

NOTES OF JULY 2, 2013 BEACH USE ORDINANCE COMMITTEE

Final Revision B – Provided by the Rye Civic League

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

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.

Opening of meeting and minutes (6:07:10 p.m.)

The pledge of allegiance and the call to order do not appear on the video. Shortly after these occurred, Chief Walsh got up to turn on the video. He may be observed sitting back down as the video begins.

There was then a discussion regarding the minutes. Some members indicated that they had not yet received them. The issue was postponed to the next meeting.

Mr. LaBrie's proposal to add individuals to the scope of the proposed ordinance (6:08:20 p.m.)

Mr. LaBrie indicated that he had done some research and felt that both individuals and organizations should be within the scope. Zumba classes, as an example, are sometimes taught by individuals. There was also a mention of private Yoga classes being conducted on private property near the Brown properties, adjacent to one of the State rest facilities, as well as "boot camps." It was asserted that noise from the classes inhibits enjoyment of the beaches during the evening. Mr. LaBrie indicated that lessons conducted on private property that is zoned residential might be an enforcement issue for the Building Inspector.

Mr. McGill indicated that Zumba classes are conducted before or after surf lessons.

Mr. Epperson stated that his original motion, which refers to "entities," would include individuals.

Selectman Mills stated that there is registration for Zumba at Summer Sessions. Mr. McGill responded that the Zumba groups use the parking lot. They do not take money for Zumba lessons at Summer Sessions.

Selectman Musselman stated that he would not interpret the term "entity" to include individuals.

Selectman Mills stated that the property cards for the Brown property indicate that the land extends into the water. He continued, stating that the Browns at one time owned what is now Ocean Blvd. and Eel Pond. The state bought some of the land for Ocean Blvd. from the Browns.

Police Chief Walsh summarized what occurs when he observes an event occurring for which a permit is required, but has not been obtained. He doesn't necessarily shut it down that day, but he does request that a permit be obtained in the

future. If there is a danger of someone getting hurt, however, he will shut it down. Fire Chief Sullivan indicated that permits for events on State property (including Jenness Beach and Wallis Sands State Park) require permits through the Coastal Office of DRED. *Editor's note: "DRED" is an apparent reference to the New Hampshire Department of Resources and Economic Development. That Department has responsibility for forests and other lands, parks and recreation, and travel and tourism.*

Mr. Record read from 2013 Warrant Article 15 and the Selectmen's charge to the Committee. The former uses the word "study," while the latter uses the word "assess" when referring to gauging the impact of activities. The word "study" refers to research on a systematic basis. The word "assess" refers to evaluating or estimating. He asked what the response would be if someone asks to see the study. Mr. LaBrie responded that the minutes and the tape are online. He asserted that they are studying and assessing. When asked by Mr. Record, Mr. LaBrie asserted that the presentation by Josh at the prior meeting was not part of the Committee's product. *Editor's note: Josh Carroll's study, presented at the June 13, 2013 meeting, found that there was insufficient evidence of a negative impact of surfing on swimmers to justify a change in the rules relating to State beaches.* Mr. LaBrie indicated that the copy of the study promised by Mr. Carroll had not been received by him. Ms. Sherman indicated that the study had been conducted in 2010 and that there had been a lot of change since then.

Mr. McGill indicated that the study had been based on interviews in the parking lot and thus related to the overall beach and not just the State portion. Mr. McGill stated that he is having a difficult time determining where the Committee is pulling information from. Mr. LaBrie stated that they are pulling it from the knowledge of the Committee members and persons who contacted them.

Mr. Record, noting that the language of Article 15 was based on the amendment that Mr. McGill introduced at the 2013 Deliberative Session, asked Mr. McGill what he meant by the word "study." Mr. McGill stated that he intended that the word "study" mean that there be a thorough review of what was happening. If moves are to be made, there should be an explanation as to why they are being made. If people are unhappy, how many people are unhappy? Are there specific demographics that are affected? What months of the year? The original rationale was liability. He sees no indication that permitting decreases the Town's liability, although it can vet the people using the beach.

Mr. McGill referred to a court case and RSA 508:14. *Editor's note: That statute, in part, states that "An owner... including the state or any political subdivision, who without charge permits any person to use land for recreational purposes or as a spectator of recreational activity, shall not be liable for personal injury or property damage in the absence of intentionally caused injury or damage."* Mr. McGill stated that he had spoken with attorneys regarding this. An ordinance would not decrease, but potentially increases, the liability.

Mr. LaBrie responded, stating that the purpose was not only to decrease liability. It is almost common sense that a proliferation of activities on a limited area of beach needs to be controlled.

Mr. Farrelly read from the unamended Article 15, which states in part that "[t]he Selectmen may place conditions on their approval so that such activities do not interfere with public safety or the public's use and enjoyment of the beach or that are otherwise in the public interest." Mr. LaBrie said "exactly, it's not strictly liability." *Editor's note:*

The original Article 15 was replaced in its entirety by new language, proposed by Mr. McGill, at the 2013 Deliberative Session. The new article, which passed 590-487, omits any mention of conditions imposed by the Selectmen.

(6:29:25 p.m.)

Mr. McGill stated that the article passed by the Town was “a study.” The process has morphed so that a permitting process is being taken on. In response to a question from Selectmen Mills as to whether he viewed what they were doing in the meeting as studying, Mr. McGill stated that he did not view it as such. Rather, it was gathering evidence on “dogs peeing” and “tourism parking.” Another group of people discussing it might present completely different anecdotal evidence. He does not know what he would tell anyone if they asked what the Committee had found. Mr. LaBrie responded, stating that they found that there were activities occurring on Town and State beaches that are unregulated. To him, the intended product of the Committee was to be a permitting process, and to decide which activities are affected. Fire Chief Sullivan stated that the two Selectmen present had heard, the prior Monday night, complaints from people, primarily from the Jenness Beach area. *Editor’s note: See notes of June 24, 2013 Board of Selectmen meeting.*

Mr. Record read from the second numbered paragraph of the Selectmen’s charge, which provides that the Committee should “propose procedures, regulations, policies and/or requirements for the regulating of these activities, if deemed necessary.” The purpose of the Committee is not to get into the ordinance until one is deemed necessary, he stated. *Editor’s note: The Charge is attached to the official minutes of the May 13, 2013 Board of Selectmen’s meeting, available on the Town’s web site, www.town.rye.nh.us under “Minutes & Agendas.”* Selectman Musselman responded, stating that they had voted at the last meeting to deem it necessary. Mr. LaBrie stated that he might be biased, because he has felt for six years that this was necessary, and had expressed that.

Selectman Musselman stated that he has personal experience with the event permits. They are not a problem and are in the public interest. They should not be regulating things that do not involve the public interest, however. There are things happening that they are not aware of that they should be.

Mr. Epperson stated that the level of activities are increasing. Mr. LaBrie stated that he guessed that all they have is anecdotal evidence of that. Mr. McGill asked how many people were complaining and how many were actually enjoying the activities. Police Chief Walsh stated that regulation would permit the locations of events to be spread out, taking into account the tides.

Mr. Epperson indicated that the discussion had become repetitious. He suggested that they move on. They should now determine who should be permitted, and whether it should include just fee-based activities. He indicated that an increase in surfing camps would infringe on Mr. McGill’s business. Mr. McGill responded, stating that it would be better for his business if his was the only one in Town, but that is not his goal here.

(6:36:45 p.m.)

Mr. Record, referring to the unamended Article 15, asked Mr. Epperson whether he saw any fatal flaws in that article. He handed a copy to Mr. Epperson. Mr. Epperson responded that, as a guideline for the permitting process, he supposed that it works. He then referred to Selectman Musselman’s draft.

Mr. Epperson, at the request of Mr. LaBrie, then moved to amend the original motion approving of the permitting process to refer to "individual or organization" instead of just "organization."

Mr. Epperson read the original motion, to which the amendment was made:

"In order for any organization to use Town beaches for any activity or purpose, to be defined, it must be granted a permit by the Board of Selectmen." Mr. Farrelly seconded. All were in favor of the amendment except Mr. McGill who voted no, and Mr. Record, who abstained.

At Selectman Mills' request, Fire Chief Sullivan related an incident from the prior Sunday. The beach was very busy with a lot of surfers and swimmers. Two young girls had gotten caught in a riptide and were rescued by a surfer and a parent. The lifeguards did not become aware of this until the next day, when someone informed them. The two lifeguards had been going up and down the water line all day whistling surfers out of the no swimming zone. Mr. LaBrie indicated that they had been instructed to do so based on the Selectmen's meeting where it had been revealed that the swim zones were not being enforced. Chief Sullivan stated that Jane, the head lifeguard, is very concerned that they are too involved with enforcement rather than with overseeing safety. Mr. LaBrie stated that the contention was that, had they not been at the water line, they would have been in the chairs able to get a better view of the entire area. He stated that the lifeguards did not know about the rip on Sunday. Mr. Farrelly confirmed that the lifeguards had been whistling surfers between the flags all day. Mr. LaBrie indicated that the head lifeguard had stated that the break was fairly far out and the surfers and swimmers were not coming into conflict. That is not always the case.

Selectman Musselman stated that it was reported at the Selectmen's meeting that there was a lack of enforcement, and that the surfers were rude and did not respond.

Mr. Farrelly passed out a synopsis of the concerns expressed at the Selectmen's meeting the prior Monday. All were Rye taxpayers and most had white hair, he said. One of the taxpayers had suggested to him that those in the Summer Sessions shop may not know what is going on out on the beach.

Mr. McGill stated that he grew up on Cable Beach and is familiar with what goes on. He hears both sides. Some say they love what's happening. Mr. McGill stated that he had watched the Selectmen's meeting, but chose not to come in order to give the Save Jenness Beach people a chance for the Selectmen to hear their side.

Selectmen Mills and Musselman stated that they were not aware until the meeting that the Save Jenness Beach people would be coming in. It was so crowded that the Fire Chief would not allow anyone else in. Police Chief Walsh stated that he learned of what was coming at the very last minute. He was relatively unprepared. He said that he had talked to Mr. Farrelly and that it was not true that the Police were neglecting to enforce the Town ordinances and the State statutes. Mr. Farrelly indicated that he had apologized to Chief Walsh. Chief Walsh stated that they are only effective as the public makes them. If people call them at 964-5521, unless there is someone in the booking room, they will be there ASAP. The schedule and patrol tactics had been adjusted. However, there are only nine officers. Mr. Farrelly said that there was frustration and he referred to a specific incident where someone was peeing on a wall and there were a lot of witnesses.

Review of draft (6:50:35 p.m.)

Selectman Musselman stated that the document was a “first idea,” and starts with an event permit form patterned after the existing one for events. *Editor’s note: There is an existing form for road and bicycle races and events of that type.*

During a pause while Chief Walsh was out making copies, Selectman Mills asked Mr. McGill whether he was “sitting drinking a beer” laughing at the heat that the Selectmen were taking at the last Selectmen’s meeting. Laughter ensued. Mr. McGill stated that he was happy not to have been on that side of the table.

There was discussion about the reference in the document to “lessons, rentals or other group activities.” Mr. McGill asked whether the Surf Club would be included since they charge. Ms. Sherman and Mr. LaBrie indicated that they probably owned the property that they use. *Editor’s note: The word “probably” was apparently a result of uncertainty as to how far down the beach their property extended.* However, Mr. LaBrie indicated that, if they moved to Sawyers Beach they would be subject to permitting. Chief Walsh indicated, and Mr. Epperson concurred, that Planning Board approval might be needed if the scope of their activities changed.

Selectman Musselman asked whether “group” needed to be defined.

Ms. Sherman asked whether the lifeguard was responsible if something went on in the sand in front of the Surf Club. *Editor’s note: The Surf Club is located just north of Wallis Rd. Extension. That location is sometimes also known as “Pirates Cove,” although the Town eschews the use of that term. Town lifeguards are posted there.* Mr. LaBrie affirmed that the lifeguards were responsible. Selectman Musselman asked whether the Town portion of Cable Beach was the strip at the end of Cable Rd. Extension. There was agreement that it was. He indicated that the rest was private property that the Town was assuming liability for because of the lifeguards being present. Mr. LaBrie stated that this was a sensitive issue that would need to be discussed. Selectman Musselman stated that perhaps he and Joe would need to be separated. *Editor’s note: There had apparently been disagreement between Mr. LaBrie and Selectman Mills regarding this issue.*

Selectman Musselman stated that “for a fee” was important, otherwise friends and church groups would be included. Mr. Farrelly stated that a 90 person group activity, such as Zumba lessons at times, would still be a problem even if offered at no charge. Selectman Musselman asked what the safety issue was with Yoga. Chief Walsh indicated that there might be a problem with people walking through a group at high tide. Mr. McGill stated that Zumba was done at low tide.

Mr. Record asked what would happen if they strike “line 2.” Then it becomes anyone, Selectman Musselman stated. Ms. Sherman suggested that “group” be defined. Selectman Mills stated that, whatever they come up with must be sold at the Deliberative Session.

There was discussion of changing the language to encompass activities, whether for a fee or not. Selectman Musselman asked how individuals, doing voluntary activities, would be able to provide proof of insurance. Would that be waived if there is no fee for the activity?

(7:09:15 p.m.)

Mr. Epperson suggested that the following language be added: “entity is defined, but not limited to, as any school, group, organization, equipment provider, club, gathering

or any other association, whether for profit or not, and where the parties are not related. The Board of Selectmen may elect to redefine 'entity' from time to time as they see fit." There was general agreement with this language. Selectman Musselman stated that this would not include individuals. Selectman Musselman suggested that it be the definition of "group," not "entity."

Mr. LaBrie suggested that it be applicable whether a fee is charged for the activity or not. Mr. Epperson agreed. Mr. LaBrie also suggested that it be made applicable only at Town Beaches: Sawyers, Jenness, Cable Rd. Extension, Foss, Wallis Sands Extension. Then he corrected himself and said that it was not just the Extension area. Selectman Musselman stated that the Beach Ordinance currently contains a definition of Town Beaches. He suggested that each be described with a starting and ending point. *Editor's note: That definition includes only Wallis Rd. Extension, Cable Rd. Extension, the area at the end of Perkins Rd. and Sawyer's Beach. Wallis Rd. Extension is defined as the area between Wallis Sands State Park and Concord Point. Cable Rd. Extension is defined as "the area between the inside sand beach corner of Lockes Neck to Jenness Beach State Beach."* *Sawyers Beach is defined as starting 50 yards south of the Eel Pond outlet pipes and extending south to the Beach Club. All Town ordinances are available at www.ryepolice.us under "Town Ordinances."* Selectman Musselman questioned whether Foss was a Town Beach. Access is provided by the Town over the shale pile, he said.

Mr. Epperson suggested that "Town Beach" be defined as "any parcel of land adjacent to, or accessible to, the Atlantic Ocean under the present or future control of the Town of Rye." Selectman Musselman and Mr. LaBrie disagreed with the definition, and stated that people needed to know where the beaches are without hiring an attorney. Selectman Musselman said that he did know which portions of Cable and Jenness beaches were under control of the Town of Rye. Fire Chief Sullivan read the definition of Cable Rd. Extension from the ordinance, as set forth above.

Mr. LaBrie stated that definition would be needed, but the fact is that the ordinance would be applicable only at Town Beaches. Selectman Musselman referred to a Town boat launch at the bridge on Pioneer Rd. north of Odiorne Point. He stated that people have in the past used for launching kayaks and indicated that it may need to be part of the definition. It may also be known as "Seavey Bridge," several persons indicated. There was discussion about Foss Beach. Mr. LaBrie indicated that it was getting more and more busy and should be included. The issue of Bass and Philbrick's Beaches was raised by Fire Chief Sullivan. Mr. LaBrie said that Foss Beach is a lot longer, about a mile long. Fire Chief Sullivan indicated that, at the right tide, Foss is well attended.

Selectman Musselman indicated that they need to be clear as Town Counsel has indicated that they do not want to assume liability for ocean activities on private property. Police Chief Walsh indicated that, when tickets are written, a reference is made to the particular beach and the closest landmark, which could be a house.

Mr. LaBrie indicated that "including Pioneer Rd. and Little Harbor Landing" was crossed out.

Selectman Mills asked about enforcement of the town alcohol consumption ordinance at Jenness Beach. Selectman Musselman stated that the Town ordinance does not apply there, but State law can be enforced by the Rye Police at that location.

(7:22:15 p.m.)

The discussion then turned to equipment. Selectman Musselman stated that he thought that it was “surf boards, kayaks, paddle boards...” He didn’t know that they were getting into Zumba and Yoga. Mr. LaBrie responded that it was group activities as defined by Mr. Epperson. Selectman Musselman indicated that he would not be in favor of that, as he does not understand what it has to do with safety and Town liability. He does not think that they’re doing this to limit crowds at the beach.

Mr. LaBrie stated that there could be 2000 people on the beach and adding an organized activity would be on top. Mr. Farrelly referred to all of the cars behind the Dunes, then cars parked along Route 1A all of the way to Rye Harbor, plus Old Beach Rd. and the side streets. Mr. LaBrie stated that, when the tide comes in there is less room. The water moves 300 feet in front of his house.

Selectman Musselman stated that he did not think that the ordinance was being drafted to control crowding at the beach. That was not what he thought that, as a Town, we would do. Mr. Epperson stated that he agreed.

Mr. LaBrie asked what the safety issue was with the Summer Sessions surf camps then. Selectman Musselman responded that there were too many of them and you had coexistence issues between swimmers and surfers. They need to be separated for safety purposes. Mr. McGill showed a photograph on his laptop of the prior Monday. It was not the hottest day, and it was low tide, he acknowledged. The photograph showed the surf camp. He said that he had never had a safety issue.

Selectman Mills referred to an incident last year where one “well respected resident” was driven off of Sawyers Beach by a Summer Sessions surf camp because of concern of the safety of his grandchild. Messrs. LaBrie and McGill indicated that this incident was not related to activity in the water. Rather, participants in the surf camp had been playing catch on the beach. Mr. McGill stated, if that’s the concern, then there are bigger issues, such as playing kickball with 30 people.

Fire Chief Sullivan indicated that if Selectman Musselman speaks against a regulation to control crowding at the Deliberative Session this is all for naught. Selectman Musselman responded that that would be true of any of them.

Mr. LaBrie stated that surf safety was a different issue from groups on the beach. Initially, for him, it was that business was being conducted on Town property. Maybe it does shrink back to fee based activities on Town property.

Mr. Record stated that liability and safety are the issues. Mr. McGill stated that the fee did not appear to be related to the liability. Rather, it appears to have more to do with a lot of people using the beach. Mr. LaBrie indicated that the Town might be creating liability through its inaction in allowing entities to conduct business on its property.

Ms. Sherman asked, if the hiring of another lifeguard is needed, where the funds would come from. Mr. LaBrie stated that a great idea had come up at the Selectmen’s meeting of selling stickers to non-residents as well as residents. That would allow Old Beach Rd., Cable and Locke Roads, for example, to be opened up for parking. It could be a different colored sticker, sold for perhaps \$40. Resident stickers are currently required to park at any of our access points, including Wallis Rd. Extension and Cable Rd., he said. We keep coming back to a revenue source, he said. Fire Chief Sullivan

stated that we are marginally budgeted for the lifeguards. Mr. LaBrie stated that there are no revenues associated with the beaches.

Ms. Sherman expressed concern with the lifeguards having to watch the kids dropped off by the surf camps. It's not just one grandfather and his grandkid, she said. Mr. McGill said that, in 11 years, he has never had a lifeguard interfere with one of his camps. There is a three to one ratio of kids to instructors. He talks to the lifeguards when he goes down, and they always say there have been no issues. Ms. Sherman stated that she had spoken to a lifeguard who said that she was responsible for all of the people on the beach. Mr. McGill stated that there is far less supervision on any portion of the beach outside of his camps.

(7:38:50 p.m.)

Getting back to the ordinance, Selectman Musselman moved that the permitting be required only when the activity was "for a fee or other valuable remuneration." Mr. Farrelly suggested the removal of the word "valuable," with which Selectman Musselman agreed.

Mr. McGill asked whether 100 people showing up for Zumba lessons, or a church group would be exempt from the permitting.

Mr. LaBrie asked Chief Walsh whether he could act in the case of an unsafe situation. Chief Walsh stated that, while he can have a conversation regarding this, unless a Town ordinance or state law is being violated, if push comes to shove, he cannot take action to issue a summons or remove them from the beach.

Selectman Mills suggested that what is proposed is picking on someone running a business. Selectman Musselman stated that, if a fee is not charged, the organization would not be able to provide an insurance certificate. The primary purpose of the ordinance is to make sure insurance is in place. That can't be provided when people are doing things on a voluntary basis. Selectman Mills asked what would happen if one of the participants in a Zumba lesson fell down and broke her leg.

In response to a question from Ms. Sherman regarding non fee activities, Mr. McGill indicated that there is Tuesday and Thursday night volleyball on the beach. He is not sure whether there is a fee for that. Mr. LaBrie stated that he had not gotten complaints about the volleyball, although it is on the State Beach. Mr. Farrelly stated that people are very upset as nets are being put up to reserve space on the beach. Not all of them are from this country, he said. *Editor's note: In the past, Mr. Farrelly has complained about particular problems with Canadians.*

Mr. McGill stated that there are a lot of activities on the beach. People will say that is their prerogative, and if it is taken away, that will reduce their enjoyment. Mr. Farrelly stated that it's about safety, liability and enjoyment of the beach. *Editor's note: Similar language appears in both 2013 Warrant Article 15 and the Selectmen's Charge, although the former does not mention liability.* Referring to introductory, no fee Zumba classes, Mr. Farrelly said that we need control of the crowding on the beach when it is used for commercial purposes.

Mr. Epperson stated that the beach is self-regulating in a way because those that arrive after 10:00 a.m. are often unable to find parking. Ms. Sherman referred to yellow buses that she had seen. Mr. Epperson stated that it would be way overreaching to stop eighth graders arriving on a bus from using the beach.

Mr. LaBrie stated that he's for limiting it to fee based activities. Mr. Farrelly referred to Zumba, Yoga, and the need for insurance, even when no fee is charged. Mr. LaBrie asked Chief Walsh about teeth being provided to deal with non-fee activities. Chief Walsh responded that they had not seen problems yet in the non-commercial area, and that the ordinance could be modified if they do. Selectman Musselman indicated that an ordinance could be adopted that would be in effect until the next Town meeting. He stated, however, that it's too late to do anything this year.

Mr. Farrelly suggested that groups of 15 or more people be at the discretion of the Chief of Police. In response to a question from Ms. Sherman, Chief Walsh responded that he would be comfortable with the authority, but he does not believe that the townspeople would want him to have that authority, although he considers himself to be one who uses a lot of discretion.

Mr. Epperson read the definition, as changed by the motion on the table. "Groups are defined, but not limited to, as any school, group, organization, equipment provider, club, gathering or any other association for a fee or other remuneration, where the parties are not related. The Board of Selectmen may elect to redefine 'group' from time to time as they see fit." Mr. McGill indicated that he agreed with Selectmen Mills that they are being singled out. This is picking and choosing.

Selectman Mills asked what would happen if the Rye Garden Club wanted to conduct a Zumba lesson on the beach. Selectman Musselman stated that they would not need to get a permit from the Board of Selectmen for that. Selectmen Mills noted that a free group could be just as much of a problem.

Mr. LaBrie stated that everyone is taking note and tightening up their policies. Businesses on State beaches may not be permitted after next week, he said.

(8:02:00 p.m.)

In response to a comment by Mr. Farrelly about injuries in volleyball games, Mr. LaBrie noted that there restrictions on sports that interfere with safety or public enjoyment. *Editor's note: See the Beach Ordinance, paragraph 7, which states that "[n]o persons shall play any game or sport upon any public beach or area which will interfere with the enjoyment thereof by the public."* Mr. Farrelly indicated that a permit and insurance should be required if there is an organized volleyball group. Mr. LaBrie asserted that if volleyball becomes a problem, the Selectmen could instruct Chief Walsh to shut down the activity because it is covered under the ordinance. *Editor's note: The ordinance limits that authority to cases where the public enjoyment is being interfered with, and would not appear to include the danger of injuries to participants among the causes for restricting the playing of a sport.* Chief Walsh stated that he had no problem making the decision, but that he did not believe that the townspeople would want to place that authority on one person. Selectman Musselman stated that you needed to have an ordinance that would then be enforced.

Mr. McGill asked whether, if the ordinance were adopted, the Selectmen could technically shut down any for profit business on the beaches if they saw an issue. Mr. LaBrie stated yes, if it became a problem. Fire Chief Sullivan stated that it could if it became a problem or was a nuisance. Police Chief Walsh stated that the only circumstance where he has ever seen that would be if there was a hurricane and he was sent down to make sure there were no surfers in the water. Selectman Musselman stated that they do not do things like that. Not ever, he emphasized.

The vote on the amendment to make the ordinance applicable only to activities where a fee is charged carried 5-3, with Messrs. Record, McGill and Mills voting no (the Chiefs are ex officio and did not vote).

In response to a question from Mr. McGill, Selectman Musselman stated that a permit would be required if only rentals were being done. Mr. LaBrie indicated that the device rentals that required a permit needed to be defined. Selectman Musselman agreed.

Mr. Epperson read an additional proposal relating to rentals: "groups renting equipment that is intended for use on the beach, on Town beaches, accessed by any town beach, shall inform the renters in writing of all rules and regulations pertaining to the use of the beaches and require signature verify that they received and understand the information and retain a copy thereof."

Selectman Musselman stated that the devices needed to be defined. Mr. Epperson read another paragraph: "use is defined, but not limited to, surfing, kayaking, scuba diving, paddle boarding, kite surfing, etc. In no instance shall motorized vehicles be permitted.

Mr. LaBrie stated that this becomes tricky. He used the example of scuba diving, and Don Stevens. *Editor's note: Mr. Stevens apparently rents scuba equipment.* He asked how Mr. Stevens would know whether or not the equipment rented would be used on a Town beach. He asked about others renting scuba equipment just over Sagamore Bridge and in Hampton. Mr. LaBrie stated that people could be subject to the permit who do not realize where the equipment is going, and the Town may not even realize that they exist. Selectman Musselman stated that businesses would either get a permit or put up a sign telling customers not to use the equipment in Rye. Mr. LaBrie suggested that there be a requirement that it could reasonably be concluded that the equipment would be used on Rye beaches.

Chief Walsh stated that, if the ordinance went into effect and they had to chase down where the equipment came from, the likelihood of getting a conviction is small, at best. Logistically, running down rental equipment would be a nightmare. Mr. LaBrie stated that he could see that.

Mr. LaBrie stated that what he wanted Summer Sessions and Cinnamon Rainbows to do was convey the Rye ordinance, and they are willing to do that. *Editor's note: Cinnamon Rainbows is in Hampton.* Mr. LaBrie asked what they wanted to accomplish with the rentals. Selectman Musselman said it was to get them to acknowledge the Town rules and absolve them of liability. He continued that the Town Administrator could write a rental shop a letter indicating that a permit was required for their rental equipment to be used in Rye, and telling them to come in and get a permit. They would not be taken to court.

(8:22:10 p.m.)

Chief Walsh indicated that he still had a problem with regulating rentals. He indicated that there had not been a problem. Selectman Musselman stated that there was no difference between the lessons and the rentals. The Town is similarly at risk.

Mr. LaBrie spoke of untrained paddle boarders and the risks. Selectman Musselman, Mr. Epperson and Mr. McGill all agreed with an estimate of 98 percent of the rented equipment used in Rye having been rented in Rye. Mr. LaBrie stated that the paddle boards are being rented at Wallis Rd. Extension (where the Summer Sessions shop used to be) for \$20. Stand ups are different, he said, because you don't need a lesson.

Editor's note: Stand ups are apparently another name for paddle boards. These are like surfboards, but the person stands on them and uses a paddle to propel themselves.

Mr. LaBrie asked what the consensus was on rentals. Mr. Farrelly said that the big problem is with those who don't know what they're doing, whether on a surf board or stand up. It's those who don't care, who are new to the sport, often coming from outside the area.

Mr. Musselman read through the list of activities. Mr. LaBrie stated that he does not see diving as a problem. In response to a question from Mr. Musselman, he clarified that kite surfing is not behind a boat. It involves a harness and foot straps on a board. Mr. LaBrie agreed that it could be crossed off. That would limit the ordinance to surfboards, kayaks and paddle boards, Selectman Musselman said.

There was discussion about a threshold for group size. Selectman Musselman stated that, if Mr. Record wanted to conduct a surfing lesson, he would need to come in for a free permit. However, he acknowledged that he is told that the minimum annual premium for liability insurance in this industry is \$1000. A \$150 policy for conducting lessons is not available, he said.

Adjournment (8:40:00 p.m.)

The next meeting was scheduled for July 24, 2013 at 6:00 p.m. Mr. Farrelly passed out photographs comparing Rye, Hampton and Salisbury beaches. He also spoke about the Rye sign saying that surfers must stay 50 feet away from "lifeguard protected" swimmers. He asked what that the term "lifeguard protected" would mean to a surfer. Mr. LaBrie stated that the requirement was to stay 50 feet away from all other persons, and indicated that he did not believe that the signs read as Mr. Farrelly indicated. Whereupon the meeting adjourned at 8:45 p.m.