

NOTES OF JULY 8, 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, Mike 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.

Approval of minutes (6:31:55 p.m.)

The minutes of the June 19, 2013 non-public session were approved with a minor change by Selectman Jenness. The minutes of the June 24, 2013 meeting were approved with a change by Selectman Musselman to note that the vote on permitting the Library to buy heating oil under the Town's contract passed 2-1, Selectman Mills voting no. Selectmen Musselman and Jenness had other minor changes. The minutes of the June 24, 2013 non-public session were approved without changes.

Letter from Peggy Taylor regarding dogs on the beach (6:36:21 p.m.)

Selectman Mills read Ms. Taylor's letter which spoke of dogs running free on properties adjacent to the beach. The population of dogs on the beach is increasing. There is a problem with the owners cleaning up after them. Dog walkers from surrounding towns are coming to Rye, some with more than one dog. She thought that the dogs were supposed to be under control. Dogs that get well ahead of their owners cannot be considered to be under control. She would call the police if she thought that it would help. However, by the time the police arrive the dog and the owner are long gone.

Editor's note: There were 5-8 people in the audience that appeared to be there in support of Ms. Taylor. A number of them spoke. Most indicated that they live on the beach. Town Ordinance 1, the Beach Ordinance, paragraph 11 relates to dogs. It provides that:

(a) Dogs are not permitted on Town Beaches before 7:00 p.m. or after 9:00 a.m., from the Saturday before Memorial Day to the first Saturday after Labor Day. The only exception will be the area between Wallis Sands State Park and Odiorne State Park, where dogs and people are allowed between the hours of 6:00 a.m. and 12 midnight.

During this part of the year:

- 1. All dogs shall be otherwise under the control of its owner or other custodian.*
- 2. The owner or custodian of any dog that defecates on Town of Rye beaches shall immediately remove such defecation from public property and dispose of it on their own property or otherwise properly dispose of same.*

Selectman Mills referred to a Deliberative Session four years earlier. He said that he and Selectmen Jenness still had the bruises from that meeting. He believes that it is a

hopeless cause. *Editor's note: See the 2008 Town Annual Report, pages 102-109 for a summary of the discussion at the 2009 Deliberative Session. As originally presented, the Selectmen's Warrant Article 15 was to have required dogs to be leashed from 6:00 p.m. to 8:00 p.m. but that provision was removed and other changes were made at the Deliberative Session. The proponent of the major amendment was Don Perrault of the Rye Organization Monitoring Pets ("ROMP"). It was revealed at the Deliberative Session that, under the prior ordinance, in 2008, 53 tickets had been issued, of which 39 were to non-residents. The amended Article 15 passed 576-303.*

Police Chief Walsh stated that the prior week there had been 8 dog infraction tickets issued, this week there had been 14. Selectman Mills warned of a pit bull coming from Lawrence or Haverhill attacking someone. Selectman Jenness stated they may need to do a petitioned warrant article. She spoke of a business offering vacations in New Hampshire to New York dogs. Part of the vacation involves walks on the beaches, she said. She said that part of the problem is what the term "under control," in the ordinance means. Selectman Musselman stated that he has two dogs. He takes them to the beach. They are not on a leash but they are under control.

Ms. McDuffee, 1084 Old Ocean Blvd., asked whether under control shouldn't mean leashed. That shouldn't be tough, she said. Selectman Jenness responded that it was. People want to have their dogs free to retrieve balls or dive into the ocean. Ms. McDuffee stated that those living on the beach are a few hundred out of 5200 people in Town. They are outnumbered from the start.

Selectman Mills stated that, after a woman's dog had been mauled by another dog at Cable Rd. Extension, he figured that passage of the warrant article would be automatic. He spoke of Victor Azzi's mother having been knocked down by a dog and breaking her collarbone.

(6:53:48 p.m.)

Mr. Azzi then spoke. He said that they have a real problem. He witnesses it day in and day out. *Editor's note: Mr. Azzi lives on the beach at Wallis Sands.* He stated that other towns must have comparable numbers of dogs per capita along the coast, but also have stricter dog ordinances. He asked what made Rye unique in its inability to get a stricter ordinance passed. He also asked who is responsible for enforcing the dog laws on State Beaches. Selectman Mills responded that Police Chief Kevin Walsh is.

Selectman Jenness responded that she thought that the Rye voters were different.

Selectman Mills stated that he personally gave Chief Walsh an order providing for no more warnings. Instead, tickets must be issued, he said. Selectman Musselman interjected that Chief Walsh understands that Selectman Mills' orders do not have any effect. *Editor's note: The Police Chief reports to the entire Board of Selectmen, not just Chairman Mills.* Chief Walsh indicated that dogs on private property are sometimes held by the owners. The fine is \$62, plus additional costs if the dog is not licensed and must be taken to a kennel. An audience member suggested that the owners should be taken to the kennel.

(6:59:50 p.m.)

Susan Anderson asked why every law in Rye requires the people's vote. She referred to the two abreast bicycling law that, she asserted, was put in place by Chief Walsh. Selectman Musselman disagreed, saying that there is a democratic process that applies.

Editor's note: See notes of May 29, 2012 meeting at which the bicycling ordinance passed as a Selectmen's ordinance. The ordinance was again passed, as 2013 Warrant Article 14, 554-537. Prior to the ordinance having been passed, there was a lighted sign placed outside of the Public Safety building appearing to establish a prohibition against riding two abreast by fiat. This had upset a number of bicyclists, many of whom attended the May 29, 2012 meeting. In the absence of prior action by the Selectmen, publication of a new "law" by sign was without effect, but many did not know this.

Normally the authority to pass ordinances rests with the "legislative body" of the Town. In Rye, that is the registered voters acting through the Town meeting process. See N.H. RSA 31:39-c, I. Town Meeting approval also appears to be required with respect to restrictions on dogs running at large. See N.H. RSA 466:30-b, II(a). In the case of the regulation of public highways, sidewalks and commons, the Selectmen have regulatory authority independent of the Town Meeting. See N.H. RSA 41:11. However, the Selectmen's authority to supercede, through a conflicting ordinance, an ordinance duly enacted by the voters appears to be highly dubious. The authority of the Police Chief to enact laws by fiat is even more dubious.

Ms. Anderson warned of a two year old being mauled by a dog. Selectman Mills referred to opponents coming in droves to oppose the ordinance prohibiting two abreast bicycling. *Editor's note: He was apparently referring to the May 29, 2012 meeting.* You don't touch dogs or frogs, he said.

Mr. Azzi spoke about leaving the issue to be advanced only by a Petitioned Warrant Article. He said that not all warrant articles are petitioned. Some are put forth by the Selectmen. He asked why there could not be some leadership from the Selectmen, who have heard the complaints. He asked why it needed to be left to the citizenry. Selectman Jenness responded that the democratic discussion process is the same in either case. A petitioned warrant article was suggested in this case because the people had asked what they could do.

(7:03:59 p.m.)

Selectman Mills raised his voice and suggested that Mr. Azzi and his "buddy Peter Crawford" who submitted half of the warrant articles on behalf of the Civic League at the last Deliberative Session submit a petitioned warrant article covering this issue. Mr. Azzi acknowledged that he could do that. *Editor's note: While a number of members of the Rye Civic League are signatories on petitioned warrant articles, submit them to the Selectmen, and speak in support of these articles, the Rye Civic League does not itself submit petitioned warrant articles.*

There was further discussion about the possible town liability if a dog were to bite someone on the beach. What would happen if the Town's insurance company excluded that from coverage, Ms. McDuffee asked.

(7:13:07 p.m.)

Peter Crawford, 171 Brackett Rd., spoke, referring back to Selectman Mills' comment. He stated that he has a fair amount of experience in the submission of warrant articles. Obtaining 25 signatures is fairly easy, between friends and neighbors. Also, signatures may be obtained fairly quickly at the Recycling Center. However, a lot of people don't realize that it's a two tier process with the Deliberative Session and the subsequent vote. Only 50-150 people show up at the Deliberative Session out of about 4000 registered voters in the Town. About 1000-1500 people vote on election day. Last

year, some of the warrant articles that he thought were dead based on what happened at the Deliberative Session ended up passing three or four to one. The people voting at each are different. Proponents need to make sure that people show up at the Deliberative Session, not just at the election.

Selectman Musselman raised the possibility of having a special dog tag for out-of-Town dog owners that would be in addition to any tags they have from their home towns. These people would then be given a copy of the rules.

Event permit, Granite State Quest (7:23:25 p.m.)

This permit was unanimously approved. Selectman Mills asked whether a letter of support from the organization providing the donation should be required. It's possible that applicants may just be putting down names on the permit applications, he said. *Editor's note: The Selectmen generally have required that the profits from events held on Town roads be given to charity.* There was general agreement that requiring a letter would be a good thing. Selectman Musselman stated that they could ask, but the Selectman could not deny the permit if no such letter was provided. They do not have a right to ask for charitable contributions to begin with, he said.

Unmerger of involuntarily merged parcels (7:25:46 p.m.)

Town Administrator Magnant spoke to the issue. Town Attorney Donovan suggested that additional information be requested. This was agreed to. No motion was made or voted on.

Quitclaim deed for Cavaretta property (7:27:02 p.m.)

The issuance of the quitclaim deed was unanimously approved. Selectman Musselman said "finally." Town Administrator Magnant indicated that this was not quite the last step. *Editor's note: The issue of the Cavaretta property is very complex. It was the subject of 2013 Warrant Article 12, which passed 652-359. See notes of the November 26, 2012, October 22, 2012, September 10, 2012, August 27, 2012, June 25, 2012 and May 29, 2012 meetings. The issue is also on the agenda for the July 10, 2013 Planning Board meeting.*

Memorandum of understanding with regard to EZ Passes for Town vehicles (7:28:01 p.m.)

Fire Chief Sullivan indicated that orange colored EZ Pass transponders may be obtained for \$8. While Town vehicles are not subject to tolls on New Hampshire toll roads, without transponders the vehicles must go through staffed lanes. With the EZ Passes, this will not be required. The orange color is to make cheating noticeable if someone attempts to use the pass with a private vehicle. The Recreation vehicle, which has a Town seal, but no department designation, will not be covered by the request, but other Town vehicles will be. All were in favor of permitting the Town Administrator to sign the Memorandum of Understanding to obtain the EZ Passes.

Study of Town drainage (7:31:00 p.m.)

Public Works Director McCarthy spoke to this issue. He said that the study results were in. All nine major drainage basins in Town were checked. Manholes were located and crossings were identified. A number of drainage facilities need replacement or an increase in size. A culvert at Wallis Sands behind the Red Roof is falling in. It could be eliminated as it is redundant with another drainage facility nearby. However, there is ongoing litigation that will be going to the New Hampshire Supreme Court, Selectman Mills said. Engineering could proceed, however.

Selectman Musselman spoke of particular problems during the 2006 and 2007 storms near McLaughlin Dr. and Eel Pond. Fairhill Ave. was another problem, but that has probably been fixed. He asked for a copy of the draft report so that he could review it. He indicated that another drainage facility high on the list for replacement floods his house. Mr. McCarthy stated that they go right down when they get a call about that one.

Paving bids (7:43:33 p.m.)

Mr. McCarthy indicated that 6 responses to the RFP had been received. Bourassa was the low bidder at \$70.25 and Brox was the high bidder at \$77.53 per ton. These prices are for machine applied, always the basis for decision as there is only minor use of shim, hand applied and adjust in grade. Bourassa buys from Pike. *Editor's note: According to its website, Pike Industries has a hot mix asphalt plant on Peeverly Hill Rd. in Portsmouth.* There was discussion about problems with the Pike asphalt, which most of the paving companies apparently use. The asphalt is stored in silos and tends to cool. Selectman Musselman spoke about the mixes having been changed for the N.H. DOT highways. The mix supplied to municipalities may have less asphalt, resulting in cracks in the road. Mr. McCarthy stated that the paving budget was adequate to cover having an inspector available. He has not seen problems with the asphalt supplied in Rye, but there have been problems in other towns. Selectman Musselman suggested that Mr. McCarthy be authorized to have an inspector on site if needed, paying for it out of the overall paving budget. There was general agreement regarding this.

Mr. McCarthy stated that the plan calls for paving the following roads this year:

1. Washington Rd. completion (final inch), completing the road all of the way from Lafayette Rd. to Central Rd., including bike lanes.
2. South Rd. (shim and add an inch)
3. Sea Rd. from Central Rd. to Ocean (shim and add an inch)
4. Brackett Rd. from Clark to Wallis Rd.
5. Fairview Ave.

The motion to award the contract to Bourassa carried unanimously.

Parsons Creek grant update (7:50:50 p.m.)

Kim Reed, Planning Administrator, addressed this issue. Emily from FB Environmental was present, she said. Ms. Reed spoke about plantings of rain gardens at Marsh Rd. near Wallis Sands and at Brackett and Geremia roads, as well as the Brackett

Rd. Massacre site. These will reduce the runoff into the watershed.

They are also planning on bringing septic sniffing dogs into Town. This process will be shared with North Hampton. *Editor's note: A one page flyer, referring to these as "Sewage Sniffing Dogs," has been posted on the Town website.* The public needs to be educated about the Parsons Creek pollution, Ms. Reed said. The problems are runoff and septic, she said.

Selectman Jenness asked whether private septic systems would be looked at, and whether the dogs could detect problems with backyard septic systems from the street. Emily said that it may be possible. Particular houses could probably not be pinpointed, but neighborhoods probably could be. The dogs can also walk the shorelines and look for seeps that are a problem.

Emily continued, stating that the dogs can distinguish between human bacteria and that from pet waste. If human bacteria is detected, that is an indication of a failing septic system in the area. Depending on which of the two dogs is used, the dog will indicate a positive detection by either barking or sitting down.

Ms. Reed indicated that a list of septic systems in a particular area has been pulled together.

Selectman Musselman stated that the bacteria data is highly variable. Measurements indicate a problem, but then it disappears. He asked whether the dogs would be able to go into the salt marshes in people's back yards. Emily responded that they could, but the owners' permission would be needed. Selectman Musselman stated that Marsh Ln. behind Wallis Sands is a problem area. However, the most significant problem is Parsons Creek. There is construction on bedrock behind the Red Roof Market.

Date change on Town seal (8:06:55)

Selectman Jenness indicated that this issue had come up because Alex Herlihy (who has been around almost as long as she has been, she said) pointed out an error. The seal say "Incorporated 1726," but that was the date that the Parish of Rye was established by the House of Representatives. Formerly, it had been known as Sandy Beach. The establishment of the Parish permitted the Town to hire its own minister. Previously, residents needed to go to Great Island and there was no bridge to New Castle then. The Town was not actually incorporated until 1785. *Editor's note: See notes of June 24, 2013 meeting, where this was also discussed.* Selectman Jenness continued, stating that the Town was settled in 1623 (but it was not known as Rye then).

Victor Azzi suggested that other entities have logos with more than one date. For example, the University of New Hampshire was established in Hanover, when it shared a campus with Dartmouth. Then there is the date that it moved to Durham and the date that it became a university. Selectmen Jenness and Musselman indicated that including three dates was a good thought.

Editor's note: See abatement section for Mr. Hynes' comments on the issue.

Trolley Barn Report (8:13:43 p.m.)

Town Administrator Magnant indicated that the report had been received on this

facility. *Editor's note: In 2013, a \$9800 warrant article was passed, 691-391, to study the 1899 Trolley Barn, also known as the Old Police Station, for possible use for records storage or other public or private uses. The building is about 100 yards down Central Rd. from the Town Hall, and the Space Needs Committee's report indicated that possible uses of the building should be looked into.*

Mr. Magnant stated that the report concluded that the building was in overall good condition, with no lead paint or asbestos found. A septic system could be located in front of the building. The soil there is fine. There is some rotting of the sills and in the attic. There is a lot of mold in the interior walls, however. Three scenarios were looked into. All involve removing the interior walls and insulation. There are four options:

1. Use of storage only
2. Use for storage and offices for 4-6 persons.
3. Use for office space
4. Demolition

Mr. Magnant stated that there is currently parking for only about 10 vehicles, and two of those would need to be for handicapped parking. That's an issue for options 2 and 3.

Selectman Musselman indicated that none of the options are cheap. It would cost close to \$200,000 to keep the building and use it for any purpose, as it has no heating system and mold is continuing to grow. Using it for storage and limited office space would cost about \$325,000. *Editor's note: No cost for option 3 or 4 was disclosed by anyone present. In addition, there may be some discrepancies between the numbers mentioned and the report.*

The motion to accept the report carried unanimously.

Abatements (8:17:53)

Town Assessor David Hynes then came up to the Selectmen's table. He indicated that Rochester has three dates on its seal, around the outside. These are the founding, settlement and incorporation dates. It was known as Norway Plains originally.

Editor's note: For the list of properties considered, their addresses and tax map and lot numbers, see the agenda for the meeting.

The first abatement discussed was Bluestone Properties. There was discussion about the only issue having been challenged was whether part of one of the properties had been improperly located in the Rye Water District, resulting in a 51 cent precinct tax being improperly imposed. Mr. Hynes stated that the abatement request triggered a review of all of the taxpayer's properties, as is required by state law. Mr. Hynes stated that one of the properties, used as an Art Gallery, was overassessed. It is a garage with a drop ceiling, but was assessed as being of average quality. It also has no heating or air conditioning. Selectman Mills noted that they don't have one of the documents relating to 33 Sagamore Rd. Mr. Hynes indicated that he did not have it either. It was agreed that the matter would be tabled.

Next, the Malinowski abatement was discussed. One of the Selectmen referred to this as the "Ice House." Mr. Hynes indicated that he had used the income basis for valuation, as the value of a commercial property to a willing buyer would be based on how much income it could generate. He asked for information from the property owner, it was provided, and this permitted him to use this valuation approach. KRT had not

assessed the property using this approach. Selectman Jenness asked whether the property owners had been informed in advance of the proposed action. Mr. Hynes responded that he does not provide numbers to the people as the abatement is subject to approval of the Board. The motion to grant a \$22,400 abatement carried unanimously.

The Georgopoulos abatement was then discussed. This property is next to the Ice House, Mr. Hynes said. It is on the market, but overpriced. Another property with much more acreage sold for approximately the assessment on the Georgopoulos property. There are drainage issues and a screen on the property to deflect golf balls from the country club. Selectman Mills noted that the abatement had initially been denied. Mr. acknowledged that KRT had denied the abatement. However, since he was visiting the Ice House, he went by this house at the same time and inspected it.

Selectman Mills moved to approve the abatement. Selectman Jenness looked at Selectman Musselman, who remained silent for some time as he read the documents. Selectman Mills then asked whether “the cat” had gotten Selectman Musselman’s tongue. Selectman Musselman noted that the building value was changing by \$282,000, but the land value remained the same. Mr. Hynes responded that the building was reduced from very good to good plus 25. Selectman Musselman then moved to approve an abatement of \$282,400. All were in favor.

The Guthlein property was then considered. It was stated that the property owner had been looking for an adjustment to the land value. Mr. Hynes stated that comparisons with similar houses had been done, but the comparables were not in the same economic neighborhood. *Editor’s note: The relevance of this presupposes that the economic neighborhoods were correctly established to begin with. This was seriously doubted by the Selectmen at their June 10, 2013 meeting.* Selectman Musselman noted that the number of bedrooms was reduced from three to two, and the property was changed from a colonial to a cape. Mr. Hynes indicated that the property was a salt box. The motion to abate \$22,000 carried unanimously.

The Colby property was then discussed. Mr. Hynes stated that the property was unbuildable marsh, assessed consistently with similar properties in Town. The motion to approve a \$14,700 abatement carried unanimously.

The McCann property was then discussed. It has no furnace, Mr. Hynes said. Moreover, it was built as a summer home and has no insulation either. Rather than a \$17,000 adjustment for the absence of a heating system, a 5 percent functional obsolescence adjustment was made in recognition of it being a summer house. Differentiation based on whether the house has insulation must be made. The motion to grant a \$44,700 abatement carried unanimously.

Energy Committee charge, duration (8:48:33 p.m.)

Susan Anderson spoke to this issue. She stated that the new members of the Energy Committee had asked why they had been appointed to three year terms when the charge needed to be renewed annually. There was discussion about the Recycling Subcommittee of the Energy Committee having a scope that might change. Selectman Musselman indicated that that was why its charge was for only a year. Ms. Anderson agreed that the Recycling Subcommittee charge could remain for a single year, but the Energy Committee’s charge would be extended to three years. The motion so stating carried

unanimously.

Rye General Store liquor license (8:53:25 p.m.)

This discussion was prompted by an e-mail from Frank McDermott. Police Chief Walsh indicated that he had sent two letters to the Liquor Commission opposing. They are planning to serve liquor, not just sell containers of liquor for consumption elsewhere. It was revealed that the Liquor Commission hearing will be July 18, 2013 at 10:00 a.m. at the Rye Public Library. Selectman Musselman indicated that he thought that the opponents have a point. This is not the Carriage House. Patrons may also be using the beach. Selectman Mills stated that the alcohol would end up on the sand. *Editor's note: See the notes of the June 24, 2013 meeting. Consumption of alcohol on Town beaches has been one of the major complaints of residents in the Jenness Beach area.* Chief Walsh spoke about traffic from delivery trucks and concern that the next step would be entertainment.

Requested letter of recognition for Eagle Scouts (9:04:12 p.m.)

Selectman Mills noted that only about 2 percent of scouts reach the Eagle rank. Selectman Jenness stated that they should come in and explain what they did. Did they clear brush to create a trail?

Railing on Old Beach Way (9:06:15 p.m.)

Public Works Director McCarthy indicated that there had been a request from Mike LaBrie to remove a deteriorating railing on Old Beach Way. It was revealed that this was a separate issue from an ongoing dispute at 32 Old Beach Way with respect to a railing there. This one is the next block down, one of the Selectmen indicated. *Editor's note: See notes of June 24, 2013 meeting, page 12.* None of the Selectmen indicated that there was a problem with removing the railing.

Gasoline allowance for new assessor (9:06:00 p.m.)

Town Administrator Magnant indicated that Mr. Hynes was using his own vehicle for Town business as he had equipment that he kept in his trunk. Thus he was requesting \$50 per month for gas, in addition to his current hourly rate. Selectman Mills indicated that Mr. Hynes was being paid substantially less than the prior assessor. Mr. Magnant indicated that the budget would support the added cost as no assessor costs were incurred in the gap between the old assessor having resigned and the hiring of Mr. Hynes' firm. The motion to authorize \$50 per month for gasoline for Mr. Hynes carried unanimously. *Editor's note: Mr. Hynes had left the meeting before this issue was considered.*

Town Hall Committee (9:10:50 p.m.)

There was discussion regarding Mr. McCarthy having declined his invitation to join the Committee. Selectman Musselman indicated that, when it comes time to consider

construction, around November and December, Mr. McCarthy should be there. Mr. McCarthy stated that he tended to agree.

Selectman Musselman indicated that 11 persons had accepted. He did not enumerate the individuals. *Editor's note: See notes of June 24, 2013 meeting, pages 12-13. There are 11 persons that were enumerated at that meeting, with Ned Paul mentioned at that meeting as the one individual who had not yet responded and Phil Winslow mentioned as having declined. No mention was made of Mr. Paul at the ongoing meeting. Subsequently, at CIP Committee meetings in July and August, it was revealed that Ned Paul and Phil Winslow, both members of the CIP Committee and both members of the 2012 Town Hall Committee, had declined their invitations to serve on the 2013 Town Hall Committee.*

Selectman Musselman stated that additions to the Committee could be considered as they proceed. Selectman Jenness stated that the charge limited the Committee to 15. One of the Selectman stated that all of the architects in Town are now on the Committee, and that one of the architects in Town had moved to Newmarket. *Editor's note: This is an apparent reference to Curtis Boivin.* Selectman Musselman stated that there are four engineers on the Committee. Ms. Neiman is a mechanical engineer, Mr. Goldman an electrical engineer, and he and Mr. Azzi are both engineers.

The motion to send the letter, a copy of the charge and background information to the Town Hall Committee carried unanimously. Selectman Mills stated that he might have an addition. A first meeting date was discussed.

Non-public session (9:16:50 p.m.)

The Selectmen unanimously voted by roll call to go into a non-public session on a personnel matter. Just prior to this Town Administrator Magnant indicated that it involved a grievance.