

NOTES OF JULY 22, 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.

Announcement of selection of Shawn Carlson as new full-time police officer (6:41:10 p.m.)

Police Chief Walsh introduced Fremont, NH police officer Shawn Carlson, a U.S. veteran of multiple war on terror operations. Chief Walsh has the pleasure of soliciting board approval of Mr. Carlson's hiring. After Selectman Mills inquired of the wisdom of leaving the U.S. military early, and asked Mr. Carlson about his reserve status and retirement, the Board unanimously voted approval of his hiring. Mr. Carlson lives in Newton, NH

Approval of minutes (6:45:45 p.m.)

The minutes of the July 8, 2013 meeting were approved with minor corrections. The minutes of the non-public session of the same day were approved without changes. The minutes of the July 9, 2013 round table meeting with Senator Nancy Stiles, were approved with a minor change. *Editor's note: At 9:12:40 p.m., Selectman Musselman revisited the issue relating to Ms. Stiles recitation of the Attorney General's position on beach ownership above the high water mark, as reflected in these notes. See below.*

Letter from Anne Morrissey regarding the conditions and management of the Parsonage Apartments (6:40:59 p.m.)

Ms. Morrissey began by informing the Board of her concerns as a tenant, which lasted approximately one hour. She requested to testify under oath, if that was customary, but the Board declined. She appeared to have brought with herself a binder with many hundreds of pages of notes and correspondence.

The town minutes of the meeting capture many of the details of her testimony. The highlights would include an extensive exhibit and analysis of various pests in containers, notably dead carpenter ants and moths, a recitation of various inactions by MB Management and the Town Building Inspector, and inadequate actions on the part of one or more pest control companies.

Selectman Jenness inquired as to whether resident Morrissey could identify which pests specifically had bitten her, which, after some discussion, was noted as not identified. Issues of minor holes around piping, sounds traveling between apartments, caps on thermostat settings in the cold season finished the testimony, concluding with a

request that the Building Inspector be dismissed and the Selectmen force MB management to become more responsive.

Septic and wiring issues were also raised. The Selectmen discussed the nuisance that pests represented, and related that they have themselves had problems in that regard. Assertions were made by Ms. Morrissey that Town officials and MB Management have not honored appointments for inspection or consultation, or had been generally non-responsive.

(7:51 p.m.)

Building Inspector Peter Rowell rebutted several claims. He stated that he was aware of no other septic complaints, and that the building had been rehabbed in the mid-90s. He asserted that there was no rubbish accumulation, although he had not been in the cellar/crawl space. He stated that he had received a heat complaint and called MB Management. He spent 30 minutes at the building on July 5, 2013 and noted a nice clean apartment. He did not see fleas or other live insects.

(7:58 p.m.)

Marty Chapman of MB Management stated his regret that Ms. Morrissey had complaints. He maintained that he has been responsive. He is happy to provide Southern New Hampshire Pest Control's report to relevant parties. There is no septic issue per L.W. Morgridge, which is under contract to pump the septic tank annually. Mr. Chapman denied that eviction threats had been made. He agreed that a third party like Granite State Pest could be a second third party inspector. He would like to see their report.

In response to Selectman Musselman's prompting of Mr. Chapman, it was revealed that rents are fair market at the beginning of a tenancy. However, because of increases being less than those applicable to rents in the open market, long-standing tenants can have lower rents than tenants that moved in more recently. The lease with the Town governs the terms of the leases with the tenants.

(8:13 p.m.)

Fire Chief Sullivan agreed to accompany the Building Inspector on a tour of the building with an eye to life safety concerns. Town Administrator Magnant stated that he has pride in the people who work for the town.

Event permit, Saunders Road Race (8:18:00 p.m.)

Police Chief Walsh explained that the event will benefit the NHSPCA. It will be a 10K race, starting and ending at the Goss Farm. Selectman Musselman talked about Washington Rd. congestion and riders using both lanes. Chief Walsh stated that he's on it, and will take care of it. The permit was approved unanimously. This event is scheduled for August 15, 2013.

Event permit, Bike MS, NH Seacoast Escape 2013 (8:23:23 p.m.)

The request for a permit for this August 24, 2013 event was approved.

Event permit, Run for the Fallen NH

This event was approved. It is a run.

Public Works Site Evaluation: Consultant Selection (8:25:45 p.m.)

Public Works Director Dennis McCarthy stated that there had been four submissions in response to this RFP. Five staff members looked at it. Mr. McCarthy explained the number of first, second and third place votes that each received. The net result was that Weston and Sampson appeared to be the most favored bidder, Wright Pierce second and AMEC third. However, the staff did not all vote exactly the same. Mr. McCarthy recommended that the Weston and Sampson fee envelope be opened to see whether the bid was less than the \$45,000 appropriated and that they proceed from there.

Editor's note: This is possibly a reference to 2012 Warrant Article 12, which passed 678-655. However, that Warrant Article was, by its terms, null and void as 2012 Warrant Article 11 failed to gain the necessary two-thirds majority, the vote being 727-540 in favor. That Warrant Article would have changed the purpose of the Salt Shed Capital Reserve Fund to a more general Long Term Improvements Capital Reserve Fund. The Town's recent policy, at least with respect to professional services contracts, has been to have bidders segregate their submissions into separate envelopes: one for the proposal, and the second for the bid amount. If the proposal is determined not to be acceptable, the bid amount envelope is returned to the bidder unopened.

After Selectman Musselman suggested that he be given time to review the proposals, the matter was tabled. *Editor's note: At 9:28:28 p.m., Selectman Musselman indicated that he had leafed through the proposals and concluded that he agreed with the staff. The motion to proceed further with the Weston and Sampson bid then carried.*

Abatements (8:29:25 p.m.)

Assessor David Hynes then came up to the table. Mr. Hynes indicated that Jim Raynes, the first taxpayer seeking an abatement, was unable to be there as he does not drive after dark. *Editor's note: See the notes of the June 10, 2013 meeting, pages 8-9. Mr. Raynes abatement request was tabled at that meeting for further consideration. Mr. Raynes is Chairman of the Conservation Commission.*

Mr. Hynes stated that he did a full interior inspection of the Raynes property at 24 Fairhill Ave. Two minor errors were found, which were rectified on the sheet. However, the land value was not changed. *Editor's note: Mr. Raynes had complained at the June 10, 2013 meeting that his property had gone up, while the neighbors' properties went down. Mr. Hynes stated that the land value was not incorrect. The reason Mr. Raynes' land value went up was that it had been underassessed before, while the neighbors had been overassessed. He had been getting a break for many years.*

The motion to approve a reduced assessment of \$493,200 was unanimously approved. *Editor's note: According to www.visionappraisal.com, the Raynes property was at \$497,400 as of August 12, 2013. Presumably this is the value prior to the abatement voted at this meeting, which means that the reduction was \$4200.*

(8:33:00 p.m.)

Selectman Mills stated that he was sorry that this could not have been handled in the daylight, so Mr. Raynes could have been there. He would have enjoyed the discussion, he said.

(8:33:25 p.m.)

The abatements for Bluestone Properties were then discussed. *Editor's note: This land is located near Foyes Corner. Bluestone Properties is associated with Mike LaBrie, Chairman of the Beach Commission and Chairman of the Beach Use Ordinance Committee that is currently meeting to consider ordinance changes involving businesses using the Rye beaches. Earlier in the year, around the time of the Town election, an article appeared in the Portsmouth Herald regarding development plans for the site. In connection with traffic routing changes at Foyes Corner, Bluestone's land ownership changed in connection with complex land swaps and purchases involving the State and the Town (Elwyn Rd. and Sagamore Rd. south of Foyes Corner are Town roads. Route 1A, which follows Pioneer Rd. into Foyes Corner, and Sagamore Rd. north of Foyes Corner, is a State road). The land purchase by Bluestone was the subject of 2013 Warrant Article 11, which passed 699-335 and authorized the Town to convey to Bluestone the unused roadbed at or near Foyes Corner that resulted from the traffic routing change. Bluestone is purchasing a small piece of land in the area, resulting from the road relocation, for \$7500. See the notes of the August 12, 2013 meeting. The matters were previously tabled due to lack of information. There was an error in the precinct that a section of one of the properties was in. It was being taxed as part of the Rye Water District when, in fact, it was not located in that district. This resulted in an overcharge of \$3.40.*

Inasmuch as that abatement request was made, all of the properties in Town under common ownership needed to be looked into, Mr. Hynes continued. A couple of minor errors were found on Map 24, lot 6. It was moved entirely into precinct 1, whereas a portion had been in precinct 4 (the Rye Water District). That resulted in the precinct 4 portion being reduced from \$6,800 to zero. The minor errors resulted in a decrease of the portion in precinct 1 from \$318,300 to \$305,000, after giving effect to the additional land area resulting from the precinct adjustment. The other property, map 24, lot 4, previously a supermarket, is now an antique art facility. The building has no heat or air conditioning, contrary to what appears on the tax card. The building has a concrete floor and an acoustic ceiling. The assessor recommends a reduction in the assessment for that property from \$361,700 to \$308,400. The motion to change all three assessments carried.

(8:38:35 p.m.)

The property next discussed was that of the Lunging Island Trust, for property located at the Isles of Shoals. There was a request for an abatement based on the acreage. While initially Mr. Hynes had agreed to reduce the acreage from 7.04 to 6.4 acres based on a survey provided by the owner and the area at mean high tide, after the owner offered to give him a ride by boat to the island, Mr. Hynes inspected the entire island. It turned out that there is an additional building there that had not been assessed. A building permit had been pulled for that in 2008. Selectman Musselman said that this was why integrated software was needed. Mr. Hynes related that there was confusion with regard to a sketch that appeared to match the photograph, when in fact it did not. A property record card was missing for another island, which is just a rock, valuable only to birds. Nevertheless, this other island was added to the tax records. The house on Lunging

Island was built in the 1800s and is in great shape, but is only usable 7 months of the year. It has no heat.

Initially, Selectman Musselman made a motion to increase the value from \$913,500 to \$991,900. Mr. Hynes indicated that the assessment would not be rebilled for 2012, but that the new value would take effect in 2013. There was an abatement on the land, but the building value went up. The motion was changed to have the assessment remain at \$913,500 for 2012. Selectman Jenness seconded the motion. All were in favor.

Mr. Hynes then discussed the process on the abatements. At the end of August he will be back before the Board of Selectmen. If there is more information provided after taxpayers get their denial letters it is prudent to review the matters again before the taxpayer goes to the BTLA. That saves the Town money in the long run. Two properties are in the category of additional information having been provided.

E-mail from Tre' Nabstedt regarding table at Wallis Rd. Ext. (8:47:35 p.m.)

A letter had been received from Mr. Nabstedt regarding setting up a table to for an information-based program relating to the health of the oceans. Selectman Musselman indicated that the table should be on the road, not on the beach. Selectman Jenness indicated that it cannot take up a parking space. There was confusion regarding the plan to erect a tent around the table, which was not mentioned in the e-mail. The matter was tabled.

Letter from Melissa Gates of the Surfrider Foundation (8:51:40 p.m.)

Selectman Mills stated that the Board of Selectmen have demonstrated that they support the access which the letter encourages. Selectman Musselman agreed that access needed to continue.

(8:52:10 p.m.)

Selectman Jenness responded that "Well, what concerned me was does 'the Board recognized that its original proposal, calling for a ban on surfing during the summer months...' This Board never called for a ban on surfing."

Editor's note: Selectman Jenness was apparently reading from Ms. Gates' letter. The full text of the paragraph reads:

"In 2004, Surfrider Foundation wrote a letter to this Board, recognizing the need to separate swimmers and surfers for public safety reasons. The Board recognized that its original proposal, calling for a ban on surfing during summer months, was unjust, and instead adopted an alternative that Surfrider Foundation supported, which established a flag system to mitigate user conflicts amongst ocean recreation enthusiasts."

Selectman Mills indicated that this might have been discussed in 2004. A discussion ensued about this, with Selectman Musselman indicating that he was unaware of this from 2005 on, when he joined the Board of Selectmen. *Editor's note: Selectman Mills assertion was omitted from the official minutes.*

Selectman Jenness disagreed, asserting that "...and back then, someone might have suggested banning, but the Board, as a Selectmens' Board, never has called for banning surfing and I objected to seeing that in this letter."

Editor's note: subsequent to the meeting and publication of the official minutes, Steve Hillman of the Surfrider Foundation circulated an e-mail challenging this statement and making specific reference to a proposed beach ordinance amendment from 2004. The e-mail states that the Board of Selectmen proposed this ordinance in January 2004 and that it was approved by Town Counsel. The RCL has reviewed the Town's 2003 Annual Report and the minutes of the January 12 and January 26, 2004 Board of Selectmen meetings. It appears that Mr. Hillman and the paragraph in Ms. Gates' letter, cited above, are correct. The Board of Selectmen held a public hearing in 2004, at the start of which a ban on surfing during the summer months was under consideration.

The following proposed Warrant Article came up for a public hearing at the January 12, 2004 meeting:

To see if the Town will vote to delete the Surfing Ordinance, which was adopted March 16, 1968, Article 25 as part of the Beach Ordinance Section 8a, paragraphs (1), (2), (3) and (4), replacing it with the following:

8a. The use of surfboards and surfing on Town Beaches shall be regulated as follows:

- (1) Any person surfing shall obey all lawful orders from beach lifeguards and police officers.*
- (2) The following beaches shall be closed to surfing from June 1st through October 1st:*
 - a. Wallis Road Extension – the area between Wallis Sands State Park and Concord Point.*
 - b. Cable road Extension – the area between Lockes Neck to Jenness State Beach.*
 - c. Sawyers Beach – the area between the Eel Pond outlet pipe to the Beach Club.*
- (3) The Selectmen's Office and/or the Chief of Police shall have authority to close to the public, any public beach and area to surfing when deemed necessary in the interest of public health, safety or the protection of the beach area.*
- (4) Any person violating these surfing regulations shall be punished by a civil penalty of one hundred dollars (\$100) for a first offense and two hundred dollars (\$200) for each subsequent offense within a twenty-four month period.*

According to the minutes of the January 12, 2004 meeting, there were a large number of persons present, and the Fire Chief determined that the room was at capacity. The minutes of the meeting reflect, as was indicated by Mr. Hillman's e-mail, that section 2, prior to the meeting, proposed prohibiting surfing during the summer months on certain Town beaches.

Later in the meeting, following the public hearing, during which a number of persons from the surfing community spoke in opposition, and Selectmen Jenness spoke up stating that the Rye beaches had historically been for bathing, Selectman Mills moved to

suspend section 2 until Police Chief Alan Gould, the Beach Commission and representatives of the surfing community had had an opportunity to meet. The minutes do not reflect Selectman Musselman being on the Board of Selectmen at that time.

As a result of these discussions, an agreement was apparently reached deleting section 2, as reflected in the minutes of the January 26, 2004 meeting. The deliberative session minutes appearing at pages 85-87 of the 2003 Town Annual Report reflect a warrant article, as it stood prior to the Deliberative Session, which omitted section (2) above, but continued to include section (3).

An amendment offered at the 2004 Deliberative Session watered down section (3) as well. The amendment permits only the "Lifeguards, Beach Commissioners, Selectmen or Police" to prohibit surfing only when they "believe a public safety issue exists," and only on the Town Beaches indicated above (with minor changes), and only between 9:00 a.m. and 5:00 p.m. from Memorial Day to Labor Day. The amendment passed by a show of hands. The amended article passed in the subsequent election, 1102-322. The language of the amendment at the 2004 Deliberative Session continues to appear in the current beach ordinance.

According to a statement by Police Chief Alan Gould at the 2004 Deliberative Session, prior to the 2004 amendment, surfing was limited to twenty-five residents per day. Surfing required permits issued at the Police Station and renewal every twenty-four hours. He said that the ordinance, while on the books for a long time, has never been enforced, effectively making the entire coastline open to surfers.

Following Selectman Jenness' assertion, Lori Carbajal, 18 Tower Ave. spoke regarding the letter. She stated that she is a member of the Surfrider Foundation, and attends some of their meetings. She stated that there is a contingent telling people that a ban has been proposed. But, the Town discussions have been about parking, not banning surfing, she said. Editor's note: See 2012 Petitioned Warrant Article 18, which would have prohibited parking, or established parking by permit only, on certain sections of Locke Rd. Mr. Hillman spoke against the article at the 2012 Deliberative Session. After Mr. Hillman made a motion to invert the warrant article to state that the voters were rejecting, rather than approving, the proposed parking ordinance change, the motion was ruled out of order by the Town Moderator as it would have eliminated the subject matter of the warrant article. Selectman Mills then made a motion to amend the Warrant Article to turn it into a study only. The amendment passed 36-22. In the subsequent election, the amended Warrant Article 18 failed to pass, 627-712.

Selectman Jenness then stated that this Board of Selectmen has been here "forever" and they have supported access. They have even gone to court to promote this.

Letter from Clerk of the State Senate regarding appointment to commission on sea level rise (8:59:10 p.m.)

This letter was briefly discussed.

E-mail from Steven Borne regarding beach issues (8:59:35 p.m.)

Selectman Mills corrected Mr. Borne with regard to his reference to "Pirates Cove." Editor's note: This is the name that many use to refer to the beach at Wallis Rd.

Ext. It uses the name of a restaurant that used to be located near there. Selectman Mills stated that it was Welch's Restaurant before it was Pirates Cove, and the beach was never called Welch's.

Mr. Borne stated that more help is needed with enforcement and that more revenue is needed to pay for it. He suggested dog patrols with college kids. In addition, he suggested that off hours parking stickers be sold. New Castle provides a limited number of stickers to nonresidents, he said.

The laws are not being followed. Part-time people are needed to enforce them, Mr. Borne continued.

With regard to swimmers and surfers, the flags work well on certain days, but on other days, there need to be separate zones for swimming, boogie boarding and surfing.

Mr. Borne suggested parking on side streets from 8:00 a.m. to 8:00 p.m. Selectman Jenness asked where this could be done. Mr. Borne stated that his biggest concern is colliding with a door being opened while on a bicycle.

With regard to the Beach Use Permits being proposed, he referred to a communication with Senator Stiles that indicated that the State is issuing these permits. He asked why an extra layer was needed, as it would place an additional on the Town.

Selectman Musselman stated that he did not know that this was the case. Town Counsel has been looking into it. He has been unable to find anything in DRED regulations requiring permitting for on water activities. There is a provision for use permits, the question is when it applies, Selectman Musselman said. *Editor's note: DRED is an apparent reference to the New Hampshire Department of Resources and Economic Development, which, among other things, has authority over the State Parks, including beaches.*

New FEMA Flood Hazard Maps (9:05:55 p.m.)

Town Administrator Magnant indicated that a letter had been received relating to updated maps. He wanted the Selectmen to be aware of this. Selectman Musselman asked whether the Town property owners would be getting their insurance discounts back because of the good job that the Town had been doing bringing properties into compliance. Mr. Magnant indicated that it was premature to expect this. *Editor's note: The Town has been working with the owners of roughly 10 properties to bring them into compliance. The issue is often the basements of the properties, which are subject to flooding. Most of the issues have been resolved, but there are one or two still outstanding.*

Dog bite at Wallis Sands and other enforcement issues (9:07:15 p.m.)

Selectman Mills indicated that someone had been bitten by a dog at Wallis Sands the prior Saturday. An ambulance was called. He feels that someone should have been issued a summons with respect to this incident as the dog was not "under control." *Editor's note: Dogs on the beach are not required to be leashed, but must be under control of the owner, according to the ordinance. This was the subject of a great deal of discussion at the previous meeting. See the notes of the July 8, 2013 meeting. Police*

Chief Kevin Walsh stated that the matter is under investigation. It is likely that one or two dog owners will be issued summonses.

Selectman Mills indicated that he was aware of a problem at Cable Rd. Ext. Bicyclists are not stopping when they should, even though automobiles are. They are nearly colliding with pedestrians.

Selectman Jenness commented about lawn mowing of properties along Ocean Blvd. Cones are being set up and traffic must go around. Police Chief Walsh indicated that they are lenient with such parking during the off season, but at this time of year, the police make lawn mowing companies unload their equipment and then move the trailer.

Selectman Mills referred to the issue of speed limits on Ocean Blvd. having been raised during the session with Senator Stiles on July 9, 2013. Chief Walsh stated that he was to be meeting with someone about this issue shortly.

Objection of statement regarding private beach ownership in minutes of meeting with Senator Stiles, July 9, 2013 (9:12:40 p.m.)

Selectman Musselman stated that the discussion with Mr. Borne had “rattled” his memory. There is a statement on the middle of page two of the minutes of the July 9 session that he disagrees with. It relates to who owns the land above the high water mark. *Editor’s note: The minutes state that Senator Stiles communicated with the Attorney General’s Office and was informed that, with regard to private beaches, “the owners have jurisdiction up to the high water mark, beyond that it is under the authority of the State.”* Selectman Musselman stated that his understanding of the legal precedents is that this is not clearly defined. The Board of Selectmen should not let this go. He moved that they go on record as not necessarily agreeing with this contention. Selectman Jenness seconded the motion. All were in favor.

Old business, Town historian (9:15:45 p.m.)

Michael Mittelman addressed this issue. He said that he did not present it properly before. If there was a Town Historian, people at Town Hall would not need to be burdened with questions about Town history. Selectman Jenness raised certain objections to what was being proposed. There was further discussion about preparation of a job description. The matter was tabled until Mr. Mittelman comes back with this.

Old business, correction of the Town Seal (9:22:55 p.m.)

Selectman Jenness indicated that she had personally done a couple of quick designs. *Editor’s note: See notes of June 24, 2013 and July 8, 2013 meetings. Alex Herlihy, Chairman of the Rye Historical Society, has discovered that the Town seal is incorrect, in that the Town of Rye was not incorporated in 1726 as indicated. Rather, that was the date that the Parish of Rye was established by the House of Representatives. The Town was actually incorporated in 1785, but established in 1623.* Selectman Jenness passed out copies of her designs. One has all three dates, the other corrects the incorporation date to 1785. There was further discussion about the difficulty of reading the dates on the first design, and ways that the design could be changed to increase the

legibility. It was agreed to send the proposed designs to the Heritage and Historical District Commissions for comment.

Proposal for Public Works Facility Evaluation (9:28:28 p.m.)

Selectman Musselman indicated that he had leafed through the proposal during the meeting and now concurs with the staff that Weston and Sampson submitted the best proposal. The motion to take the matter off the table and concur with the staff consensus carried unanimously.

Bridge to New Castle, advisory meeting (9:29:49 p.m.)

Town Administrator Magnant indicated that he would be attending an upcoming meeting. Selectman Musselman asked whether a lift bridge was a good expenditure of money. Mr. Magnant indicated that bridge opening data is being gathered, which is one of the reasons for a delay in resuming meetings.

Appointments to Rockingham Planning Commission (9:31:10 p.m.)

Selectman Mills indicated that Phil Winslow is requesting appointment to this Commission. A question arose as to whether Keriann Roman, currently serving on that Commission, had resigned. Ms. Gillespie indicated that there are four positions available, the intent is that Ms. Roman would continue to serve until a second appointment is made. The motion to appoint Mr. Winslow carried unanimously. Steven Borne asked for confirmation that there are indeed four positions available. He stated that the Civic League web site indicates open positions. The existence of four positions was confirmed. *Editor's note: Subsequently, the RCL learned that two of the four positions may be technical, and that one of those is already filled. This needs to be confirmed.*

Adjournment (9:33:15 p.m.)

Whereupon the Selectmen voted unanimously to adjourn the meeting.