

## NOTES OF MAY 30, 2013 BEACH USE ORDINANCE COMMITTEE

Final Revision B – Provided by the Rye Civic League

Committee members present: Selectmen Musselman and Mills, Members Tom Farrelly, Tyler McGill, Michael LaBrie, Bill Epperson, Del Record, Police Chief Kevin Walsh (ex officio), Fire Chief Skip Sullivan (ex officio).

*Editor's note: Normally, for ease in finding particular sections using the archived video and audio on the Town website, the times associated with each section are normally indicated. However, the recording of this meeting is not available, thus no times are provided.*

### Opening, election of officers

Selectman Mills opened the meeting and stated that it was a work session. There will be no public input at this point. A public hearing will be held in accordance with 2013 Warrant Article 15. The Town has been fighting beach issues for 20 years. All of a sudden something happened.

Mr. Mills stated that there was one resignation this morning from the citizens at large. John Collins, 26 Myrica expressed interest in serving. Selectman Mills stated that that made three.

Selectman Musselman suggested that Mike LaBrie be made Chairman of the Committee. *Editor's note: Mr. LaBrie is Chairman of the Beach Commission. Earlier in 2013 he tendered his resignation from the Beach Commission, but was persuaded not to resign, in part because of the work that this Committee was to do.*

Tom Farrelly volunteered to serve as Chairman if Mr. LaBrie could not do so. *Editor's note: Mr. Farrelly and his wife, Devin Farrelly are organizers of the Rescue Jenness Beach neighborhood group. The group has expressed multiple concerns relating to the large crowds and increased traffic associated with the beach.*

Mr. LaBrie was unanimously elected chairman. He then assumed leadership of the meeting. Mr. Farrelly was unanimously elected Vice Chairman.

Bill Epperson volunteered to serve as Clerk. He was unanimously elected. *Editor's note: Mr. Epperson is Chairman of the Planning Board. The Planning Board has recently addressed issues relating to Summer Sessions, a surfboard rental and surfing lessons business located at Jenness Beach. These issues related primarily to pedestrian traffic and parking outside of the business, and related safety issues. Ryan and Tyler McGill are co-owners of Summer Sessions. Tyler McGill is on this Committee.*

Mr. LaBrie then read the Selectmen's Charge relating to the Committee. *Editor's note: The charge may be found attached to the official minutes of the May 13, 2013 Board of Selectmen meeting. To access this, go to [www.town.rye.nh.us](http://www.town.rye.nh.us), then click on "Minutes & Agendas," then "Board of Selectmen" under "Meeting Minutes."*

Selectman Mills indicated that a public hearing should be held early in the fall after the Committee wraps up during the summer.

### Initial discussions

Selectman Musselman stated that the goal should be that the Town obtains insurance certificates. That is what got this process started, and nothing else. Mr. Epperson agreed, stating that it should be limited to that and dealt with. They do not want to overreach.

Mr. LaBrie stated that he felt that they needed to look at who is regulated, as well as scheduling issues. The numbers should be looked at. Campers and organizations using the beach should be looked into.

Selectman Musselman stated that they do not want to get into regulating anything that is not a Town beach. He referred to potential legal liability being the driving issue.

Mr. Farrelly referred to the ordinances of other towns that have been called to his attention. He believes that it is important for the Committee to facilitate consideration of this.

Mr. LaBrie cautioned against going beyond the charge. Some of these issues may be more appropriate for a Beach Commission meeting. Otherwise, this could spiral out of control.

Mr. Farrelly suggested that this could be the forum for addressing these other issues.

Selectman Musselman stated that there are existing ordinances in place, including providing the ability to separate people (i.e. surfers and swimmers).

Del Record stated that there is a specific charge. They should stick to that. *Editor's note: Mr. Record has, in the past, supported the rights of surfers and has opposed undue restrictions.*

#### Information about beach use

Discussion then turned to organizations using the beach. Tyler McGill spoke of other businesses from Hampton and Massachusetts, including Cinnamon Rainbows from Hampton. Mr. LaBrie mentioned New Heights out of Portsmouth.

Mr. Farrelly asked who would approach a group of 40 people that show up. Selectman Mills indicated that the lifeguard would. Mr. LaBrie added that some groups arrive after 5:00 p.m. *Editor's note: The lifeguards go off duty at approximately 5:00 p.m.* Mr. LaBrie continued, stating that there are paddle board lessons at Wallis Sands at 7:30 p.m. They will need to get the word out through surfing web sites that you cannot just show up and do business.

Mr. Epperson asked whether the current and ongoing use was a problem. Tyler McGill asked whether their camps had proven to be a danger, or whether they were an amenity for residents. What is the goal of the Committee? Selectman Musselman responded, stating that it was to get an insurance certificate, with the Town named as an additional insured.

Mr. McGill noted that Summer Sessions brands their own boards. Some boards with their name on it are privately owned. This is also true of Cinnamon Rainbows.

Mr. McGill referred to other businesses using Rye beaches on occasion, including Pioneer in Salisbury and Pumphouse in Massachusetts.

Selectman Mills asked about trailers from Quebec. Mr. McGill responded that these are self contained. They do not frequently shop at Summer Sessions. Mr. Farrelly stated that there was some camping behind the Dunes. *Editor's note: The Dunes is*

*adjacent to Summer Sessions. The building that houses Summer Sessions and the Dunes, are both owned by Paul Leary of Hampton, according to the assessors' data.*

Police Chief Walsh stated that the police are checking the rear lot, documenting such instances, and notifying the owner. Nothing substantial has been shown or they would have brought in the Building Inspector, Peter Rowell.

The question arose as to the locations of the flags denoting the no surfing zones. Mr. LaBrie stated that the "break" does not always align with the flags. The lifeguards have come under pressure. *Editor's note: according to Wikipedia, a "surf break" is an obstruction that causes a barreling wave that can be surfed. Surf breaks are often defended vehemently by surfers, it says.*

Mr. McGill stated that their classes have an average of 15 surfers, with a maximum of 20-25. Their camps are done at Sawyers Beach, which is the least populated. This minimizes the impact. The camps, which have morning and afternoon groups, are limited in size. A lot are sold out now. Kids camps are always run at Sawyers. Ladies and adult programs are run at Jenness at off peak times.

Mr. Farrelly asked about the Town role through the programs that the Town Recreation Department runs with Summer Sessions. Selectman Musselman cautioned that everyone would be sued if something major happens. A lesson provider may have insurance, but the Town is not included unless they are named as an additional insured.

Mr. McGill stated that surfing is one of the lowest impact sports. He's more nervous about skiing. In 11 years they have not had a single incident.

Selectman Musselman stated that a Town board should not be setting qualifications.

Mr. McGill stated that they have 10 full-time instructors, and 15 total. It is not easy to get these people insured.

Mr. LaBrie stated that Sawyers would be going from one to two lifeguards.

The discussion turned to crosswalks. Police Chief Walsh stated that the markings are minimal. If the Town provides something on Route 1A it must be maintained. He cannot see the Town stepping into this. It's up to the state.

Mr. Farrelly asked about beach enjoyment. Selectman Musselman stated that the Board of Selectman and the Beach Commission could discuss. The no surfing zone can be made wider under the existing ordinance, he said. In any event, surfers must stay 50 feet away from swimmers, even outside the swim zone.

Mr. LaBrie stated that lifeguards are placed within swim areas. Children are watched. They cannot patrol the entire length of the beach. There was an uproar when restricting the surfers at Straws Point was proposed. There would have been more injuries if that was done.

Fire Chief Sullivan stated that they will have 4-5 new lifeguards this year. These people encourage and advise, and do not have enforcement authority. Mr. LaBrie stated that they whistle, but surfers may ignore the whistles. Occasionally the lifeguards paddle out. The next step is to call the police. Police Chief Walsh stated that one surfing ticket had been issued in his 6 years as Chief.

Selectman Mills stated that he has a "pipeline" to the beach. She calls him. Lifeguards whistle but don't follow up. Eighteen and nineteen year olds don't want to be confrontational.

LaBrie stated that volleyball falls under their purview. Police Chief Walsh stated that people do show up without permits. If there is an impact on Town operations, they take enforcement action. *Editor's note: Chief Walsh was apparently referring to the use of Town roads for races and activities of that type. A permitting process is in place for those, but permits for use of the beach are not. It is the purpose of this Committee to determine whether those are necessary and, if so, to propose an ordinance.*

Selectman Musselman asked about the launch site for kayaks on Pioneer Rd. Fire Chief Sullivan stated that it used to be used. He hasn't seen it recently. Mr. LaBrie stated that a lot go in at the Old Wentworth Marina. Selectman Mills stated that they used to go in at Sanders Poynt. *Editor's note: This has been an issue of much controversy and is the subject of ongoing litigation. The Wentworth-by-the-Sea Country Club blocked off access to Sanders Poynt and an adjoining parking lot by erecting a fence.*

Mr. Epperson asked about Hobie Cats launched from the beach. Mr. LaBrie responded that one is supposed to own the adjacent property to do this. However, persons other than the property owners do launch. That could be a problem with swimmers in the water. Selectman Musselman stated that he had spoken to Don Stevens about this. Typically they go in at Odiorne Point or Rye Harbor State Park. They rarely if ever use Town beaches. The State asked for insurance, which they have.

Mr. LaBrie stated that kite surfing typically occurs when it is very windy and not a lot of others are out. This is usually done near Sawyers. He is not aware of lessons.

Mr. LaBrie stated that rentals, other than those at the beach, should not attract attention.

Selectman Musselman asked whether groups come in and rent, but do not receive lessons. Mr. McGill stated that it is difficult to judge capabilities when people rent. All of the boards look the same. Selectman Musselman asked how renters know the rules, for example the 50 foot rule. Mr. McGill stated that renters are given the run down. They get a lot more than those buying elsewhere.

Mr. LaBrie emphasized the importance of the ordinance, the requirement of leashes, and the 50 foot rule.

Del Record asked whether a document is signed when equipment is rented. Mr. McGill responded in the affirmative. What is being said about providing rules at the time of rental makes sense. He is more than happy to work on.

Fire Chief Sullivan spoke about a definition of Town Beaches. It included Sawyers, Cable Rd. Extension, Wallis Rd. Extension, and the area at the end of Perkins Rd.

Mr. LaBrie spoke of the trigger for "why we are here," which is the growth of the business. Mr. McGill stated that surfing is a growing sport. Even if Summer Sessions closed there would be growth. They are very lucky to have good relations with the lifeguards. He has met with Mr. LaBrie and they have no more issues. Mr. LaBrie cautiously noted his agreement with that statement.

Selectman Musselman stated that other events might present more difficulties. There should be a permit with flexibility. It should be relatively simple and aimed at getting the insurance in place.

Next steps

Mr. Epperson then suggested that they move on to Item E, next steps. Selectman Musselman indicated that he could provide an outline of a permit. Mr. Epperson indicated that kayak businesses at Witches Cove should be surveyed, as well as Cinnamon Rainbows. There is the issue of others that are unknown. A question arose as to whether Witches Cove is in Rye. The response from Messrs. Musselman and LaBrie is that it is, but the waters are State, not Rye.

Mr. LaBrie asked about the guy at the Red Roof Market. Joey Cresta of the Portsmouth Herald, who was in the audience, indicated that he was doing an article on this. They are not involved in surfing, but may be involved with paddle boarding. Mr. LaBrie, referring to problems last year, stated that they needed to talk with them.

Mr. Farrelly stated that they should look at neighboring communities and their ordinances. People can't just show up and do something.

Selectman Musselman referred to a Nantucket ordinance, and a reference to parties and tents. Mr. LaBrie responded that this has not been an issue. When requests come in, they suggest that the requester check the tide. That often kills the request. Fire Chief Sullivan stated that tents require building permits and a Certificate of Occupancy.

Mr. Farrelly stated that trailers with kayak rentals have been observed.

#### Next meeting

Mr. Epperson stated that he and Mr. LaBrie would form an agenda and post it. Selectman Mills suggested that Town Attorney Donovan be invited to the last meeting prior to the public hearing.

Selectman Mills spoke of Josh Carroll, who was invited to be on the Committee, but could not, as he is taking a job out of town. He has a PhD in Recreation. He will try to invite him to one meeting.

The next meeting was scheduled as a work session, to occur at 6:00 p.m., June 13. Whereupon the meeting adjourned at 7:29 p.m.