

NOTES OF FEBRUARY 1, 2014 RYE DELIBERATIVE SESSION
Afternoon Session

Final Revision C – Provided by the Rye Civic League

Present on the stage (left to right as viewed from the audience): Town Clerk Beth Yeaton, Town Counsel Michael Donovan, Selectman Priscilla Jenness, Vice Chairman of the Board of Selectmen Craig Musselman, Chairman of the Board of Selectman Joe Mills, Finance Director and Assistant Town Administrator Cyndi Gillespie, and Town Administrator Michael Magnant.

Present at the podium: Bob Eaton, Town Moderator.

Additional persons present from the Town included: Police Chief Kevin Walsh, Fire Chief Skip Sullivan, Public Works Director Dennis McCarthy.

The meeting was called back to order at approximately 12:51 p.m. The elapsed times are from the start of the recording at approximately 12:47 p.m.

Editor's note: The elapsed times are relative to the start of the recording at 12:47 p.m. Video and audio recordings were made of the meeting. While this version of this document does not provide links to those recordings, and are not yet useful, a future version of this document will provide links. Check back by reopening your Civic News e-mail or go to the RCL website to see if a new version with video/audio links has been posted.

SUMMARY

1. Attempts to amend the BOS-sponsored warrant article to require permits for commercial beach activity largely failed, but not without vigorous debate on both sides.
 - a. An attempt to amend the article to add denial clause that would have limited the reasons for which the BOS could deny a permit failed. That left the vague criteria that the BOS could deny a permit if allowing the activity was inconsistent with the "safe, enjoyable and accessible" use of the beach.
 - b. At attempt to amend the article to remove limits as to the time and place of private and semi-private lessons failed.
 - c. An amendment to require the BOS to state the reasons whenever it denies a permit passed.
 - d. An attempt to amend the article to require retention of records for three years (the statute of limitations period) rather than one year, failed.
 - e. Voters raised questions regarding the lack of permit fees and the burden on the police to enforce the ordinance and process permit requests.
2. The Petitioned Warrant Article to ban commercial activity on the beach that is not water-borne was conditioned upon the BOS-sponsored warrant article failing, and modified such that the BOS need only consider whether such activities should be banned.
3. The Petitioned Warrant Article to ban all commercial activity on the beach on summer weekends and between 10 a.m. and 5 p.m. on summer weekdays was conditioned on the other two commercial beach articles failing, and amended to require only that the BOS consider such a ban.

4. Selectman Musselman acknowledged that Town Counsel had questioned the ability of the Town to ban activities beyond the low tide mark, in the Gulf of Maine, but could not explain how the BOS-sponsored Article 23, which specifically applies to beach activities "whether in the ocean or on land" was permissible, other than to distinguish between permit denial and an outright ban.

ARTICLE 23: COMMERCIAL BEACH ACTIVITY PERMITS (5:05 elapsed)

Mr. Eaton called the Deliberative Session back to order and then read a summary of Warrant Article 23. He stated that the article is long and that “it seeks to amend the Town Beach Ordinance to institute a permitting process with the Board of Selectman for any person or business that wishes to use Town beaches for commercial activity or that wishes to rent certain beach equipment for use on Town beaches. Violation of that permitting process would result in a fine.” Because of the length of the article, he stated that he would entertain a motion to waive its reading. Selectman Musselman so moved, and that was seconded by Selectman Mills. There was no discussion. The motion carried.

Selectman Mills moved the article to the floor for discussion. Selectman Musselman seconded. Mr. Eaton then asked Mr. LaBrie, Chairman of the Beach Use Ordinance Committee, to speak to the ordinance.

(6:14 elapsed)

Mr. LaBrie stated that the warrant article resulted from a process that took most of the summer. The group studied the existing situation on the beaches and studied what other coastal communities across the country were doing with regard to commercial and group activities on town and public spaces. They found that they were “behind the curve” in this regard. Mr. LaBrie stated that he has always espoused the institution of a permitting process. He has been Chairman of the Beach Commission for seven years. The frequency and types of commercial activity have been increasing. Permits are in place for bike races, running races and uses of Parsons Field. It is appropriate and reasonable for there to be a permitting process in place for other public spaces, namely the beaches.

The Committee was comprised of those of opposing interests, as well as those ideologically in between. Over the course of the summer and the many meetings, including the one lively public meeting, a reasonable compromise was forged that also protects the Town from liability. *Editor’s note: In fact, the meetings, which were generally monthly, lasted until January of 2014.* Mr. LaBrie stated that the warrant article is a good starting point, and is reasonable.

Selectman Mills asked Tyler McGill to address what Mr. LaBrie had said. Mr. McGill stated that he would like the public to speak first. After Mr. Eaton asked whether anyone wanted to speak and none did, Mr. McGill came to the microphone.

Defense of surf camps (10:58 elapsed)

Tyler McGill, 1000 Washington Rd., came to the microphone. *Editor’s note: Tyler and Ryan McGill are co owners of Summer Sessions a surf shop located near*

Jenness Beach in Rye. Mr. McGill appeared to read from a prepared written statement. His remarks appear below.

“One year ago, at this same Deliberative Session we passed an amendment to Article 15 by an overwhelming majority. The reason: people were concerned about the permitting process on public trust land. There was no clear process for acquiring permits, no explanation of the criteria upon which a permit would be approved or denied, and most importantly, there was concern whether a permitting process was even necessary in the first place.”

“Over the past eight months, the Beach Usage Committee, of which I was a part, has worked diligently, although contentiously at times, to create a document that represents a compromise between all sides involved. It is by no means perfect legislation, sorry dudes, but legislation rarely is. This document does, however, represent a reasonable middle ground, and if implemented properly, with a few small changes, should not affect any of the existing providers on the beach, while still empowering the Board of Selectmen to vet, reorganize and approve or deny all event applications.”

“As a BUC member, but more importantly as a member of the community and a Rye resident, I support what we as a Committee have done. There are, however, other members of the BUC and members of the community who want to take a more radical approach and ban all commercial activity. I’m sure you’ve seen the stickers on street signs or you’ve received a flyer in your mailbox this week. This is the wrong approach. I will explain my opposition to their citizens’ petition on legal, conceptual and factual grounds.”

“From a legal standpoint, the land below the high tide water mark is not Town land, but State land. That being said, Rye may provide for ordinances that reasonably regulate the use of such property, provided such regulations are not inconsistent with State law.” *Editor’s note: See N.H. Rev. Stat. Ann. (“RSA”) 483-C:1, III.*

“An outright prohibition of commercial activities would in fact be inconsistent with State law in that it violates the public trust doctrine. Simply look at rulings on bike trails, lakes or rivers where the State has consistently deferred to open access. This is important, because it clearly states that all Town ordinances on State land must be in line with existing State precedent. Therefore a ban on commercial activities on public trust land would, I believe, be overturned by the State Supreme Court.”

“Proponents of the ban continually claim that commercial activities overwhelm Rye town resources without adding anything to the local tax base. This is categorically false. Local businesses pay property taxes just

as homeowners do, if they own the land. If renting, businesses pay common area maintenance and a share of the real estate taxes in their rental agreement. Businesses also provide countless jobs to local residents, pay Business Enterprise Tax, Business Profits Tax, as well as New Hampshire Unemployment Tax. Therefore the argument that somehow local businesses are leaches on Town resources is not only wrong, the opposite is actually true.”

“But more importantly, this burden of which they speak is not the burden created by local businesses, but the burden created by tourists and visitors that come to our shores every summer. Whether commercial entities existed in this Town or not, tourists will come. That’s the reality of living in a seacoast town between June and August and this trend will not change as the result of any permit or any regulation. Unfortunately, that’s an inevitability as populations grow, incomes rises (sic) and people find the beaches of New Hampshire. When proponents of commercial bans speak in vagaries about the ‘big businesses’ that are crowding out ‘the public,’ I think it’s important to put a face and a name to these monsters of industry and commerce.”

There was laughter. Mr. Eaton cautioned Mr. McGill to be careful and not to engage in personal accusations. Mr. McGill continued, saying:

“The only consistent providers on the beaches are the local surf shops. So, they’re looking to stop kids camps, our lessons, and our rentals. They want to take away the ability for our kids to come and enjoy the beach and learn an amazing sport in a fun and safe environment. They want to keep you from renting a board or coming to a ladies night. How is that supporting the public’s right to open access?”

“But more importantly, they overlook that a ban on all commercial activities will affect more than just our ‘big businesses.’ This ban would also encompass the Rye Recreation Department to whom we provide classes, church groups, New Heights Community Center, the Seacoast Science Center, fund raisers, and any other event or organization where money exchanges hands as we delineated in the BUC document. This ban would keep Rye kids, in the Rye Recreation Program, from using our beaches with our surf camps. That’s just plain wrong.”

“Furthermore, from a conceptual standpoint, businesses don’t crowd out the public, we exist only to serve the public. I don’t have a business if the public isn’t interested in learning to surf. Period. The people in classes and lessons are the public and they have just as much right to the water as someone not in a lesson, and vice versa. The fact that money changes hands does not mean that a resident, or visitor, forfeits their right to use our beaches. The U.S. Constitution affords citizens certain inalienable

rights. So too does public access afford all the people equal rights, not just those in the public deemed worthy of special treatment or better access based on tax payment or their local address.”

“Finally, we often hear about the terrible externalities associated with commercial activities on Rye beaches from the beachgoers whose rights were infringed by rampant commercialization. What about the other 98 percent of the population who love the beach, had a great experience last season, who enjoyed some commercial activity or maybe just a relaxing day on the beach? Where are their voices? Well, they don’t often get heard. But, I’m happy and thankful to see a lot of those individuals in this room today. I’m equally grateful for the outpouring of support we received from those who couldn’t make it today. But they wrote to send encouraging words anyway.”

“I’d like to share a couple with you. Frank Wayne, Rye resident: ‘In an age where we’re facing mounting obesity and serious disconnect from our natural outdoors, these instructors and their programs reinforce the importance of physical education, our natural resources, and, most importantly, fun. We look forward to the time when our four and a half year old and two year old can join their ranks.’ “

“Tim McCue: ‘Your business and what you have done for our children has been a life changer. Thank you so much.’”

“Allison Lee: ‘Hopefully I will not have to tell my children that, because some adults can’t share the beach, surf camp got canceled. This surf camp is teaching children to respect the beach, to surf, and have fun. We always leave happy little footprints on the beach and nothing else.’”

“And finally, this last one, I’m going to leave anonymous on their request: ‘My kids were fragile. They were so fragile and so sad and so scared. Their lives had just been turned upside down. They had to move away from their only friends they’d ever known, and away from the only home they’d ever known, and away from the only school they’d ever known. Everything they had ever known was gone. They were scared and they cried. And I did everything in my being to find courage and strength to put a life back together for us. A new life, a life totally different from what we had known. Desperately wanting my kids to be empowered and strong after being hurt and scared, I brought my son to the very first week of surf camp this summer. Everyone from Summer Sessions was so nice and so kind. We spent five days around the kindness and encouragement. Five days of the ocean, the warm sun, the cleansing salt water. I saw my son, who I desperately love, smile. It had been a while since I’d seen him smile.’”

Mr. McGill's voice started to break up at this point. He continued reading:

‘Some kids go through a ton of stuff in life, some really hard headed stuff. When kids show up at your camp you have no idea what they’ve been through. When you had an opportunity to set a tone, turn a tide, give a smile, a word of encouragement, a high five, you did it. And that tells kids they can do it.’”

“This is, in the end, not a fight about commercial activities. It’s about open access and the ability to use our beaches how we so choose. Regulating public trust land is dangerous and a slippery slope and these citizens’ petitions need to be amended here today and defeated in March at the vote.”

(20:07 elapsed)

Mr. Eaton asked Mr. McGill to speak to the article that was before them.

“We do, I’m speaking for my brother and my family, however agree that there does need to be some regulation. That’s why the Beach Usage Committee has put forth a permitting process we are supporting with a few amendments. But an outright ban on all commercial activities is short-sighted, bad headed legislation that goes against what New Hampshire is all about. Living freely. Thank you.”

(20:32 elapsed)

There was extended applause.

Mr. LaBrie had a point of order. He stated that, since their ordinance had not been read here that day, he did not want there to be confusion. A lot of what Tyler is speaking against are the petitioned articles and not the warrant article that the Beach Use Committee put together. “Our ordinance does not seek to ban commercial activities or the activities that he’s discussing. We simply want to put a permitting process in place to do so. A lot of what he was addressing is the petitioned articles. Thank you.”

Mr. McGill expressed his agreement, and stated that he had thought he would have only one chance to speak.

He stated that he had two amendments. They are separate, he said. Mr. Eaton asked that they be taken one at a time.

Proposed amendment to add a denial clause fails

Mr. McGill stated that the first amendment is the inclusion of a denial clause. This is important because, as currently written, it is very subjective as to who would and would not receive a permit. The major one is that it would affect the enjoyment of the beach and that is too subjective. Someone seeking a permit deserves to know why a permit was either (a) approved or (b) denied. This was put before the BUC but voted down.

The reasons would be:

- Detrimental to the ecosystem.
- Excessive noise, lighting, staging or equipment.
- Conflicts with existing permitted activities on specified beaches.
- Fails to meet certification (liability insurance or CPR certification).
- Does not comply with existing beach ordinances.
- Exceeds maximum number of participants - 35 (Selectmen may approve additional participants if they so wish).
- Deemed unsafe by Police or Lifeguards.

Mr. McGill stated that this was a reasonable and all encompassing list. It would give the public peace of mind that it is an objective, and not a subjective decision. Mr. Marion seconded the motion.

Mr. McGill then handed a written copy of the amendment to Mr. Eaton. Mr. Eaton stated that it would add a “section (o)” to the proposed ordinance, to include a section entitled “Reasons for Permit Denial.”

(25:24 elapsed)

John Sherman, 25 West Rd., stated that he does not support the permit process as written and has some amendments as well. However, what Tyler proposes is not unreasonable, that somebody submitting a request for a permit know, if it’s denied, why. However, the Selectmen, in making the decisions, need to have some discretion. There should be a provision that says “other” so that the Selectmen would be able to have another reason for denial and be able to explain that. It is not fair to isolate and define the reasons for denial.

Mr. Eaton stated that, in his rules, he does not allow amendments to amendments unless Mr. McGill accepts this as a friendly amendment.

Mr. McGill stated that the whole point for enumerating reasons for denial is that “other” can’t exist. “Other” is the subjective, otherwise there’s no point in having a denial clause.”

There was substantial applause.

Selectman Mills asked whether Delly (i.e. Del) Record, who had been a member of the Beach Use Committee, was there. Mr. Mills started to speak, saying “Tyler I’m disappointed...” Mr. Eaton interrupted and asked Mr. Mills to speak to him.

“We talked this all over. Don’t give us a reason to deny your permit and I explained it to you...”

Mr. Eaton interrupted and said, I don’t think your mike’s working, Joe. In fact, it appeared to be working fine. Selectman. Mills continued:

“...and Delly was witness to it and he agreed with me. Don’t give us more reasons to deny you a permit. That’s why I was upset with that at the beginning and you withdrew it and pulled it out and that’s why it was voted seven or eight to zero against it. Was that right, basically, Delly?”

It appeared that Mr. Record confirmed, although he was not using the microphone so it was difficult to hear. *Editor's note: See the notes of the Beach Use Ordinance Committee meeting, January 6, 2014. The vote was 6-1 against inserting the denial clause, with Mr. McGill voting in favor.*

(27:38 elapsed)

Selectman Musselman stated that they had discussed this in detail with the Beach Use Committee. He stated that:

“[t]he Beach Use Committee had decided not to list the specific reasons for denial and the reason that was discussed at that time was that you couldn't make it comprehensive enough to cover the reasons why it might be entirely appropriate for a monster commercial activity that comes in adjacent to what Summer Sessions does and has people who, for instance, misbehave, in some way. Let's say some way that's unacceptable to all of us.”

Selectman Musselman asserted that every time the proposed ordinance had been amended they had had to get legal advice as to whether it would work and that it would be enforceable. One thing that is not on the list is compliance history with previous permit requirements. There are probably three or four other reasons for Tyler's monster competitor to be limited, he said, or perhaps, somewhere down the line, to deny the permit in a given location at a given time.

Selectman Musselman stated that what has to be relied on is setting up a process that is reasonable. The Selectmen are required to be reasonable as their decisions have to be consistent with the purpose of the Beach Ordinance, which is to provide for the appreciation of the beach by everyone, including people surfing, swimming and walking. It has to be within that general guideline.

Selectman Musselman stated that steps have also been taken to ensure that the current levels of activity go forward. He stated that he does not know that anyone has a problem with those levels of activity. It is unwise to make lists that preclude reasonable decisions that might affect Tyler's "monster competitors" in the future. A broad objective is much better. Both of those things were run by Town Counsel and his suggestion was that the Town of Rye would probably be better off with a broad interpretation of what is acceptable with respect to all beach users. Tyler is concerned that he may be inappropriately denied a permit, however, within all of these, he cannot be absolutely ensured that that would not happen.

There was limited applause.

Scott Marion, 71 Washington Rd., stated that he was one of the folks asking at the public hearing in the fall for clear criteria for how these would be approved or denied. This proposed amendment is a step in that direction. While he is sympathetic to the concern about being hemmed in, somewhere a set of criteria is needed, if not these. The "other" category is taken care of by the adherence to police and fire safety rules. If the Selectmen have three or four others that should be added he would like to hear them so that people know and it is transparent.

Jeff Quinn, 71 Cable Rd., asked the Moderator whether there was a spot where the reasons for denial could be stated. If that is the case, he would support what Mr. Musselman said. They may just feel that the activity is detrimental to the health of the Town. That may be a judgment that may need to be made on the spur of the moment.

Selectman Mills stated that approvals are given in a public, transparent, meeting. Tyler would come in and it would be based on the Police Chief's recommendation. Selectman Mills said "and we, to be truthful with ya, we haven't denied a permit yet, that I know of, since I've been here for 22 years, okay. So we try to work with the people."

Selectman Mills gave the example of the original ordinance having grandfathering for only a year, and Tyler asked for two years. So it was changed to two years. "We tried to work with him, okay" he said.

Tom Farrelly, 18 Gray Ct., stated that he worked with the Beach Use Committee and with Tyler over a long period of time trying to hammer this out. There is a nuance that Selectman Mills spoke to some of. "Everything that everybody's been doing on the beach is grandfathered." *Editor's note: This is not quite correct. The proposed ordinance provides for only two years of grandfathering (i.e. assured renewal), after which the Selectmen must approve each permit. Current participants have priority for the same locations and times over new applications, but there is no assurance that any applicant will be granted a permit. See subsections (h) and (i).* Mr. Farrelly continued, stating that the motion is asking for expansion of Tyler's activities to something other than what he has been doing. Good local beach people would not ask to do something on the Fourth of July. It's just too crowded. The amendment strips the power of the Selectmen and the Chief to be able to make decisions based on quality of life and it subjects them to being sued by somebody who wants to do something that just doesn't make sense. Mr. Farrelly argued that the amendment was for the purpose of further intensifying activities by allowing other new ideas for commercial activities on the beach.

Selectman Musselman stated that the purpose of the permitting process, in all likelihood, is not to deny permits, but to manage the time, location, intensity and impact of activities so that, hopefully all people can be accommodated. In terms of due process, it would be necessary reasonably to state the reasons for denial as it might be contested in court. Those reasons would have to go to the general purpose of the ordinance or they would never be able to win in court. If the amendment is voted down, he would offer another one stating that, if a permit is denied, the Selectmen shall state the reasons. There is not a body here that can, flat out, say no, just as the Planning Board cannot, flat out, say no.

(40:41 elapsed)

Tyler McGill clarified that the two year permit does not mean that it is grandfathered forever. His camps could go from their current size to half of that without an explanation or reason. He agrees that the list he put forward is probably not complete. Additional reasons could be added. It is not just for his business, but for anyone in Town who wants to hold an event.

(41:43 elapsed)

Peter Crawford stated that he had attended almost every Beach Use Committee meetings so he is familiar with the arguments. Both sides make good arguments. There

are problems at the beach that need to be dealt with. There are surfers running into swimmers. The way to deal with that is with flag zones where the surfers and the swimmers are separated.

Mr. Crawford stated that he supports Mr. McGills's amendment as there are serious problems with putting all of the authority in the Selectmen. People think of them as sort of a legislature, but they're not. We're the legislature of the Town, he said. If it turns out that the criteria are not correct, then they can be amended, either at a special Town Meeting that can be called at any time with fifty signatures or at the next Deliberative Session through a Petitioned or Selectmen's Warrant article. Mr. Crawford continued, saying:

"The solution is not to give unbridled authority to the Selectmen. The solution is to come up with specific actions that ensure that the conflicts are reduced dramatically so people don't have the complaints. But, you can't give the Selectmen the authority to put Summer Sessions or any other business in Town out of business, which is what this could potentially do."

Mr. Crawford acknowledged that there might be a right of appeal, but with a vague criteria for rejecting a permit a court would typically uphold a denial, but with a specific set of criteria a court would look further into it. If the Selectmen go against the criteria, a court would issue a ruling in favor of Summer Sessions. This is a bad policy without a denial clause, he said.

(44:01 elapsed)

Mr. LaBrie stated that he does not support the amendment. The Committee discussed the denial clause at length. It was determined that it could not be fully comprehensive. A full day could be spent here discussing what the list should be. Mr. LaBrie stated:

"This shouldn't be a vilification of our town government structure. It requires, when we have a body like the Selectmen, that we all remain vigilant and remain active in the voting process, and that we remain represented on that Board and the process of that Board remains transparent."

Mr. LaBrie then stated that the ordinance needs to remain flexible. There was limited applause.

Someone spoke up to call the question. Mr. Eaton stated that he would permit several other persons to speak.

John Meehan, 15 Pulpit Rock Rd. stated that the Selectmen should go on record with regard to Tyler's amendment. The flexibility of the "other" provision unfortunately leaves open a gigantic hole. He puts his faith behind Tyler, who is most affected by this. If Tyler is for it, he is for it.

There was substantial applause.

Bill Epperson, 324 West Rd., spoke against the amendment. He said:

“This look like déjà vu all over again. We spent months and months and months trying to hammer out this particular permit program, only to be stymied, time after time, at every single meeting, people moving the goal posts on us. We had very contentious meetings.”

All of the people on all sides came up with this particular permit process voted on it unanimously. Mr. Epperson stated. He agreed with Selectman Musselman that a permit could not be denied, “just because.” Mr. Epperson stated that he is Chairman of the Planning Board. They have to have a viable reason to say no. If the reason is not supported by law the person has every right to go to the ZBA or a court to try to overturn that. It is not fair to the Selectmen to be hamstrung.

There was limited applause.

Ray Jarvis spoke, suggesting that the types of activities that could cause a rejection could be enumerated. You cannot take away the flexibility of the decision makers, but, as Tyler said, they need to have some idea of what is outside of the boundaries.

There was limited applause.

Mr. Eaton called for a vote on the motion to call the question (which was never seconded). The motion passed.

After reading the amendment, Mr. Eaton then called for a vote on the amendment. The amendment failed.

Amendment to not limit frequency, magnitude and location of unscheduled and unadvertised lessons fails (51:41 elapsed)

Mr. **McGill** stated that he had another amendment. He read the proposed amendment:

“Permits issued for rentals of Designated Beach Equipment, and for all private and semi-private lessons (all activities that are not explicitly scheduled and advertised as group lessons on specified dates), shall require proof of insurance and certification of participant release and the release of the Town of Rye by participant forms, but shall not stipulate the frequency, magnitude and location of these activities.”

That was voted on, by the BUC and passed, Mr. McGill said. However, when they got the final document a week or so ago, that amendment had changed. It read that “lessons of three or four are exempt.” A permit would be required for a group of more than four. A permit, requiring 30 days advance application, would be needed for a birthday party with six kids. Not a single business or entity can work under these types of regulations. What is being presented is an event permit. A private or semi-private lesson is not an event. He would amend the existing article to go back to what had been voted on in the BUC. It would not undermine the document as a whole. Any advertised and scheduled event would still fall under the permit requirements.

Mr. Eaton stated that the proposed amendment would rewrite section (l). **Steven Borne** seconded the motion.

Selectman Musselman stated that there was a significant misunderstanding by Tyler on how the permitting process would work. The full intent for everything that Summer Sessions and the other current surf companies active in Rye is that they would come to the Board of Selectmen in the Spring and get a permit for all of their activities over the course of the summer. Nobody has discussed the need for a separate permit for small group lessons. That is what the words are intended to address.

Selectman Musselman stated that Mr. McGill's concern was with a group of seven people. Selectman Musselman stated that his response, earlier that day, was to have two groups of four. We're getting into micromanagement of these words. He would strongly encourage them not to consider the amendment. By the wording, the private and semi-private activities could apply to everything that they do. He acknowledged that that was probably not intended. Advertised is not defined. To consider something like this, language would need to be drafted and reviewed by counsel, and then a proposal made. Doing this on the fly is inappropriate and unnecessary.

Mr. McGill stated that he agreed that it was a difficult subject to address on the fly. That is why it was addressed at the last BUC meeting and voted on. Requiring groups of more than four to get a permit is micromanaging small businesses and would place an undue burden on them.

Selectman Mills referred to "you people who have been around town for a while." He then referred to complaints received regarding the ice cream truck at Wallis Rd. Beach and Cable Rd. Beach. There was concern that someone would be hurt, he said. Continuing, he said:

"Can you imagine the Board of Selectmen saying that the kids can't have an ice cream on the beach? That's like committing suicide, okay. So, this, you're painting the Board of Selectmen as a bunch of ogres for no good reason. We haven't denied a permit in 22 years that I know of."

As he said the last two sentences, Selectman Mills raised his voice.

Mr. Gould called the question. Mr. Eaton stated that there were a few seconds. He selected **Mr. Goldman**. The motion to end debate passed.

Mr. Eaton then read the amendment and called for a vote. The amendment failed.

Amendment requiring the reasons for a permit denial to be stated passes (1:02:35 elapsed)

Selectman Musselman stated that he would like to offer an amendment. There was then confusion as to whether the question had been called on the entire article or the amendment. Mr. Eaton referred to the beginning of the discussion, when Mr. McGill had been waiting for others to speak to see how the meeting went when the question was called. He said that Mr. Collins had seconded the issue of calling the question. That would require a two-thirds vote which would end all further debate on Article 23. He asked people to consider the fact that the question had been called so quickly and that

Selectman Musselman was offering another amendment when voting. The motion to end debate failed.

Selectman Musselman proposed to amend the article to add an item (o) which would read “Denial: If a permit is denied, the Selectmen shall state the reasons for denial.” He said that he had promised to do that so thought that they should add this. Mr. Eaton stated that the motion had been seconded by Selectman Mills.

Mr. Marion, 71 Washington Rd., asked whether Mr. Musselman would entertain a friendly amendment to have the reasons in writing and appearing in the minutes.

Selectman Musselman agreed. Mr. Marion stated that the phrase “in writing and to appear in the minutes of the Board of Selectmen meeting” should be added. Selectman Mills seconded the friendly amendment.

The motion to call the question on the amendment carried. Mr. Eaton read the amendment with Mr. Marion’s added phrase added at the end. The amendment carried.

Amendment changing the record retention period to three years fails (1:08:10 elapsed)

Mae Bradshaw, 106 Harbor Rd., suggested that a word in subsection (k) be changed. That requires retention of the records for only one year. Because the statute of limitations in all likelihood would be three years. The phrase “at least one year” should be changed to “at least three years.” **Mr. Borne** seconded the amendment.

Selectman Mills asked Tyler whether the Beach Use Committee had agreed to one year, as three years would be too cumbersome. He stated that he believed that Mr. LaBrie also agreed. “The permits go with the Chief of Police, anyway,” he said, “and all these releases would go to him.”

Frank Drake, asked Attorney Donovan could clarify his thoughts on this. He suggested that it would be cleaner to take out “at least.”

Attorney Donovan stated that his understanding that this is how long the operator of the surf school keeps the records, not the Town. He stated that he had a lot of input into this along the way. He certainly thought about the statute of limitations. If there is an accident they would know about it when it happens as the police and rescue services are going to be involved. The Town could then request, right away, all of those records.

Ms. Bradshaw stated that there is nothing in the ordinance suggesting that the Town is going to get or retain possession of the documents. Very often litigators do not start litigation in the first year. The longer the damage period is extended the greater the damages. They are only compelled to bring a suit at three years. Anything less than that for a retention would be dangerous for the Town.

The question was called by an unknown person. Ms. Anderson and Ms. Holway seconded. The motion carried.

Mr. Eaton read the amendment and called for a vote. He stated that the article (sic) fails.

Questions regarding permitting fees and enforcement costs (1:14:20 elapsed)

Peter White, 58 Liberty Common, asked whether a fee structure is envisioned with the permitting process.

Selectman Musselman stated that none was proposed. This had been discussed at the Beach Use Committee. They were more interested in managing the beach resources than in raising funds for the Town. They do not see ongoing out of pocket expenses associated with the enforcement.

Selectman Mills asked Mr. White whether that was somewhere in the warrant. Not using the microphone, Mr. White stated that he was wondering whether there was a revenue stream to offset potential expenses.

Mr. Crawford asked the Police Chief what the effort would be to enforce this.

Chief Walsh stated that the process would be the same as the event permit process. They would come to the Police Station or by e-mail they could get the application. The secretary keeps them in chronological order. He would review them to make sure every step is complete, that the insurance binder is there, and that the dates are appropriate and everything is covered. He would then bring it to the Selectmen for approval and the applicant would then get an e-mail or letter indicating it was approved.

With regard to the ordinance, it is difficult to say what the enforcement issues are going to be, as they have not been faced with them yet. He is not sure what the businesses, the people on the beach and the Selectmen will expect from the officers. He has to wait until the vote. The words are there, it is then going to be an interpretation process. It's going to be a year or two shuffling through what we're all expecting, he said. There will be a lot of discussion with the Board about violations and documenting them. There is then the question of whether it would be a civil thing or whether it would go to the 10th Circuit Court with their attorney.

Jane Ireland called the question. **Mr. Gould** seconded. The motion to call the question carried. Mr. Eaton ordered Article 23 placed on the ballot as written.

Mr. Gould moved to restrict reconsideration on Article 23. Mr. Drake seconded the motion. The motion passed.

Mr. Eaton corrected the record to state that it would appear as amended by Mr. Musselman.

ARTICLE 25: ALLOWING ONLY OCEAN-BORNE COMMERCIAL ACTIVITIES (1:18:58 elapsed)

Mr. Eaton read the warrant article:

“(By Petition) Shall to Town of Rye, NH preserve public beach access by allowing only ocean borne commercial activities such as surf, kayak and stand up paddle board lessons and camps banning all other commercial uses of the beach?”

Mr. Marion moved the article to the floor. Mr. Borne seconded the motion.

Lori Carbajal, 18 Tower Ave., stated that she would like to address why she oriented the article towards ocean borne activities. She wanted to ensure that these activities would have a place on our beaches and in our community. It would be counterintuitive to exclude programs such as surf camps for kids which teach valuable lessons.

Her proposal was well-received by residents and non-residents at the public Beach Use Committee meeting last October. At that time, there was an impasse with regard to this process. A ban on commercial activities was proposed then because there was an absolute free for all on the beach. She stated that there should be a backup to permit these ocean borne activities only. It sounds like they may have a permit process. But her concern is that this would not go into effect and 2014 would continue without any law for permitting.

She wants to ensure quiet use of the beach without infringement by other user groups on the sand. She does not necessarily oppose smaller group activities such as yoga, however she felt they were at impasse and wanted to ensure that ocean borne activities could take place on the beach during the summer. The natural environment should be kept free of major commercial events, she said.

Amendment passes conditioning Article 25 on Article 23 failing (1:23:32)

Selectman **Musselman** offered an amendment. He moved to insert a clause at the beginning saying “if Article 23 does not pass,” Selectman Jenness seconded the motion.

Selectman Musselman stated that there were a number of issues with the warrant article. One is that it conflicts with Article 23. If both passed, one says that activities would be permitted in the intertidal zone and the other says they would be excluded. If Article 23 failed and this one passed, they would have to go through a process to determine what to do.

They have legal advice, to date, which is advice with a “little a,” that this may not be lawful. If passed, a Legal Opinion, with a “capital O” would need to be obtained as to whether or not this is lawful. If deemed unlawful, the Board of Selectmen would need to decide whether to enforce it or not. That is a quandary. He suggests adding this introductory clause so the voters are choosing. If the latter happens there would be costs to obtain a Legal Opinion with full research. They would probably come to the conclusion that it is not lawful, and the Board of Selectmen would probably choose not to enforce it. Those who supported the warrant article could then contest that.

(1:27:10 elapsed)

Bob McGrath, 6 Rands Ln., stated that, if he has a dog walking business he would not be permitted to walk dogs on the beach. If he is a psychotherapist with a patient wanting to have a session while walking on the beach he would not be allowed to do that. As a photographer, he would not be permitted to do a family portrait on the beach. You can keep naming things. There are definitely things that all of us would rather not see.

There was significant applause.

(1:29:30 elapsed)

The motion to call the question on the amendment carried.

The amendment passed.

(1:30:03 elapsed)

Peter Crawford asked legal counsel whether inserting a number of persons into the article would make it more palatable from a legal standpoint. Everybody has concern with 50 person Zumba lessons, but dog walking involving a few people might not be an issue, he said.

Attorney Donovan stated that it would not eliminate the concerns that he has.

(1:30:52 elapsed)

Scott Marion proposed amending the article again. After Selectman Musselman's amendment stating "should Article 23 fail," continue reading "shall the Town of Rye, NH preserve public beach access for ocean borne commercial activities such as surf, kayak and stand up paddle board lessons and camps." He acknowledged that he is trying to weaken the effect.

Mr. Eaton read the proposed warrant article with Mr. Marion's amendment. "If Article 23 does not pass, shall the Town of Rye, NH preserve public beach access for ocean borne commercial activities such as surf, kayak and stand up paddle board lessons and camps." Mr. Eaton stated that he believed that that nullified the petition, and pursuant to *Bailey v. Town of Exeter*, he declared it out of order.

(1:32:43 elapsed)

Jaci Grote, 124 Washington Rd., asked whether rescission by the person submitting the warrant article would result in its removal from the ballot. Mr. Eaton stated that it would not. **Selectman Mills** stated that the intent could not be eliminated. Mr. Eaton stated that that was not necessarily true, and stated that the subject matter of the article could not be eliminated. Ultimately it is a nullity if you make the article senseless and you cannot do that, he said. Ms. Grote asked whether they needed to decide today. Mr. Eaton stated that, if you want to amend it, you have to do it here.

Mr. Eaton asked whether there had been a second to Mr. Marion's amendment. Someone responded that he had struck it. Someone else said that there would have been a lot of seconds.

Amendment to bring Article 25 under the BUC document fails

Tyler McGill stated that he would like to propose an amendment that would bring Ms. Carbajal's warrant article underneath the BUC document. If the BUC document goes through then it would be encompassed there. Mr. McGill started to state the amendment as "shall the Town of Rye, NH preserve public beach access by required permitting of commercial use of the beach, including ocean..." He then corrected himself, starting over and saying "shall the Town of Rye, NH preserve public beach access by requiring permitting of commercial uses of the beach, excluding ocean borne activities such as surf, kayak and stand up paddle board lessons and camps in accordance with the Beach Use Ordinance Committee permitting process set forth in Article 23 of this warrant." **Mr. Drake** seconded the motion.

Mr. Eaton then read the amendment, which would rewrite Article 25 to read: "Shall the Town of Rye, NH preserve public beach access by requiring permitting of commercial uses of the beach, including ocean borne activities such as surf, kayak and stand up paddle board lessons and camps in accordance with the Beach Use Ordinance

Committee permitting process set forth in Article 23 of this warrant.” *Editor’s note: As read by Mr. Eaton, the word “excluding,” as read the second time by Mr. McGill, was changed to “including.”* Mr. Eaton stated that he would permit the amendment as he does not believe that it makes the article senseless.

(1:36:40 elapsed)

There was then discussion from the audience as to whether the warrant article was circular and what would happen if Article 23 passed. Mr. Eaton stated that, if Article 23 passes there would be nothing to enforce, but that he would leave it up to counsel.

Attorney Donovan stated that, as he understood the amendment, it would replace the article as amended by Selectman Musselman with the language that Tyler read, which takes out the language “if Article 23 does not pass.”

Selectman Musselman stated that the problem becomes, if 23 fails, and 25 passes, we have 25 calling for management under 23, which failed. We have a complete quandary, he said.

Mr. Eaton stated that he does not believe that the amendment is illegal. It’s going to be subject to interpretation as to how it is enforced. It may be enforceable based on the language of Article 23. It may be that the Town voted it down in one place and voted it up in the other, but he will let the amendment go forward.

Mr. Drake asked whether they could take out the “if Article 23 does not pass.” Selectman Musselman stated that he believes that Tyler’s amendment replaces it in its entirety. Mr. Eaton stated that that was correct.

Shawn Crapo proposed that Selectman Musselman’s amendment stay and that the word “consider” be added. Mr. Eaton stated that there was an amendment on the floor. Mr. Crapo stated that if the amendment on the floor failed he would bring up this amendment.

Becky Franz, 804 Central Rd., asked that the amendment be read. Mr. Eaton did so. Ms. France asked whether that did not change the intent as it took out “banning all other commercial uses of the beach,” which she sees as the germane piece. Mr. Eaton stated that he had given his opinion on that. It gives the voters a choice on restricting commercial uses of the beach, he said.

Lee Perrault, 232 Brackett Rd. asked whether it might make sense to Amend Article 25 to say that, if Article 23 fails, the restrictions on the public beach would return to the status quo.

Mr. Marion called the question. Mrs. Ireland seconded the motion. The motion passed.

Mr. Eaton then called for a vote. The amendment failed.

Amendment to add the word “consider” passes (1:44:14 elapsed)

Shawn Crapo asked to clarify that Mr. Musselman’s amendment was still in the language. Mr. Eaton agreed. Mr. Crapo proposed an amendment to add “consider” after “New Hampshire” and change “preserve” to “preserving.” If Article 23 fails and this passes, this would permit the Beach Use Process to continue. It would not bind them and cause them to instantly ban all commercial activity. **Randy Crapo** seconded the motion. Mr. Eaton read the proposed amended article:

“If Article 23 does not pass, shall the Town of Rye, NH consider preserving public beach access by allowing only ocean borne commercial activities such as surf, kayak and stand up paddle board lessons and camps banning all other commercial uses of the beach?”

Mr. Eaton stated that he considered this to be an amendment to make it advisory.

(1:46:44 elapsed)

Ann Morris Morrissey made a comment about the effect of the change.

Alan Gould stated that they were trying to make a silk purse out of a sow’s ear. A woman with a day care facility would not be able to take children to the beach. He does not think that was anyone’s intent. He urges that the article and the amendment be voted down. It does not make any sense at this point and is discriminatory.

There was applause.

John Sherman, 25 West Rd., stated that the issue was what could be done to enforce activity on the wet sand and in the water because there had been an issue raised as to whether the zoning allows this type of activity. The Town’s attorney has issued an opinion saying that, in the dry sand, the zoning can apply, but it might not be a great idea to enforce the zoning restrictions on the wet sand and in the water. The idea here is that, if the zoning cannot be used, it could be done in another way. The idea here is to pass a warrant article. He stated that he does not agree with it, but is trying to empower the Town to take the steps that it needs to take.

There was limited applause.

(1:50:31 elapsed)

Frank Drake stated that the intent, as written, was to ban all wet sand commercial activities.

(1:51:28 elapsed)

Selectman Musselman stated that he thinks that the amendment changes the original article which says “ban” to “consider banning.” In that case the Selectmen would have to consider the implications, but they would not have the obligation to ban it. If the language cannot be turned around to make it positive, the amendment to say “consider” might be the way to go.

Ms. France called the question, Mr. Marion seconded.

Virginia McDonald, 112 Washington Rd., stated that she had been seeking the floor when the question was called. She stated that she supported the amendment. She is a follower of social media, and the impression of the rest of the State is “live free or Rye.” These are everybody’s beaches.

Lori Carbajal stated that she had been seeking the floor before the amendment was called. Mr. Eaton told her to make it short.

Ms. Carbajal suggested the insertion of “other commercial user groups in excess of ‘a number.’” Mr. Crapo indicated that he would not accept that as a friendly amendment.

The motion to call the question passed.

Mr. Eaton read the amendment and then called for a vote. The amendment carried.

Steven Borne, 431 Wallis Rd., made a motion to strike “consider” and change it to say “shall we study.” There was no second, so the motion failed.

Mr. Drake called the question. The motion passed without having been seconded. Mr. Eaton ordered Article 25 to appear on the March ballot as amended.

ARTICLE 26: BAN ON COMMERCIAL ACTIVITY AT PEAK TIMES **(1:56:33 elapsed)**

Selectman Musselman moved to restrict reconsideration of Article 25. Mr. Crapo seconded the motion. The motion carried.

Mr. Eaton read Article 26:

“(By Petition) To protect public access on Town beaches, shall the Town of Rye prohibit commercial activity on Town beaches from Memorial Day through Labor Day, Mondays through Friday, between the hours of 10:00 am and 5:00 pm and at all times on the weekends and holidays?”

“A “YES” vote prohibits commercial activity on Town beaches from Memorial Day through Labor Day between the hours of 10:00 am and 5:00 pm Monday through Friday and at any time on the weekends and holidays.”

“A “NO” vote allows commercial activity at any time on Town beaches.”

Patricia Kelly moved the article to the floor. Peter Crawford seconded the motion.

Keith Evelund, Liberty Common, spoke to the article. He said he has been using the Rye beaches since 1972. The article will make access to the beach easier for everyone, both commercial and non-commercial. As the price of a beach permit has gone up, access has gone down. It’s jammed, he said. He estimated that the activity is increasing by 10 percent annually. The poor access is not just about parking. It is also the police oversight. The police have stated that they cannot oversee what is going on at the beach. If the warrant article passes, the citizens will be paying more to oversee the beach, for no compensation. It’s not just the commercial activity. The non-commercial activity is increasing at an alarming rate due to the popularity of the area.

In terms of safety, the lifeguards are responsible not only for non-commercial activity but for commercial groups as well. Some groups have as many as 35 people per session, three times a day. That’s a lot.

The State beach does not allow any commercial activity between Memorial Day and Labor Day, for a good reason. They allow permitted things, but for a charge. These are special kinds of events.

His warrant article would be better for the commercial activities that could be there before 10:00 or after 5:00. They would not be hindered by the masses of people. The hours of daylight before 10:00 and after 5:00 is 8 hours on May 1. On June 1 it is over 8 hours. On July 1 it is 8.5 hours. On August 1 it is 7.5 hours. On September 1 it is down to 6.5 hours, but lessons let up by then.

Mr. Evelund concluded by saying “This is our beach. This belongs to all of us. We the people of the Town of Rye, its officials, have been entrusted with the stewardship of our beaches. Let’s manage it so that everybody can enjoy it. Thank you.”

There was applause.

(2:04:30 elapsed)

Frank Drake held up a blue card and stated that he “would like to ask the Moderator to consider that we do not discuss this article any further until the people who are quote unquote ‘Save Our Shore’ show themselves.” *Editor’s note: A mailing bearing the designation “Save Our Shore,” consisting of a blue card, was delivered to some or all of the mailboxes in Town the week prior to the Deliberative Session.*

There was substantial applause. During the applause, Mr. Drake stated that he was “I was very disappointed to get an anonymous mailer on a political subject of this magnitude by (inaudible) people, so I suggest we table all discussion until they stand up.”

Mr. Eaton stated that that was not a rule of the meeting and they would proceed with the discussion. He stated that, if the authors of the flyer wanted to say who they are, they could, but he is not going to force them to.

Mr. Drake continued, stating that if Mr. Evelund “thinks banning commercial activities by Summer Sessions, and even the Zumba classes, and Dave Copper from Cinnamon Rainbows, the few times he comes up, is going to open up his parking spaces, he’s out of his mind.” The audience applauded, and Mr. Eaton cautioned against personal statements. “It’s not them, it’s the growth of the whole Seacoast area,” Mr. Drake said. “It’s exploded,” he said. There was applause.

(2:06:12 elapsed)

Steven Hillman, 399 Central Rd., said that that he would provide some facts. He read from a report from NPR’s State Impact Bureau from the Fall of 2012 which stated that tourism was New Hampshire’s second largest industry. The State maintains a number of parks, campgrounds, historical sites and visitor centers. It also funds marketing to market the State to potential visitors, with the heaviest efforts concentrated on Boston, Philadelphia and New York City. Canadian tourists, especially the Québécois, also make up a sizable portion of the summertime visitors.

Mr. Hillman then referred to 2013 summer travel data from the Institute for New Hampshire Studies at Plymouth State University. He stated that he had learned a few things from his daughter about dropping facts on people. *Editor's note: Elizabeth Hillman spoke to Article 24, the non-smoking article, earlier in the session.* In the June-August 2013 period, visitors were up 9 percent from the prior year. Summer visitors have been growing .5 to 5 percent annually for the past ten years. Spending by those visitors is up 5.5 percent. The traffic count at the New Hampshire Route 101 exit is up 6.8 percent, also for these three months of 2013. The rooms and meals tax collected from tourists in Rockingham County, for these three months, was up 6.8 percent for the three month period, and constituted almost 30 percent of the total going to the state. The Seacoast region was up 6.9 percent, and accounted for almost a quarter of the rooms and meals tax sent to the State for the period.

Mr. Hillman then cited information from New Hampshire Parks and Recreation. For Wallis Sands State Beach, one two state beaches in Rye, and one of five in New Hampshire, summer visitors for the three months were up from 74,398 in 2011 to 102,644 in 2013, an increase of 37 percent, based on data from the kiosk there. Jenness State Beach pay station figures indicate an increase from 24,899 receipts to 27,868 over the same period, an increase of 12 percent. Mr. Hillman stated that banning all commercial activity would not change the numbers, which are increasing on their own.

Mr. Hillman then referred to NOAA's National Coastline Population Report data on the U.S. coastlines. In 2010, counties located directly on the shoreline constituted less than 10 percent of the land area, not including Alaska, but 39 percent of the total population. From 1970 to 2010, the population of these counties increased by almost 40 percent. An additional 10 million people, an 8 percent increase, will be added by 2020. The density in these coastal counties is already six times greater than the corresponding inland counties.

He's heard talk about commercial activities being out of control. He does not have an issue with the process that was gone through, however does have an issue with a sweeping ban of everything. The beaches are crowded, but by people that have a full right to use our beaches. Monday through Friday it's wide open. You can go anywhere and park anywhere. The issue is 20-24 weekend days. The haggling over this is ridiculous.

Mr. Hillman asked all beachgoers to Rye beaches to drive slowly, stop for pedestrians, park legally, pick up and pack out their trash, leave their booze at home, bike to the beach, and most importantly respect the ocean, beaches, lifeguards, police and private property and most of all each other. "We as Rye residents must all realize that we need to share our treasured resource with all who wish to visit. Thank you."

There was extended applause.

(2:13:38 elapsed)

Tom Farrelly, 18 Gray Ct., stated that "Steve Hillman's statistics to me say there's fifteen pounds in a five pound bag, but let's make room for

commercial activities all day long.” He compared the annoyance to someone on a plane or in a restaurant on a cell phone.

We’re talking about surf camps that want 100 yards, the equivalent of a football field, of our beach, he said. He was on the Committee and still does not know the number of times per day this is permitted or the number of simultaneous events that will be permitted to occur. There is no answer and no criteria. This is simply a request to have a time of day when people don’t have to put up with somebody making money at the beach. He said:

“When it’s pay to play, you’re pushing people off the beach for the purposes of making money. And it is everybody’s beach. That access issue keeps getting twisted around. The access to the beach, moneymaking enterprises should not take priority over someone who drove from Keene with their kids...”

Having certain times of the day during June, July and August is not an unreasonable request, Mr. Farrelly said. There’s hundreds of thousands of dollars of revenue being made off of the beach that does not contribute one penny to recoup the resources. He asked, as a taxpayer, “why am I subsidizing someone’s business on this beach?”

There was applause.

Mr. Farrelly stated that he thought there should have been permit fees. He stated that there is a legion of people, and referred to Rescue Jenness Beach, and stated that he was part of that action. It is still alive and going. There are 300 people on that mailing list and their blood is boiling over this. This is not going away. What is being proposed by Mr. Evelund should have been married up with the permitting.

There was applause.

(2:17:30 elapsed)

Patty Schwartz, 1304 Ocean Blvd., stated that she lives on the beach. She walks down to watch the kids surf, oftentimes when she is the only one on the beach. They are totally dependent on the tides. They can’t surf between 10:00 and 5:00 when it’s low tide at 5:00. That would automatically preclude a business there. The kids look like they’re having a wonderful time. “It looks pretty healthy to me,” she said.

There was substantial applause.

Amendment to condition Article 26 on Articles 23 and 25 failing, and require only that the Selectmen consider banning commercial activity (2:18:42 elapsed)

Selectman Musselman offered an amendment that would insert at the beginning “If Article 23 does not pass and if Article 25 does not pass,” and that further, “taking a page out of Shawn Crapo’s amendment book,” change the word “prohibit” to “consider prohibiting.” Mr. Crapo seconded. Selectman Musselman stated that:

“I would note that we have the same, a similar, legal issue with this article as we did with the last one. The last one had to do with the intertidal zone; this one has to do with Gulf of Maine. And, I don’t know that we have the ability to ban recreational activities from the State of New Hampshire or the United States Government or whoever has purview of the Gulf of Maine, for the Town of Rye to be able to ban recreational activities in the ocean, and there are some other legal issues as well. We have advice to date that this may not be copasetic. If it did pass we would need to get a Legal Opinion and decide what we could or could not do...”

Selectman Musselman stated that this makes a similar change to that made to Article 25. If Article 23 passes, this becomes not relevant. There is a conflict between Articles 25 and 26, because Article 25 allows it in the ocean and Article 26 says not in the ocean at certain times. This amendment provides a decision making tree that can be dealt with.

(2:22:00 elapsed)

Scott Marion raised a point of clarification, indicating that the last two paragraphs could also need a change to insert the word “consider”

Mr. **Blouin** stated that he was opposed to the original article but that he likes what Shawn and Mr. Musselman had come up with. He had heard them say that they had never said no, but these two articles would give them license to say no. Picture taking and psychotherapists on the beach are not a problem, but the beach is not something to be exploited for money. As a citizen, he would like them to say no to a soccer game of kids from the Town of Henniker. Saying no has to be a huge part of Articles 23, 25 and 26. Not everything can be either banned or allowed. Their job is going to be very important going forward and he hopes that it is taken seriously. He is not anti-business. It is up to them to find a common ground.

(2:24:10 elapsed)

Mr. Eaton asked Selectman Musselman whether he would like to address Mr. Marion’s concern that the amendment is inconsistent with paragraphs two and three of the article.

Selectman Musselman suggested that it should read “A ‘YES’ vote directs the Selectmen to consider prohibiting commercial activity...”

Someone asked whether there was a definition of “consider” in the Town’s ordinances.

Mr. Eaton asked Mr. Crapo whether he agreed with the amendment. Mr. Crapo confirmed. Mr. Eaton read the article with the proposed amendment.

Selectman Musselman asked to make a further amendment. He stated that the Selectman could not prohibit the activity, but would need to consider a separate warrant article to do so. He suggested adding “a subsequent warrant article.” Mr. Crapo agreed. Mr. Eaton read the amended second paragraph. “A ‘YES’ vote directs the Selectmen to consider a subsequent warrant article to consider prohibiting...” Selectman Musselman

suggested that it read “A ‘YES’ vote directs the Selectmen to consider submitting a subsequent warrant article prohibiting commercial activity...”

There was then discussion as to whether the paragraph starting with “A ‘NO’ vote...” was needed. Selectman Musselman stated that Town Counsel advised that it be stricken.

(2:29:02 elapsed)

Tom Jackson, 611 Central Rd., Rye Beach, stated that he appreciated how much Mr. Evelund loved the beach. One of the things that he appreciates is the energy, the enthusiasm and the excitement since Tyler and Ryan opened Summer Sessions.

There was substantial applause.

He stated that his grandson was in the camp. He got self esteem and confidence out of the camp as an 11-12 year old. He does not see why anyone in Town would want to restrict that activity. He watches kids playing volleyball. It’s fantastic. Rye beaches are unique because of the way that we can use them. We need to make sure that we do not abuse them. It is not just citizens of Rye that have a right to access these beaches.

There was substantial applause.

He heard someone say none of us want Zumba. I want Zumba.

There was applause.

I want volleyball. I want soccer. If the kids from Henniker want to come over, let them come over.

There was applause.

That is what the beach is supposed to be.

He thinks that the permitting process is probably overdue. It’s a great idea to have a permit. There were concerns about insurance and liability. That’s great, but let’s not restrict access.

He bets that three-quarters of the people travel almost an hour to attend the Zumba classes.

There was substantial applause.

(2:33:34 elapsed)

Tom Farrelly asked a question about Selectman Musselman’s comment questioning the legality of prohibiting recreational activity. They are talking about commercial, for profit activity. “Everything that he just talked about, who would be against that?” Someone shouted out “you are.”

It’s the commercial aspect, Mr. Farrelly said. The whole thing is not about recreational activity. It is about commercial activity. He asked for a clarification.

Selectman Musselman responded, stating that

“You also need to keep in mind that the people taking surfing lessons are surfing out in the ocean. That’s what they’re doing. That’s recreation. Yes, there is someone there who is tutoring them and teaching them but it is both a commercial activity and recreation by members of the public and the question is do we have the right, out in the ocean, to restrict that, or to ban that, and I don’t know that we do. I think we do on the dry sand, I think we arguably can manage it in the intertidal zone but whether or not

we have the ability to ban it out in the ocean, near shore or off shore, I don't know."

Mr. Farrelly cited research by the Beach Use Committee, and stated that Rye is one of the only places that allows all of this, unrestricted.

(2:35:46 elapsed)

Shawn Crapo stated that several hours ago, some people were concerned about \$12,000 in interest charges on a backhoe. If the amendment is not passed and this is permitted to go forward, you would potentially be enacting legislation that is so overbroad that the next budget session, tens and hundreds of thousands of dollars to fight people's legal challenges to this would be needed. No one has defined "commercial activity." He cited the example of Manchester YMCA that is paid to send kids to the beach on a bus. That is a commercial activity, he said. He asked whether Chief Walsh would stop people to see whether they were here commercially when they walk across Ocean Blvd. This is way too restrictive. The public lives in Canada also, he said.

These folks spent a gazillion hours crafting Article 23. These last couple of articles would undermine that and cost us all in the end, he said.

There was substantial applause.

(2:38:00 elapsed)

Mr. Eaton stated that the question had been called on the amendment. He called for a vote. The motion to call the question passed. He then read the amended article:

"If Article 23 does not pass and Article 25 does not pass, to protect public access on Town beaches, shall the Town of Rye consider prohibiting commercial activity on Town beaches from Memorial Day through Labor Day, Mondays through Friday, between the hours of 10:00 am and 5:00 pm and at all times on the weekends and holidays?"

"A "YES" vote directs the Selectmen to consider submitting a subsequent warrant article prohibiting commercial activity on Town beaches from Memorial Day through Labor Day between the hours of 10:00 am and 5:00 pm Monday through Friday and at any time on the weekends and holidays."

Mr. Eaton stated that the last paragraph would be stricken.

The amendment carried.

(2:39:00 elapsed)

Steve Hillman, 399 Central Rd., clarified a few things. Little or no commercial activity takes place on our beaches during the weekends. There are surf lessons here and there, but that is about it. If there was such a proliferation they should have a big long list of who all these people are and what they do and what their impact is.

People have been using the phrase “public trust” without understanding what it means. He said:

“The essence of the doctrine is that the waters of the State are a public resource, owned by, and available to all citizens equally, for the purposes of navigation, conducting commerce, fishing, recreation and similar uses that this trust is not invalidated by private ownership of the underlying land.”

There was applause.

This Town has a legacy of access issues. He is glad that the current Board of Selectmen is pro access.

There was applause.

Mr. Hillman stated that there had been access issues. He referred to former governor Benson who, he said, had large boulders to keep people off the beach in front of his house. There was a parking article that would have made the parking around Straw’s Point permit parking. These things continue to emanate and all are to restrict access. He stated that he had already told everyone that it is not going to get less crowded. The most recent attempt was that, at a December BOS meeting, someone wanted to remove all parking on the west side of Ocean Blvd. from Perkins to Locke.

Mr. Hillman referred to an equitable and fair permitting process protecting the Town and the business owners. Mr. Hillman again stated that there was little commercial activity on weekends. “If you’ve got a beef, take it up with the tourists,” he said.

There was applause.

(2:43:11 elapsed)

Mr. Crawford asked a clarifying question of Selectman Musselman. He stated that he thought that he heard him say that the Town can regulate the dry sand and the wet sand, but there is a legal question as to whether they can regulate in the water.

Selectman Musselman stated that there are legal issues in the ocean and in the intertidal zone.

Mr. Crawford stated that Article 26 does not refer to anything in the ocean, but Article 23 refers to “whether in the ocean or on land” in section 13(d). He asked whether that wouldn’t be a problem with Article 23 because of section (d).

Mr. Eaton interrupted, stating that they were considering about Article 26.

Mr. Crawford asked “why do you raise this issue on Article 26 when Article 26 does not refer to anything in the ocean, unlike Article 23?”

Selectman Musselman responded that:

“Article 26 has to do with banning commercial activity in the ocean from 10:00 a.m. to 5:00 p.m. It has to do with the ocean, and a permitting process has to do with permitting activities, and if we’re denying a permit we’re denying a permit on dry sand, wet sand and the ocean, so I think they are different issues.”

Mr. Crawford followed up asking “so you’re making a distinction between denying a permit and an ordinance that would deny it outright. Is that correct?”

Selectman Musselman responded “yes, but take what I say with a grain of salt, because I’m not a lawyer.”

Mr. Crawford motioned towards Attorney Donovan and requested a response from him, but Mr. Eaton cut Mr. Crawford off.

(2:45:37 elapsed)

Sam Winebaum, 52 Cable Rd., stated that he lived 300-400 yards from the beach and people can park in the right of way on his lawn. He is not seeing an acceptance of some of the statistics. Although not related, it is the same with sea level rise. There needs to be a comprehensive look at the coastal area, with all of the issues from parking to commercial activities. He stated that he agreed with Mr. Jackson. There is a theory of the tragedy of the commons. If everyone takes their cattle to the commons and there are more and more cattle and they graze it, it kills the commons. We are in danger of such a tragedy unless we all come together and work in an intelligent fashion that isn’t just everyone’s personal self interest.

It may be that, over time, the surf camps may have to restrict the number of participants. This helter skelter stuff is not doing us any good. He knows that the Committee worked hard, but it’s a much bigger problem with many hundreds of thousands of people wanting to enjoy our coast. We should welcome them, but on rules that are clear. He stated that he noticed, in San Diego and in Hampton Beach, but not in Rye, visible, clear, large signs with pictures. Rye’s signage is tiny and not effective. Apparently referring to San Diego, he said that, even in the off season, police and lifeguards were present and visible. He referred to their facilities, towers and trucks and people knowing what the rules are. This is a problem in Rye. The police are trying their best but the rules are not clear. Authority and decency are not being respected because it’s chaotic. We have a lot more work to do.

There was extended applause.

(2:49:22 elapsed)

Ryan McGill stated that he appreciated everyone’s work. He appreciated people looking at the possibility of not limiting all kinds of recreation or having only one spot for surfing. These are all activities that everyone loves. Hopefully they can figure out a solution that allows everyone to be down there. You pay to have coaches with soccer to help your kids and help them grow. Permitting is very important but if it takes 30 days to permit, and we say anything over four people requires a permit, the summer is almost over if it’s July.

(2:50:40 elapsed)

Mr. Eaton stated that the question had been called. He requested a vote. The motion carried and he directed that Article 26 appear on the ballot as amended.

Shawn Crapo made a motion to restrict reconsideration, which was seconded by Mr. Hillman. The motion carried.

ARTICLE 27: SALE OF SURPLUS EQUIPMENT (2:51:12 elapsed)

Mr. Eaton read the warrant article:

“To see if the Town will vote to authorize the Selectmen to sell to the highest bidder at public auction, or sealed bid, such surplus Town equipment as is not traded in on new equipment in 2014.”

Mr. Mills moved the article to the floor. The motion was seconded by Selectman Musselman.

Selectman Mills stated that it was just to get rid of any excess equipment.

Someone called the question. There was no second. Mr. Eaton asked for a vote. He stated that he did not see anyone opposed, and he ordered Article 27 to appear on the ballot as written.

ARTICLE 28: OTHER BUSINESS (2:52:10 elapsed)

Mr. Eaton read Article 28:

“To transact such any other business which may legally come before this meeting.”

Selectman Mills moved to bring the article to the floor for discussion. Selectman Musselman seconded the motion. Selectman Mills stated that he would not like to speak to the article unless someone in the audience had something.

(2:52:32 elapsed)

Kim Reed, Planning Administrator, came to the microphone and stated that she had her card and her hand up when the \$10,000 was requested to be added to the budget. She stated that she had applied for a grant on behalf of the Planning Board to address sea level rise. She is meeting with the University of New Hampshire and the Rockingham Planning Commission and two members of the Planning Board on February 11 to talk about next steps, including zoning amendments, Master Plan and Land Development Regulations and to look at a budget for next year to address sea level rise.

(2:53:18 elapsed)

Hearing no further discussion, Mr. Eaton ordered Article 28 placed on the ballot as written, and then stated that he would entertain a motion to adjourn.

The motion to adjourn was made and seconded. The motion carried and the meeting was declared adjourned by Mr. Eaton.