

NOTES OF MAY 13, 2013 RYE BOARD OF SELECTMEN MEETING

Final Revision B – Provided by the Rye Civic League

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

Editor's note: For ease in finding particular sections using the archived video and audio on the Town website, the times associated with each section are indicated. These coincide with the times appearing in the black bar at the top of the screen.

Announcements (6:31:48 p.m.)

There was an announcement relating to the Memorial Day ceremony. Fire Chief Skip Sullivan announced that there would be a speaker in the morning relating to the Thresher. *Editor's note: This year is the fiftieth anniversary of the sinking of this nuclear submarine with all hands. The Thresher was based at the Portsmouth Naval Shipyard.*

It was also announced that the non-public session that had been scheduled for 5:30 p.m. had been canceled.

Approval of minutes (6:32:48 p.m.)

The minutes of the April 22, 2013 meeting were unanimously approved without changes.

Approval of sale by the Cub Scouts at the Recycling Center (6:33:29 p.m.)

Scoutmaster Jim Horgos addressed a number of concerns that the Selectmen had regarding this, including the scouts entering the area where vehicles unload to assist residents with unloading. It was agreed that they would not do this. The motion to approve the event, to be held on Saturday, May 25, 2013 was unanimously approved.

Letter from Lynn Jocelyn regarding Recreation Department Senior Program (6:37:13 p.m.)

Ms. Jocelyn read this letter, which praised the program. There are now 186 people over 55 in this program.

Presentation of "emergency kit" for bathroom use by Town Administrator Magnant (6:39:41 p.m.)

Editor's note: Recently, Mr. Magnant dropped his cell phone in the toilet while using the facilities, clogging the toilet and necessitating that Public Works be brought in to remedy the situation. This was a topic of much discussion and joking at the April 22, 2013 meeting.

Selectman Mills, to great laughter, presented the kit to Mr. Magnant. It consisted of a harness, to which a cell phone was attached by a chain. Also included was a plunger and other paraphernalia. Selectman Mills asked Mr. Magnant to use the kit when he uses the upstairs bathroom.

Event permit for Rye-by-the-Sea Duathlon (6:42:05 p.m.)

Police Chief Walsh indicated that there had been no problems with this event, which had been occurring for the past 5-6 years. The insurance is in order. Selectman Mills commented that John Kirkland does a good job on these. The permit was unanimously approved.

Book on Rye by Bob McGrath (6:43:30 p.m.)

Mr. McGrath spoke regarding his recently published book, "Rye in Focus," which includes a large number of photographs of activities in Rye. The books, of which 1200 copies were printed, will be sold for \$25 through local businesses. The Seacoast Science Center, Ray's and probably the Farmers Market will be selling copies. Copy 1 of 100 signed and numbered copies was presented to the Selectmen.

Purchasing policy changes (6:50:08 p.m.)

Town Finance Director Cindi Gillespie addressed this issue. Selectman Jenness expressed concern about a provision awarding contracts to the low bidder at the time of opening. There's also the issue of whether the department head or the Board of Selectmen should award the contract. Selectman Musselman stated that an award to the low bidder is typically not appropriate if the contract involves services. He also suggested that contracts be awarded after notification to the Selectmen. Selectman Mills expressed concerns with the doubling of the purchase approval limits. Mr. Magnant responded that these were last amended in 2001 or 2004. The matter was tabled.

Part-time employee for Recycling Center (6:56:44 p.m.)

Public Works Director Dennis McCarthy addressed this issue. Seven applications were received, five were interviewed. Jennifer Colby, a Rye resident, is being recommended for the position. The runner up was also a good candidate. Two or three people have been out each week due to sickness. There is a summer position remaining to be filled, probably by a "college kid." Mr. McCarthy stated that he wanted to "feel out" the Board of Selectmen on an additional position of 8-16 hours per week.

Selectman Mills asked whether Ms. Colby would be capable of doing heavy lifting. Mr. McCarthy stated that she would be, and noted that Andrea is currently doing this.

The hiring of Ms. Colby was unanimously approved.

Mr. Magnant then asked about hiring the second applicant as well. Mr. McCarthy stated that he needed this person soon, and would bring up the issue at the next meeting if the Selectmen would entertain it. There was inconclusive discussion about this, although

Selectman Mills indicated that he was not opposed, apparently because there was another open position for summer help. It appeared, however, that Mr. McCarthy was requesting the hiring of two part time persons (Ms. Colby and the runner up) plus a person for the summer.

Fencing of Public Works facility (7:03:08 p.m.)

Mr. McCarthy stated that the issue comes up periodically. A 600 foot fence would be \$15,000. He does not have any budget item with a sufficient anticipated surplus to cover this. Possible phasing over several years was discussed. Issues are improving the look and view of the site and also blocking of sound. There have been a number of complaints. There was extensive discussion about the various sections of the perimeter of the site and what might be done with each. Mr. McCarthy stated that, once the fencing is started there would need to be a plan to do the entire facility. One possibility would be a \$50,000 warrant article.

There was agreement that the Recycling Center would remain in its current location for the foreseeable future. There are no other suitable sites and the current one is centrally located. Selectman Jenness noted that the facility has been there for a very long time and nearby residents were aware of it when they moved. Realtors, however, may have told them that the Recycling Center would be moving elsewhere.

Selectman Musselman suggested a site plan be done first, indicating where screening was needed. Then a warrant article could be put forth to do this. Selectman Jenness indicated that the idea had a lot of merit.

Selectman Mills noted the location of residents who were complaining. Selectman Musselman responded that the Board of Selectmen could commit to doing something next year. Selectman Mills asked what would occur if the warrant article was defeated. Selectman Musselman stated that he could not imagine this.

During the discussion, at approximately 7:15:05 p.m., a flushing sound emanated from Selectman Mills' cell phone. He stated that he had intended to play this during the presentation of the "emergency kit" to Mr. Magnant earlier.

Selectman Mills stated that he wanted to do the fencing this year. Selectman Musselman stated that it should be planned for and done properly, however Mr. McCarthy could address an issue with one house on his own. Selectman Jenness asked whether there was only one resident complaining. Mr. McCarthy responded that he had probably talked with most of the abutters at one time or another about the issue.

There was further discussion, including regarding a new gate location and the problem of obtaining access across the wet area. Selectman Musselman stated that fencing shouldn't be done if a subsequent plan might be to have a gate in the location. Mr. McCarthy stated that the cost for the Public Works plan could be substantial. The fueling area needs upgrading, and a new salt shed is needed.

Selectman Jenness stated that, in the interest of fairness, there should be a total plan, rather than just one for fixing the problem for one or two residents.

Selectman Musselman made a motion to prepare a fencing plan as part of the Public Works site plan, including a comprehensive plan this year to address visual aspects and noise. Selectman Jenness seconded. The motion carried, Selectman Mills voting against. He told Mr. Magnant to call the person complaining, provide the results,

and provide the phone numbers of the other two Selectmen to the complaining resident and “take his off of the list.”

Coalition of communities and EPA permit for surf drainage (7:25:00 p.m.)

Mr. McCarthy stated that the Town has had a permit with the EPA for surf drainage, an MS4 for non-point discharge. The last permit was 10 years ago and was very controversial. Each time, the requirements are more stringent and numerous. The cost to comply for Rye is estimated to be \$80,000. Portsmouth will be much more, \$800,000 or greater. He’s been attending Seacoast Coalition meetings in Dover to discuss ways of dealing with. Many of the attendees feel that the “feds” are overstepping the bounds of their legal authorization. Only five states, including New Hampshire, Massachusetts and 3 out on the West Coast are not permitted to issue their own permits.

The requirements are more onerous for communities larger than Rye. For Rye, requirements are things such as (1) sweeping the streets, even if they don’t need it, for an annual cost of \$5000 and (2) annual cleaning of catch basins, rather than waiting four years, for a similar cost. Manchester, Portsmouth and Nashua are leading the process. Concord is not, they are not considered urban enough to be subject to the requirements, even though Rye is. The cost of an attorney to challenge the EPA would be \$350,000. Rye’s share would be \$1000 to \$3500. Selectman Jenness complained about attorneys billing at \$375 per hour. Mr. McCarthy stated that this would probably be the highest rate in the state. The Building Inspector, Zoning Board of Adjustment and Planning Board have been doing a lot of work on impervious area and are getting good at it. Mr. Magnant stated that North Hampton is considering participating in the effort. Mr. McCarthy stated that discharge from Eel Pond is the biggest concern. Concerns are bacteria, nitrogen and phosphates. The Town is now 4 years late on obtaining a permit.

Selectman Jenness asked how compliance is enforced. Mr. McCarthy stated that there is a \$37,000 per day penalty. Selectman Musselman asked whether Mr. McCarthy knew the size of the EPA staff handling this issue throughout New England. Mr. McCarthy responded that there were two. Mr. Musselman stated that the information filed likely goes into a dark hole in Virginia. Mr. Musselman’s motion to take the proposal under advisement and place it on file carried unanimously. Mr. McCarthy stated that he would continue going to coalition meetings.

Approval of raffles this summer at the Isles of Shoals (7:40:37 p.m.)

This request was unanimously approved.

Selection of Doyle as vendor for Old Police Station (i.e. 1899 Trolley Barn) study (7:41:04 p.m.)

Editor’s note: The voters approved \$9800 for a study of the Old Police Station in 2013 (warrant article 5). An RFP was issued in accordance with this warrant article. Mr. Magnant outlined the process, stating that four responses to the RFP had been received. He, his staff, Cindi Gillespie and Dennis McCarthy had looked at the responses both individually and collectively. Separate envelopes providing the bid amounts have

not yet been opened. Mr. Magnant stated that H.L. Turner and Doyle submitted proposals that were very close in terms of merit. Either could do the job, but Turner was ranked higher.

Selectman Musselman stated that his initial review arrived at the same conclusion. However, he now believes that the Turner proposal is inappropriate because the proposed project manager, who also signed the proposal, has only an AA degree and is not an engineer or architect. Although Turner is a fine firm, and has 4-5 other people who could be put in charge, he doesn't believe that the person submitting the proposal can be put in responsible charge.

Selectman Jenness stated that Doyle is her choice as well. Their proposal more closely mirrored the Space Needs Committee and public input. There was also discussion of the historical appearance. They had a better handle on the issues. *Editor's note: During 2012, there was extensive work by the Space Needs Committee, with public input, particularly from a group of "Concerned Citizens," which led to warrant articles 4, 5 and 8 providing for schematic designs of Town Hall, a study of the Old Police Station, and a study of options for records storage. All passed.*

Selectman Jenness then described a 1966 booklet on the Portsmouth Electric Railway. The building was a battery building and not used to house trolleys. A total of 264 T-1 cells provided 800 amps at 550 volts. It fed back towards the City of Portsmouth at night. There was an electric bell circuit to the postmaster. The battery was overhauled in 1912. At one point, noting that the batteries provided insufficient power, there had been a proposal to install a motor generator set at Little Boars Head. The 1966 report stated that the building was, at that time, used by the Rye Highway Department.

As Selectman Jenness completed her description, Musselman handed an envelope to Selectman Mills, who opened the envelope and revealed that Doyle's proposal was for a total fee of \$8600. Following this, Selectman Musselman began a motion to approve award of the contract be awarded to Doyle. Selectman Mills interrupted and stated that he intended to open all of the envelopes. Selectman Musselman then stated that the agreed process had been to short list firms, open only the bid amount envelopes of those on that list, and send the others back. He stated that this process had been followed "quite regularly."

Selectman Mills then stated that he still felt that the Turner envelope should be opened as well, inasmuch as all of the staff had agreed that they were the first choice. Selectman Mills then stated that the motion could be made. Selectman Musselman stated that he was not opposed to opening the other proposals. However, the other proposal was not appropriate and was unlawful.

Selectman Musselman then made a motion to enter into a contract with Doyle, and to authorize the Chairman to sign the agreement. *Editor's note: Selectman Mills is currently Chairman of the Board of Selectmen.* Selectman Jenness seconded the motion. The motion carried by a 2-1 vote, Selectman Mills voting against. Selectman Mills then tossed a folder towards Mr. Magnant and stated that Selectman Musselman could sign the agreement as vice chairman.

Bid results Rye Recreation Turf Management Program (7:54:00 p.m.)

According to Selectman Mills, the competing bid was \$4000 higher than the Outdoor Pride bid of \$6575. Selectman Mills stated that the Recreation Commission recommended that the Outdoor Pride bid be accepted. Commenting that it looked like two good bids had been received, Selectman Musselman moved to accept the Outdoor Pride bid. All were in favor.

Quitclaim deed for paper street, 130 Perkins (7:56:01 p.m.)

Selectman Mills stated that Attorney Donovan had reviewed and approved. The motion to approve signing of the deed was unanimously approved.

Webster at Rye Raffle (7:56:47 p.m.)

The request for a raffle was approved unanimously.

Correspondence from Michael Mittelman regarding appointment of Town Historian (7:58:27 p.m.)

Mr. Mittelman addressed the Board of Selectmen regarding this issue. He suggested a term of 1, 3 or 5 years, with the person to be appointed by the Board of Selectmen. After asking the Board of Selectmen whether they had any questions, Selectmen Jenness stated that “we’re on the air.” Selectman Mills then stated that Mr. Mittelman was new to Town, to which Mr. Mittelman replied that he had lived in Town for 15 years. Selectman Musselman asked whether they had the authority to make this appointment. Selectman Mills suggested that a call be put in and the matter tabled for two weeks. The motion so providing carried unanimously.

Retirement of Police Sargeant Jeffrey Peirce (8:03:00 p.m.)

Selectman Mills stated that Mr. Peirce had sent a letter announcing his retirement, effective May 31, 2013. Selectman Mills indicated that Mr. Peirce would still be working on part-time special duties. Police Chief Kevin Walsh stated that he had requested to do so, and that the Board of Selectmen could decide. Selectman Mills stated that he did not have a problem with that. The motion to accept Mr. Peirce’s retirement, and to thank him for his service, carried unanimously.

Letter from Susan Anderson regarding Rye Energy Committee (6:04:24 p.m.)

The letter indicated that Ms. Anderson had been selected to serve on the Recycling Subcommittee. Mr. Magnant stated that the size of the Subcommittee was still unclear. Selectman Jenness stated that nobody had been appointed yet. Mr. Magnant stated that if Recycling Subcommittee members are also members of the Energy Committee that that the size of that committee, as indicated in the charge, might be exceeded. Selectman Musselman stated that Ms. Anderson was the only Recycling Subcommittee member who was already on the Energy Committee. Mr. Magnant asked whether new appointees to the Recycling Subcommittee would also become members of

the Energy Committee. Selectman Jenness stated that the Energy Committee charge provided for 3-7 members, but that if two additional persons are appointed to the Recycling Subcommittee there would be 8 members. Selectman Musselman stated that Ms. Anderson's letter sounded fine and that they would need letters from the others who are interested.

Letter from Jaci Grote requesting appointment to Conservation Commission (8:08:06 p.m.)

Ms. Grote was unanimously appointed to a 3 year term, ending in 2016.

Letter from Brian Klinger requesting appointment as Library Trustee (8:09:06 p.m.)

During the discussion of this issue, it was revealed that Bill McDade had resigned for personal reasons. After Selectman Mills stated that the Board of Selectmen had not received a resignation letter, Victor Azzi stated that the Chairman of the Library Trustees had received such a letter. *Editor's note: Mr. Azzi is one of the Library Trustees.* Selectman Mills suggested that the matter be tabled for two weeks. Although he has no problem with Mr. Klinger, they need to do things right.

Letter from Jonathan Menes regarding the rise of Eel Pond (8:10:53 p.m.)

Mr. Menes of 14 Bernard Dr. addressed this issue. He stated that there is usually a 100 foot buffer, but the water is now up to his land and there is a foot of water in his basement. The sluiceway (apparently permitting Eel Pond to drain into the sea) has been closed. One good rain and the water will go over Route 1A. In response to his e-mail to the Town Administrator, it was stated that the gate was not controlled by the Town, Mr. Menes said. The fact that the state is responsible doesn't mean that Rye does not have a say. It is urgent that at least one slat be removed.

Public Works Director Dennis McCarthy stated that the State had put boards on the discharge side to keep sand from plugging a discharge pipe. Selectman Musselman stated that the property owners have input as they control both sides. Mr. Menes reiterated that the water was rising. Selectman Musselman asked whether Mr. McCarthy could have a conversation with the State (Division 6). Mr. McCarthy stated that the shed at Dow and Lafayette Rd. controls. He said he would call the State, but the homeowners should as well. Selectman Mills suggested that Mr. Menes be given the telephone number of Doug DePorter, District Engineer with the State.

Statement by Tom Sherman, State Representative (8:19:42 p.m.)

Mr. Sherman addressed the Board of Selectmen. As he started to speak, Selectman Mills asked who he was. Mr. Sherman replied that he was their "state rep." Laughter ensued. He said he wanted to stop by and see if there were any concerns. He stated also that he understood that there was a concern about Town media storage. *Editor's note: This was the subject of 2013 Warrant Article 8, which appropriated \$25,000 for study of this issue.* Mr. Sherman stated that state law prescribes what must

be done, but that it doesn't track with the technology. He stated that his belief was that the law should prescribe the concept and allow for growth of the technology, rather than, for example, mandating the use of microfiche. We're past that now, and everything is in "the cloud," he said. Town Administrator Magnant stated that he did not have enough information regarding how the law was formulated to know whether changes were needed. The issue had not been raised by the Town, as Mr. Sherman suggested, but by one of its residents at one of the Board of Selectmen's meetings. *Editor's note: Town resident Mark Galvin, a former member of the Planning Board, raised the issue at the November 14, 2012 meeting (see RCL notes, page 12).*

Mr. Sherman then discussed the budget was currently being considered by the Senate. It is likely that there will not be much of an increase for the towns. The Senate budget appears as though it will be \$300 million less than the house one. Now is the time to be activist with the Senate. If there are an town-focused bills, these should be looked into this summer.

After asking the other Selectmen whether they had any questions or comments and hearing none, Selectman Mills thanked Mr. Sherman.

Beach Use Ordinance Committee (8:24:26 p.m.)

Mr. Magnant stated that all but one of those invited had agreed to serve. That person would be moving in August. After Selectman Musselman stated that the plan was to have two of the Selectmen on the Committee and he offered to step aside, provided that the insurance issue was dealt with. The other two Selectmen both indicated that they could also step aside.

Selectmen Musselman and Mills were appointed to the Committee, along with Mike LaBrie, Tyler McGill, Del Record, Jay Nadeau, Bill Epperson and Thomas Farrelly. *Editor's note: Mike LaBrie is Chairman of the Beach Commission. Tyler McGill is a co-owner of Summer Sessions. As originally drafted, 2013 Warrant Article 15 would have required the Board of Selectmen to give "express permission" to operate a number of beach related business, including the "surf camps" and surfboard rentals provided by Summer Sessions. After Tyler McGill and his brother, co-owner of Summer Sessions Ryan McGill, spoke in opposition to the proposed ordinance at the 2013 Deliberative Session, their proposed amendment to the Warrant Article creating a study instead of an ordinance carried overwhelmingly, if not unanimously. The amended Warrant Article passed 590-487. Bill Epperson is Chairman of the Planning Board, which has recently approved a site plan involving Summer Sessions with a long list of conditions. Thomas Farrelly is one of the key participants in a group known as "Rescue Jenness Beach" which is organizing citizens expressing a number of concerns relating to use of the area near Jenness Beach where Summer Sessions is located.*

Immediately after the motion to approve the appointments had been made, Selectman Mills raised the issue of whether two of the members would be able to get along. He was not able to discuss this in public, he said. He asked whether the names of the other proposed members had been provided to the candidates. Mr. Magnant stated that letters had been provided individually. One candidate had called to ask about the other members and stated that he did not have a problem serving with the others. Mr.

Magnant suggested that the Board could go into non-public session on the issue of reputation to discuss, however this was not done.

After the appointments were unanimously approved, it was agreed that the charge would be attached to the minutes.

Jeff Latimer's request for widening of bicycle paths (8:30:24 p.m.)

Selectman Jenness indicated that she had had second thoughts about this request, and whether it might backfire. *Editor's note: This had been approved at the April 22, 2013 meeting.* She expressed concern that the widening would encourage more parking, with cyclists squeezed even further between parked cars and traffic. Selectman Mills stated that this was not a problem where the bicycle path is by Wallis Sands. Public Works Director McCarthy stated that the State would look at the speeds and see if the travel lanes could be narrowed. Selectman Jenness stated that, on a hot summer day there are cars parked all of the way from Jenness Beach to Rye Harbor. Anyone who can get their tires over the white line will do it. Tom Sherman spoke up to encourage the Board to get back to Jeff on the issue. He is becoming an expert on the issue and has attended several national conferences on the it.

Race on Lang Rd. (08:34:14 p.m.)

Selectman Jenness expressed further concern over a race with 300 runners planned for a Saturday. She thinks that this may not be workable.

Victor Azzi questions on the status of the Town Hall project (08:35:37 p.m.)

Mr. Azzi asked the Board of Selectmen about the status. Selectman Mills stated that nothing had been done yet. They wanted to get the Old Police Station squared away as to what was going to happen there first. Mr. Azzi suggested that this was inconsistent with the discussions that had occurred between last summer with the Space Needs Committee, through the Deliberative Session in March 2013. Mr. Azzi referred to issues with the Town Hall's fire safety, the old electrical system and the overcrowding. As he spoke, Selectman Musselman was busily arranging his papers.

Selectman Mills raised his voice, pointed his finger at Mr. Azzi, and stated that he did not believe there was a time frame established on the issue.

Selectman Musselman stated that staffing was limited. They are taking it one step at a time and acting entirely appropriately. "No one is slowing anything down," he said.

Mr. Azzi reminded Selectman Musselman of discussions that the two of them had had, and asked when the schematic design portion would proceed.

Selectman Jenness stated that there had been 3 warrant articles. A handle on the other issues is needed before an RFP can be written for the schematic design. They need to know what space at the Old Police Station could be used.

Mr. Azzi stated that it was good to know what the thinking was, but noted that it was different from the discussions from last Summer through March of this year. Mr. Azzi stated that people had no reason to believe that the three studies would not be done in parallel.

Selectman Musselman stated that the projects were not being done in series. The procurement process to bring on an architect would be done next.

Non-public session (08:41:56 p.m.)

The Board then voted to go into non-public session, pursuant to RSA 91-A:3, 11-b, hiring.