Girl Scouts and the Cub Scouts together. Selectman Musselman responded that there was a reason why there are separate groups. Mr. McCarthy stated that he imagined that both could be accommodated if "you people" did not think it would be a problem. They would be appealing to different crowds. The Cub Scouts would be selling popcorn.

Selectman Musselman joked that the popcorn would lose out. He continued that it was probably not a good idea to have both the same day. He asked whether Mr. McCarthy could talk to both groups and see if one could be shifted. Cindi Gillespie interjected that Kim Reed knew that there was another earlier request and that there might not be approval as the other had been first. Selectman Mills interjected that the best spot had been taken by the earlier group. *Editor's note: see above regarding identity theft literature.* Mr. McCarthy asked, in apparent jest, whether they should be charging for spots. Selectman Jenness stated that that would solve the budget problems. Cindi Gillespie suggested that one be done in the morning and the other in the afternoon. Selectman Musselman made a motion to approve both requests, with the possibility that there might be a staggered schedule or an alternative date. In such case, one or the other

of the groups could choose either of the following two Saturdays. The motion carried unanimously.

Letter from Howard Fales, III regarding condition of home at 1647 Ocean Blvd.

The letter stated that Mr. Fales had been mowing Mr. Tranberg's lawn, but because of fear that the deck would collapse, would no longer be doing so. Mr. Magnant stated that Building Inspector Peter Rowell had been in touch with Mr. Tranberg, who is a street vendor in Boston. He had been given until the end of April to remove the deck. Mr. Magnant stated that the inside of the house is uninhabitable. Selectman Musselman asked whether the house was a hazard from a Public Safety standpoint. Fire Chief Sullivan stated that the building was closed up, and it could not be classified as a fire hazard. Selectman Jenness stated that the house was tight to the outside.

Letter from New Hampshire Department of Revenue Administration regarding Assessment Review

Selectman Jenness read the letter. Part way through the reading, Selectman Mills made a motion to waive the reading of the letter. He appeared perturbed. *Editor's note: Selectman Mills has been a vocal opponent of the new assessments.* The letter stated that the DRA had conducted a compliance review pursuant to N.H. RSA 21-J:11-a and RSA 21-J:14-b, I(c), and that the Town had been found to be in compliance.

Mike LaBrie letter: not seeking reappointment to Beach Commission

Selectman Jenness stated that an additional letter had come in that night, stating that Mr. LaBrie would not be seeking reappointment to the Beach Commission. The letter spoke about improved signage, partnership with the Fire Department, and the permit process. It stated that he hoped that the committee formed would seek the right balance. *Editor's note: Warrant Article 15, which, in its initial form would have required the Board of Selectmen to approve the usage of Town beaches by businesses, or for events, was amended at the 2013 Deliberative Session. The amendment required only a study prior to the drafting of any legislation. Warrant Article 15 passed, the day after this meeting, by a 590-487 vote.* After the letter was read, Selectman Musselman expressed his appreciation to Mr. LaBrie, who was in the audience. Selectman Mills stated that he had discussed the possibility of a one year term with Mr. LaBrie to help them get through Article 15. He said that Mr. LaBrie had not absolutely said no. He suggested that they not accept the resignation, but rather reappoint Mr. LaBrie for one year.

Mr. LaBrie then stated that he understood the politics regarding the Committee. Skip (referring to Fire Chief Sullivan) could pick up the lifeguard issues. As long as he did not have to chair the Committee, it might be OK.

Selectman Musselman suggested that they wait and see how the Town voted. If it is voted down there will not be a new initiative. The signs are catchy, saying "Live Free Outside," Selectman Musselman said. *Editor's note: Tom Sherman, one of the two state representatives for Rye and New Castle, had been distributing signs, which appeared on*

many residents' lawns prior to the election. These read "Live Free Outside, Vote no on Articles 14 and 15" Article 14, making single file bicycling ordinance permanent, narrowly passed 554-537.

Fire Chief Sullivan said that Mr. LaBrie had been an aggressive Chairman of the Beach Commission. They had worked hand and glove on the beach. The lifeguard hiring would not need to necessarily be done by the Beach Commission in the future.

Selectman Musselman asked whether others were willing to step up. Mr. LaBrie stated that "Ed" had agreed, but his wife had passed away after he came onto the board. "Peter" was not interested. *Editor's note: These are apparent references to Ed Mallen, whose term expires in 2014, and Peter Kane, whose term expires in 2015. Mr. LaBrie's term expires this year.*

Selectman Mills stated that it would be tough for someone new. Selectman Musselman suggested a one year extension. Although no vote was taken, it appeared that Mr. LaBrie was amenable to a one year extension. Fire Chief Sullivan stated that he was convinced that Selectman Mills could sell freezers in the Antarctic.

Discussion regarding recent storms

Mr. Magnant expressed thanks for the outstanding job that the Police and Fire Departments had done in recent storms. Police Chief Walsh stated that the State DOT had also done a fantastic job. The Town had found out Friday that there was no front end loader at the garage. It had taken some time to get the equipment, which had been stationed elsewhere. Before the equipment arrived, guys had been out with shovels and barrels. *Editor's note: this is an apparent reference to gravel and small rocks that the waves had knocked off of the shale piles along Ocean Blvd. After the storm, a front end loader was observed scraping the gravel and rocks off of the roadway and shoulder and lifting it back onto the shale pile.* Fire Chief Sullivan stated that the State Emergency Management group had put pressure on DOT.

Mr. Magnant also indicated that plowing had been ongoing for 24-30 hours at a time. An outstanding job had been done on that. Kim Reed had also done an outstanding job of posting information on the Town website.

New Assessor

Editor's note: Assessor Norm LeBlond has recently indicated that he would be resigning. Mr. Magnant requested that, in addition to considering a contract assessor, that the Town also consider a part-time assessor. He has had discussions with Greenland regarding a combination. While this wouldn't work right now given the end of the terms, contractors have been a revolving chair. He knows that the Board of Selectmen don't like employees on the payroll, but a part-time assessor might be better than having a contractor.

Selectman Musselman stated that the last two individual assessors had been from elsewhere, and did not know the town. There has not been much stability in the last 3 years. There is currently an RFP out for a contract assessor, he said.

Mr. Magnant suggested that they advertise for a part-time assessor. Then, both options can be looked at. Last time there were only 4 responses to the RFP, and one of

those (MRI) had declined. Selectman Musselman joked that, if MRI had been selected, a certain house on Washington Rd. would have had its assessment go way down. Mr. Magnant said that Norm LeBlond had typically worked 3-4 days a week. Selectman Musselman asked about his hourly rate. Mr. Magnant responded that it was \$47. Selectman Musselman stated that that was higher than what a salary would be, but not inordinate. That's a low rate for a contractor, and probably reflects the lack of overhead for Mr. LeBlond.

Enforcement actions 51 Fairhill and Pizza Shop adjacent to Summer Sessions

Mr. Magnant stated that Town Attorney Donovan had requested that the Board of Selectmen approve these enforcement actions before he proceeds.

With regard to 51 Fairhill, Mr. Magnant stated that the mother of the current owner had constructed a small kitchen. The complaint was that the property had been turned into a duplex. There was an enforcement letter, the Board of Adjustment had denied the variance, and appeals had been turned down. *Editor's note: See minutes of February 7, 2013 meeting of the Zoning Board of Adjustment.* Selectman Jenness stated that it was important to follow up.

Mr. Magnant stated that the pizza shop at Summer Sessions had expanded into the parking lot. There had been a request for a site plan, and the pizza shop had indicated that they would not be complying. Selectman Jenness stated that this would create difficulties with parking. Mr. Magnant stated that there were concerns regarding people in wetsuits and surfers crossing the road. Selectman Mills stated that this had gone to the Planning Board, which had allowed the usage though the rest of the summer.

Mr. Magnant continued, stating that Attorney Donovan was ready, and that he had been in the loop.

Selectman Mills stated that the ZBA had denied the variance at the Fairhill Ave. property. There was no question about that one. On the other one, another letter should be sent. Selectman Musselman asked whether a time certain had been given for response. Mr. Magnant stated that there was a deadline of Friday, March 15. He stated that they would revisit after the 15th based on the response.

Liquor Commission letter regarding Jenness Beach Pizza and Grill

Mr. Magnant stated that a letter had been received from the New Hampshire Liquor Commission regarding this establishment, which is a new use for the Rye General Store. The Board of Selectmen have an opportunity to file comments. Selectman Jenness stated that the issue was supposed to be coming before the Planning Board the following night, but had been withdrawn. She has a feeling that they may be revising the plans. At last month's Planning Board meeting there had been a lot of opposition.

Police Chief Walsh stated that he had asked Kim Reed to pull the file. Since he had been with the Town the place had only served breakfast and lunch. The proposed use would include evening service. They could be serving hard liquor as well. Selectman Jenness stated that the plans "gutted" the General Store. The seats would be expanded from 24 to 60. The 24 seats had barely gotten approval due to the parking. Selectman Musselman asked, in apparent jest, whether they were planning to run shuttle buses.

Police Chief Walsh stated that, in his opinion, this would be changing the use. He would be happy to write a response stating that the Town is objecting.

Selectman Mills commented about the Wildflowers Café. They had wanted to have a bar there. The neighbors had “come unglued” and it was turned down. He asked whether a 21 year old lying in the sun after 5-6 mixed drinks might overtax the lifeguards.

Selectman Musselman asked about issues with Peteys, particularly with regard to parking.

Chief Walsh responded that they had arrested people for DWI coming out of there, as they have everywhere. He is concerned, as is Selectman Mills, about opening up the issue, apparently referring to the establishment of a precedent.

Selectman Jenness expressed a concern about trash from the establishment making its way onto the beach. Although there would be trash barrels, people wouldn't carry trash back across the road, due to the traffic.

Mr. Magnant asked that he and Chief Walsh be permitted to put together a response.

Selectman Musselman stated that the Liquor Commission could act before the Town does. Selectman Mills stated that, in the past, the Liquor Commission had taken a dim view of the input from towns.

Pole Petition, Ocean View Dr.

Mr. McCarthy stated that this request is for a pole on the opposite side of the road from the others. They are trying to avoid this. He asked that the issue be permanently tabled. A motion to do so carried unanimously.

Concrete steps, 32 Old Beach Rd.

Mr. Magnant stated that Mr. Frost, the property owner, had concerns about liability for his part of the property. Town Attorney Donovan had looked at the issue. It turned out that he was familiar with the steps as they came about as a result of another action against the Town that included Mr. Frost's parents. The settlement was that the property owner was supposed to build steps. The owner had not done so, the Town did. The e-mail that he received suggested that responsibility for maintenance runs to the owner.

Selectman Musselman asked whether creation of a municipal trail might resolve the problem. Selectman Jenness asked about the distinction between a municipal trail and an easement. Mr. Magnant suggested that a revocable trust be created, and that that would grant the easement. Selectman Musselman stated that walking access to the beach is needed there. He is not sure that making it revocable would be OK. Selectman Mills stated that the Jenness Beach District admitted that they had put the stairs in. He asked why the other taxpayers were involved. Selectman Jenness stated that the action of the ocean had removed the railing, or at least made it weak.

Selectman Musselman suggested that they ask Mr. Crapo why the Jenness Beach District can't own this land. The Rye Beach District owns land. *Editor's note: Randy Crapo is a Commissioner of the Jenness Beach Village District.* Selectman Jenness

stated that it's different for Rye Beach. Selectman Musselman stated that there may be a different statute for the Jenness Beach District, but it doesn't say that they cannot own land.

Mr. Magnant stated that if they decide to go with a municipal trail a town vote would be needed. Selectman Musselman stated that the property owner has a valid concern that he should not be liable if a member of the public using the stairs has a claim.

Further on Seacoast Lacrosse

Chuck Allen, having arrived after the earlier discussion, addressed the Board of Selectmen. Selectman Mills asked Mr. Allen whether he was the same Chuck Allen whose name he had seen on e-mails regarding surfing. *Editor's note: This is possibly a reference to e-mails regarding 2013 warrant article 15.* Mr. Allen responded he was not, but acknowledged that he might have been on an e-mail list. He wasn't necessarily agreeing with what was being said. Selectman Mills indicated that one of the e-mails had referred to him as a "white, old, rich dude." Mr. Mills stated that he is not rich.

Selectman Mills stated that complaints had been received from neighbors on both sides of Parsons Field. He asked why they could not use the fields at Langs Corner or the Recreation Area.

Mr. Allen replied that they do, and that the field at Rye Junior High is used as well. The Recreation Area field is very limited as to the times that they can use. Last year, it was not possible to use it until the end of April due to the grass condition.

Selectman Musselman asked whether, every time that they use Parsons Field, the Recreation Area field is unavailable. Mr. Allen replied that they use the rectangular fields when they are available. The Recreation Area has a great field. Selectman Musselman persevered, asking whether it would be possible to find a time when the Recreation Area field is free and Parsons Field is in use. Mr. Allen responded that he could not say that for sure as the fields are scheduled in advance. The order in which they try to schedule the fields is the Recreation Area, the school, and then Parsons.

Selectman Musselman stated that he had been told that use of the Recreation Area fields had not been maximized for lacrosse. Their "deal" was not to have an athletic field in a residential area. It should be used when the others are not available.

Mr. Allen responded that that appeared to be a reasonable request.

Selectman Musselman suggested that Recreation Director Lee Arthur look at the times. Selectman Mills stated that Parsons Field should be used the minimum number of times to avoid complaints.

Mr. Allen stated that there had been no complaints in two years. There had been a complaint three years ago. High School Lacrosse has nothing to do with them.

Public Works Director McCarthy stated that they put sawhorses there to avoid rutting. It was reseeded last year. It's a springtime thing, due more to dogs than athletics.

Selectman Musselman asked whether the Junior High field was OK. Mr. Allen responded that it was for younger kids, but that it was a smaller field and not regulation size.

Selectman Mills asked about ledge outcroppings at Parsons Field. He is concerned about the kids tripping on the outcroppings. Mr. Allen stated that there is an old wall in the area. He keeps them away from that.

Selectman Musselman made a motion to authorize use, with the proviso that it be coordinated with the Recreation Department and that the Recreation Area and Rye Junior High fields be used first. All in favor.

Fire alarm wire abandonment

Fire Chief Sullivan stated that fire alarm wires were in the way of the PSNH project. *Editor's note: This is an apparent reference to the PSNH work being done in Town to improve the delivery of power and its reliability. See the notes of January 28, 2013 meeting.* The Town has no resources to take these wires down. Overtime would be required and they would have to borrow bucket trucks. The wires are two conductor connecting Town Hall and the DPW. They are now dead. He requests that they be permitted to work with the utility companies and Comcast.

Selectman Mills asked who would get the money for the wire. Chief Sullivan responded that most of it was copper coated steel and of little value. The utilities can keep the wire, he said.

Non-public session

The Board of Selectmen voted to go into a brief non-public session. Selectman Musselman indicated that the purpose needed to be disclosed, and that it was for a personnel issue.