

TOWN OF RYE – BOARD OF SELECTMEN

Monday, September 24, 2018

6:30 p.m. – Rye Town Hall

Present: Chairman Priscilla Jenness, Vice-Chair Phil Winslow and Selectman Keriann Roman

Others Present: Town Administrator Michael Magnant

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Chairman Jenness called the meeting to order at 6:30 p.m. and led the Pledge of Allegiance.

II. ANNOUNCEMENTS

- A. The Town Offices will be closed Monday, October 8, 2018 in observance of Columbus Day. The next Board of Selectmen's meeting will be Wednesday, October 10, 2018 at 6:30 p.m.
- B. Vice-Chair Winslow recognized and thanked Fire Chief Cotreau and the Fire Department for their efforts in providing mutual aid to the North End at LP & Natural Gas.
- C. Selectmen Roman recognized the Rye Recycling Center for receiving the Northeast Resource Recovery Association's award for brilliance.
- D. Selectman Roman announced that Mae Bradshaw sent correspondence stating that the National Park Service has accepted the Town into the "Certified Local Government Program".

III. PUBLIC COMMENT – (at the beginning of the meeting, for any comment by any Rye resident on any topic. Requested time limit, up to 5 minutes each person.)

Jim Cassin, 17 Perkins Road, expressed concern regarding parking and traffic on Perkins Road. He stated that he would like to see no parking on Perkins Road all the way to Route 1-A. He asked if there is a progress report since the last Selectmen's meeting.

Selectman Roman stated that the Beach Committee is working on the issue and has one more meeting prior to issuing their recommendations. The meeting is tentatively scheduled for 10/27.

Sarah O'Brien, 56 Perkins Road, asked how the decision is made to make Perkins Road residents' permit parking.

Chair Jenness stated that the Board of Selectmen could make a Selectmen's ordinance that would be good until the next town vote, where it would appear on the ballot.

Patricia Breslin, Old Beach Road, expressed concern that while the issues of the dogs at the Town Forest are being addressed, the issues of dogs on the beach have not been addressed.

Michael Netishen, 15 Bernard Drive, expressed concern regarding parking on Bernard Drive and Perkins Road. He stated that people are parking in front of the fire hydrant and in front of the "No Parking" signs. He pointed out that it is a safety issue.

IV. CONSENT AGENDA ITEMS – (to be discussed at the meeting only if pulled off the consent agenda by one of the three Selectmen.)

- A. Request from Jaci Grote and Kate Murray for permission to hold signs and pass out literature regarding their candidacy for State Rep at the Recycling Center on Saturday, 9/29/18 and 10/27/18 from 9:00 am to 12 pm.
- B. Appointment: Heritage Commission – term to expire 04/01/2020
 - 1. Gail Hughes: Appointment as a member – letter rec'd 9/12/18
 - 2. Recommendation letter rec'd 9/20/18 from Beverly Giblin, Chair

Vice-chair Winslow requested that item A, be pulled for discussion.

Motion by Phil Winslow to accept item B on the Consent Agenda. Seconded by Keriann Roman. All in favor.

Vice-chair Winslow extended permission to all the candidates on the November Rye Ballot, as well as Jaci and Kate. This way they will not have to come to the Board individually for permission.

Motion by Phil Winslow to accept item A on the Consent Agenda. Seconded by Keriann Roman. All in favor.

V. DISCUSSION ITEMS

A. PUBLIC HEARING: LEASH ORDINANCE

Chair Jenness opened the public hearing at 6:45 pm.

The purpose of the hearing is to consider the approval and adoption of the Town of Rye Town Forest Leash Ordinance. This is a Selectmen's ordinance. The purpose of the ordinance is to assure that dogs are to be leashed in certain areas in the Rye Town Forest.

Vice-chair Winslow announced that this ordinance is not intended to be permanent. However, because hunting season is coming up, it is a temporary fix until the Beach Committee makes their final recommendations to the Board.

Chair Jenness stated that this ordinance applies just to the Town Forest and does not apply to service dogs or any dog employed by or acting on behalf of law enforcement. RSA-B: 1.

Police Chief Kevin Walsh stated that the goal of the Dog Committee was to make things safer and better. The committee has done a good job but this is just a start and not final.

Ritchie White, 30 Lang Road (Chairman of the Dog Committee), stated the committee had substantial information (including pictures) from at least two land owners that have ongoing problems with dogs on their land. The report to be heard tonight is a temporary measure to address the issues in the Town Forest that need immediate attention, until a permanent ordinance is passed at town meeting.

Susan Shepcaro, 45 Recreation Road, presented the signs that will be placed in the "Leash Zones" identifying areas where leashes are required and where they are optional.

There being no further public comments, Chair Jenness closed the public hearing at 6:55 pm.

Motion by Phil Winslow to adopt the Town of Rye Leash Ordinance as written and revised, dated September 19, 2018, with the change by Selectman Roman and correcting the numbering. Seconded by Keriann Roman. All in favor.

B. Meeting Minutes

1. Meeting, Monday, September 10, 2018, 7:00 p.m., Town Hall

The following corrections were noted:

- Page 1: Selectman Winslow introduced the ~~follow~~ guests: should read
 - Selectman Winslow introduced the following guests:
- Page 1: A. Rye Harbor Dredging should be B. Rye Harbor Dredging (taken out of order).
- Page 2: End of the first paragraph the word dredge should be dredged.
- Page 6: Prior to C. Enforcement Action – Bernard Drive it should read, B. Rye Harbor Dredging (taken out of order).
- Page 6: All reference to Class 4 and Class 5 roads should read Class IV and Class V.

- Page 6: There was discussion on the paragraph in italics: Ordinance has questionable wording should look back to original ordinance.
- Page 7: E. The ~~easiest~~ date should read the earliest date.
- Page 8: Third paragraph; The sentence that reads: She invited concerned residents to attend the next Beach Committee meeting to give some ~~impute~~ on a solution. Should read: She invited concerned residents to attend the next Beach Committee meeting to give some input on a solution.

Motion by Phil Winslow to approve the minutes of September 10, 2018 as amended. Seconded by Keriann Roman. All in favor.

2. Non Public Session, Monday, September 10, 2018 (1) Per RSA 91-A:3,II (a)
Personnel

Motion by Phil Winslow to approve the non-public minutes of September 10, 2018 as written. Seconded by Keriann Roman. All in favor.

C. Dogs at Large Committee Final Report

Ritchie White, Dogs at Large Committee Chair, presented. He explained that the Dogs at Large Committee held ten public meetings. They received a lot of input from the Board of Selectmen, Conservation Commission, Rye Police Department and the Town Attorney. Also, the public sent e-mails, called and talked to the members of the committee expressing their concerns. The committee researched the rules and regulations of other towns in other states such as Maine, Massachusetts, Colorado and Pennsylvania. After the data was collected and reviewed, the first vote of the committee was to determine whether there is a problem with dogs at large in the town and whether something needs to be done.

He continued that the first part of the solution was to change the definition of "Dog at Large". Existing laws and regulations are not definite enough to make sure that owners of dogs that are a problem can be fined and the dog brought under control. This revised definition will apply to the Town Forest, Town Beaches, Town Properties and other public places.

The definition reads as follows: "Dog at Large" means the dog is off the premise of the owner or responsible party and is not under the voice and sight control of any person responsible for the dog. Voice control of the dog is defined as the dog returning immediately to and remaining by the side of the responsible party in response to the responsible party's command to the dog to return. Sight control of the dog is defined as, the dog always being in the sight of the responsible party. The dog is also specifically defined as "at large", under the ordinance:

- When the dog is on private property without the permission of the property owner.
- The dog jumps on an unwelcoming party.

- The dog shows aggression to another dog and is not under voice control of the responsible party.
- The responsible party refuses to call their dog through voice control when requested to by an authorized town official.

In addition to the definition of "Dog at Large", the committee focused on the Town Forest issues. The committee recommends that the Town institutes a "Voice and Sight Control Tagging Program". Dogs must be registered in the program in order to be off leash in the Town Forest and abutting land. All other dogs must be on leash at all times.

Attachment #1 outlines the program:

- Annual Renewal
- Must register each guardian in the household and each dog.
- Registration Fees will give dog owners tags for their dogs. The tags will be a different color each year.
 - Residents \$25.00 for 1 guardian and 1 dog. Additional \$5.00 for each guardian and each additional dog \$10.00 each.
 - Non-Resident \$75.00 for 1 guardian and 1 dog. Additional guardians \$10.00 each and additional dogs \$25.00 each
- Each guardian must watch the training video and Power Point presentation and sign stating that they understand and agree to the terms and conditions, and will abide by the rules.

Selectman Roman asked why the committee did not propose the town beaches.

Chief Walsh explained that the committee believes it is important to test the program in a defined area prior to it going out town wide. They are anticipating issues with education, awareness and enforcement that will need to be adjusted. Implementing any changes will be easier in a small area. He assured the Selectmen that if this program proves successful, he will be looking to implement it on the beaches as well.

Chief Walsh presented the Power Point presentation and the video borrowed, with permission from Boulder, Colorado. The Chief is working to adapt the video to Rye and it will be online so that dog owners can watch it any time.

Mr. White stated that the last and most difficult issue addressed by the Dogs at Large Committee was the dogs on the beaches. The Dogs At Large Committee voted to recommend that in addition to the current restrictions on the town beaches, the town institutes a one year trial requiring all dogs be leashed from 7 pm to 9 pm on Saturdays, starting the Saturday before Memorial Day and through the Saturday after Labor Day. After the one year trial, the committee will have feedback on how this worked and the program could be expanded or adjusted if needed.

Mr. White pointed out that the committee also included a list of education information and public outreach programs available.

Members of the Dogs At Large Committee include:

- Ritchie White – Chair
- Mike Garvan – Vice-Chair
- Susan Shepcaro
- Shawn Joyce
- Kevin Kobylinski
- Selectman Phil Winslow
- Police Chief Kevin Walsh – ex officio member

Selectman Roman read e-mails from **Frank Breslin** of Old Beach Road and **Cindy Sorenson** of Drake Lane stating their concerns regarding dogs on the beach.

Vice-chair Winslow stated that the intention of the committee was to have three separate articles on the warrant.

1. The definition of Dog at Large;
2. The Town Forest Program; and
3. The one year trial on the beach hours.

The Board agreed to get advice from town counsel and hold a public hearing in order to change the definition of “Dog at Large”.

D. Enforcement Action – 120 Garland Road

Building Inspector, Peter Rowell, explained to the Board that an application for a septic design was received by his office on 120 Garland Road. The Building Department file on the property shows no building on the parcel. Upon investigating the site, it was found that there are four buildings on the property that have no permits. They are not occupied. The buildings are being used for agricultural purposes. In addition, there is also a structure built across the street that has not been permitted by the town or the state, which is in violation of the wetlands ordinance. The DES is pursuing it. Mr. Rowell stated that he has sent out notices of violation and has not received any response from the owner in regards to the notices. The owner has said that he was going to file for permits and hire a surveyor to make sure that the buildings are not in the setbacks but this has not happened. Mr. Rowell said that he feels it's time to move forward with enforcement.

Selectmen Roman questioned the application for an after-the-fact permit to construct a dam that is currently blocking part of a creek at Willow Brook, where there is a pond that used to be a wetland. She expressed concern that the permit would be issued. Mr. Rowell stated that the permit probably will not be granted and that the owners would have a right to appeal the decision.

Motion by Keriann Roman to forward this issue to Attorney Donovan to initiate enforcement action. Seconded by Phil Winslow. All in favor.

E. Enforcement Action – 1677 Ocean Blvd.

Mr. Rowell explained that the violations at this place of business have been going on for many years. The business is using holding tanks as their septic system. Mr. Rowell stated that he has not gotten involved with this issue up until now because at some time the holding tanks were permitted by the DES. He has been told that there is a septic design in the works but this has been said since 2007. Now there is an occupancy issue. The holding tanks permit and the certificate of occupancy were issued for a certain number of seats in the restaurant, which has been exceeded.

Motion by Keriann Roman to forward this issue to Attorney Donovan to initiate enforcement action. Seconded by Phil Winslow. All in favor.

F. Dennis McCarthy, Public Works Director – MS4 – Notice of Intent (NOI) Submission

Public Works Director, Dennis McCarthy, explained to the Board that the MS-4 Program has been in existence for a number of years. The program is currently in phase three. The last permit was to last 5 years but it lasted 10 years. Rye is a member of the Storm Water Coalition which is made up of all the communities that discharge into the bay or the ocean in this area. It is a necessary requirement that municipalities send in a Notice of Intent to the EPA by October 1st. It is a complicated process and a complicated permit. He explained that it is basically a permit that the EPA requires from every community in the State that falls within a certain definition of being urbanized or a developed community. This permit is required to allow these communities to discharge their storm waters into the water of the United States, which comprises of the rivers, the lakes, and the ocean. All of Rye's waters go into the ocean.

After a lengthy discussion regarding the costs of compliance and mediation of contaminants to storm water discharge, Mr. McCarthy provided the Board with two copies of the MS-4 for signatures.

Motion by Keriann Roman to agree to file the Notice of Intent with the EPA and to authorize Chair Jenness to sign on behalf of the Board. Seconded by Phil Winslow. All in favor.

G. Dennis McCarthy, Public Works Director – Swap Shop Discussion

Mr. McCarthy reported that the Swap Shop at the Transfer Station is becoming a dumping ground for useless items that people want to get rid of, despite notices being sent out and signs stating what can be left and what cannot be left there. Currently, the building fills up in less than

a week with paints, electronics and broken items. This requires a half day, from one of the Public Works employees, of cleaning up the mess. He stated that there needs to be a different way to operate and monitor it or that it will have to be closed. He suggested that one solution may be getting volunteers to run it, as it is hard to find and keep part-time help.

The Board recommended advertising in the town newsletter and on the website for volunteers. It was also suggested that Mr. McCarthy reach out to the Rye Recycling Committee to have them look into the issue, even though their main focus is energy related.

H. Bid Results – Town Hall Clapboard Replacement

Mr. McCarthy reported that there were no bids on the Town Hall clapboard replacement project.

Town Administrator Magnant stated that the contractors that looked at the job may not have agreed with Grass Roots suggestion about only replacing the clapboards from the top of the windows to the ground. They seemed to feel that the Town should replace all clapboard that is broken and rotted. The painter is anxious to get started but said he could push it off until the end of October. He informed the Board that Grass Roots had recommended a contractor that is a former resident of Rye that has the expertise. This contractor has looked at the job and is willing to do it.

The Board agreed that it is important to move forward on replacing all the damaged clapboards and trim as soon as possible.

VI. CORRESPONDENCE

- a. Chair Jenness read a notice dated September 11, 2018 from EPA with the oversight of the DES regarding contaminants in Berry's Brook. It stated that after fish testing in five locations, from the area of Lafayette Crossing over five miles towards the Berry's Brook Estuary and the Coakley landfill, the results show PFOA, PFOS and PFNA are all well below the unacceptable risk level.
- b. Chair Jenness read into the record a letter from Town Attorney Michael Donovan regarding the request for continuance from Verizon. The continuance was granted, upon the recommendation of town counsel to the chair of the ZBA, on September 18th by three members of the ZBA, which is a legal quorum and has the authority to grant such continuances. The continuance was requested for a period of 90 days to allow Verizon to explore three options for alternative sites for a cell tower. (Document on file with these minutes)

VII. NEW BUSINESS

Public Works Director, Dennis McCarthy, announced that the annual Household Hazardous Waste Day Event will be held Saturday, September 29th, in Bentwood at the Public Works Garage from 9 a.m. to noon.

VIII. OLD BUSINESS

A. Vice-Chair Phil Winslow – Dredging of Rye Harbor

Vice-Chair Winslow stated that he attended the Dredge Management Task Force Meeting, along with Sue Reynolds of Granite State Cruises, Leo Axtin, Rye's Harbor Master, and Don Blouin, to represent Rye. This task force, working with the Army Corp of Engineers, looks at the requirements for dredging various harbors throughout the State. Selectman Winslow stated that he will be Rye's representative on this project going forward. He informed the Board that they will be working with the Chief of the Navigation Section of the New England District of the Corp of Engineers. The Corp of Engineers will be doing an additional study of Rye Harbor that will be completed this year. This is because of the 2017 storms and the last study was done in 2014. The plan is to dredge the center of the harbor with the spoil being taken to the Cape of Arundel. The Cape of Arundel is available to accept the materials only until 2021 so it is important that Rye finds the funding prior to that date. If it is not done before then, the costs will escalate because of having to transport the spoils to further sites. The current estimate is between 1.5 and 2 million.

IX. OTHER BUSINESS

Town Administrator Michael Magnant reported that the Town received notice from the New Hampshire Department of Health and Human Services (DHHS) officials that Rye has had two additional positive batches of mosquitoes for the West Nile Virus. The DHHS has increased the risk level in Rye from low to moderate. Mr. Magnant told the Board that notices have gone out to the schools, recreation and other public areas around town as well as being posted on the town's website.

ADJOURNMENT

Motion by Phil Winslow to adjourn at 8:53 p.m. Seconded by Keriann Roman. All in favor.

Respectfully Submitted,
Dyana F. Ledger

DRAFT MINUTES of the Board of Selectmen's Meeting 9/24/18
See minutes of 10/10/18 for approvals/corrections

RYE TOWN COUNSEL'S
STATEMENT RE: VERIZON'S CONTINUANCE

When Verizon's Attorney read my September 13, 2018 memorandum describing what I discovered about the state land at the end of 0 Port Way when I visited the area on September 5, he sent me two emails objecting to this information being part of the ZBA record, which had been closed by the ZBA. The second email sent at about 3:00 pm on Friday, September 14 included a paragraph which I interpreted as a suggestion that Verizon would be open to exploring the state land alternative.

At about 4:30 p.m. on Friday, September 14, Verizon's attorney and I had a long conversation about other alternatives. I gave Verizon's counsel some new information which became available after the September 4 ZBA meeting about possible access to the Condron parcel. The conversation ended with Verizon's attorney stating that he would discuss with Verizon officials whether or not to devote time to exploring these alternatives.

On Monday morning September 17, I sent Verizon's attorney additional information extracted from my files from the 1995 *Condron v. Town of Rye* litigation. (This is not the new information mentioned in the above paragraph, which at this time must remain confidential).

At 1:16 p.m. on Tuesday, September 18 Verizon's counsel called me and said that Verizon would like to have the applications continued for 90 days to work with the town to further explore three options: (1) 0 Port Way town land; (2) Condron; (3) state land in vicinity of end of Port Way. I said I would recommend the applications be continued. At 1:25 p.m. I called Planning and Zoning Administrator Reed and told her that the request for a continuance would be forthcoming and to tell the board chairs that I recommended it be granted. At 1:33 p.m. Verizon's counsel sent the continuance request to Ms. Reed. (Note. The time of my calls is verified by my cell phone call application.)

Applicants frequently request continuances, which the land use boards routinely grant. When that occurs, the Planning and Zoning Administer notes the request on the agenda and notifies interested parties of the continuance. The applicant and interested parties do not show up, and the continuance is then formally voted upon by the board the night of the meeting. In essence, that is what happened here.

DRAFT MINUTES of the Board of Selectmen's Meeting 9/24/18
See minutes of 10/10/18 for approvals/corrections

On September 18 only three (3) members of the ZBA attended because two (2) others mistakenly thought the meeting had been cancelled. The continuance was granted. One person has asserted that a continuance requires all five (5) members to be present. That is incorrect, three (3) is a quorum, sufficient to grant a continuance.

The continuance is being criticized by parties who assume that the ZBA would have denied the Verizon applications on September 18; that the denials would be upheld by the federal court; and that the real reason for the delay is to allow Verizon to strengthen its position in the litigation. The criticism is misplaced.

First, a denial on September 18 would have immediately set the town and Verizon in an adversarial position headed to court. That would have made a joint pursuit of viable alternatives more difficult to affect.

Second, there is no assurance that a federal court will sustain a denial. The parties who assert that the federal court sustaining a denial is a "slam dunk" are non-lawyers who may be blinded by their own vehement opposition to the Brackett Road site.

Third, before agreeing to recommend the continuance, I considered the possible effect of a continuance on my ability to defend the town in the event the ZBA denied the relief required for 120 Brackett Road. The delay will not adversely affect the town's position if these alternatives prove to be unworkable. The ZBA record is closed. The record does not contest that 0 Port Way and the Condron parcel have access issues. With respect to the state land, the towns defense of a possible denial by the ZBA does not "sink or swim" on the availability of that land.

Fourth, the critics appear not to understand that the ZBA's record will not be the only evidence the federal court will use to make a decision on effective prohibition, including whether the carrier has diligently pursued other alternatives. The parties may develop and introduce evidence extrinsic to the record on this issue. The federal court litigation will likely involve experts, expert reports, interrogatories and depositions, all part of extensive pretrial discovery. Any information Verizon gains during the continuance is evidence it would have been able to develop and introduce had a denial been voted on September 18.

DRAFT MINUTES of the Board of Selectmen's Meeting 9/24/18
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Fifth, I believe that, if these other alternatives do not materialize, the delay will place the town in a stronger position. For obvious reasons, I am not going to reveal litigation strategy in a public statement.

Sixth, the criticism assumes a road layout process to provide access to 0 Port Way is a simple matter. The critics may not understand that a layout by the selectmen requires town meeting approval or that it may be challenged in court. Residents of Port Way and Holland Drive have indicated they will organize to oppose a cell tower at 0 Port Way.

In conclusion, the need for better cellular service in the north part of Rye was documented by the board of selectmen in the December 17, 2017 town newsletter. Rye will not be able to lawfully deny every cell tower proposal that comes along that is opposed by neighbors (as most proposals are). There will eventually be one or perhaps more cell towers in this part of Rye. The opportunity to explore these options further may result in solving the coverage gaps in this part of town with one tower reasonably distant from homes and not too obtrusive to the view shed. Without the continuation such an opportunity would have been missed.

Michael L. Donovan, Esq.
Rye Town Attorney
9/24/2018