

BOARD OF SELECTMEN'S MEETING
July 22, 2010 6:30PM

Quorum noted

6:30 PM: Meeting called to order by Chairman Fernald.

Roll Call: Mr. Fernald, Ms. O'Donoghue, Ms. Place and Mr. Moynahan. Mr. McPherson was absent for roll call.

Pledge of Allegiance recited

Moment of Silence observed

Approval of Minutes of Previous Meeting(s)

6:32 PM Motion by Mr. Moynahan, seconded by Ms. O'Donoghue, to approve the minutes of July 8, 2010, as written.

VOTE

4-0

Chair concurs

Public Comment:

6:33 PM Mr. Manero said that he would like to make two very brief points. He said that, in any time that any issue came before the Planning Board (PB) that had to do with Piscataqua Landing LLC or Eliot Shores LLC, he wanted it clearly understood that he recused himself from the PB, Larry Dow sat in for him, and Mr. Manero became a private citizen. He clarified that any implication that he used his position on the PB to affect anything is incorrect. Additionally, Mr. Manero said that, almost a year ago, he initiated the discussion with the CEO in viewing some of the aspects of Eliot Shores LLC. He added that, as a result of that discussion, the CEO determined that violations had occurred. He told the CEO at that meeting that he did not know there were violations and was willing at any time in the future, including that instant in time if necessary, to make whatever adjustments might be to his position in relation to Eliot Shores LLC to come into full conformance with the Don LaGrange plan, which was approved 5½ years ago. Mr. Manero said that he met with the CEO a month ago and told him exactly the same thing – that he was ready, standing and willing to make whatever changes are necessary to conform to the LaGrange plan. Mr. Manero said that he stood before this Board, tonight, each one of them, and he commits to do whatever it is necessary to return to and be in conformance with the plan approved by Don LaGrange in 2005 – 5 ½ years ago. He commented that his problem was that he really didn't know what to do because no one has told him – no one has issued a violation against him so that he could contest it and he doesn't know what to do to conform and reiterated that he was ready, willing and able to do that.

Mr. Fernald asked if there was anyone else.

6:36 PM Bruce Haedrich asked if this was an appropriate time to comment on the firing of the CEO.

Mr. Fernald said that, remembering that this is a personnel matter and the CEO is not here to defend himself or otherwise, he should take that into consideration if he wanted to say something.

Mr. Haedrich, Goodwin Road, said that he believes the Board made a mistake in firing the CEO and the reason he thinks that is so is because he doesn't think...if a public employee is to be fired, then he or she has to be fired for cause and there are reasons to do that – dereliction of duty, not showing up, etc. He added that, as he understands it, none of that applied to the CEO. Mr. Haedrich said that, apparently, what the Board has done is fire him on the basis of a discussion or an incident that happened to him – doesn't matter whether it happened to him in this Town or another town – where the DEP has questioned him and so forth. He said that the DEP can question someone and give him Answer A in the morning and Answer B in the afternoon; this is not a consistent agency. He added that, whatever problems the CEO had with the DEP, he doesn't see how they are related to his performance within the Town. Mr. Haedrich said that, if that sort of

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advance planning is going to take place on the part of the Board, then they could say Mr. Blanchette, for instance, runs into a problem with the IRS and questions something that he does on his tax return, then the Board says that he can't serve the Town because that's so terrible.

6:38 PM Jack Murphy, 5 Brixham Road, former Selectman and 15 years on the PB, said that he has 10, so far, points of objection to the way the action took place one week ago. He added that he does not think Mr. White was properly represented. He commented that his main purpose, tonight, was that tonight is the next regular meeting after that meeting and is the one time at which the Board could reconsider the action taken for that time. Mr. Murphy said that he strongly urged the Board to reconsider and have it on the record that the Board reconsidered. He commented that this would not only protect Mr. White in case the Board has to change their mind and reinstate him until it could be looked at formally and in a proper manner, which was not taken place last Thursday. He said that, if the Board liked, he could go down the list of objections.

Mr. Fernald said that it needs to be...

Mr. Murphy said yes, but they're here and he isn't a stupid man and he is outraged and he urged the Board to reconsider tonight and reinstate him until there could be a proper hearing and the incidents that brought this up have a proper hearing rather than it all be done by the newspaper, which he (the Chair) said was a danger...that the Chair said he used as a basis for his decision. He thanked the Board and said that he was not alone in being outraged.

6:40 PM Mr. McPherson arrived at this time.

6:41 PM Nancy Shapleigh said that she would like to say that she is not outraged and she believes that many people who have spoken for him have not worked with him in the field. She added that there are a lot of people who did work out in the field with him that feel the Board did do the proper thing and the Board did it in the proper manner.
Mr. Fernald asked if there was anyone else who wished to speak on any other business.

There was no one who wished to speak.

Department Head/Committee Reports

Mr. Sylvester said that, on Monday, they received the paving bids and had two of the four companies they requested from turn them back – Pike Industries' bid was \$66.35 per ton and Libby Scott's was \$66 so, at this time, he would like for the Board to accept Libby Scott's bid.

The Chair asked for the pleasure of the Board.

Mr. Moynahan moved, second by Ms. O'Donoghue, to approve Libby Scott at \$66 per ton for highway needs.

VOTE
4-0
Chair concurs

6:42 PM Mr. Sylvester said that he had one other issue that came up at 4 PM this afternoon. He said that he had been told by the company that does Eliot's striping that they couldn't do that until the end of August or mid-September. He added that the company called at 4 PM and said he could do it tonight on his way back from Caribou. He said that he needed approval from the Board to spend the money out of that account. He added that the price is the same as last year and, last year, they paid him almost \$3,200, which is well over the \$2,000.

The Chair asked for the pleasure of the Board.

Mr. Moynahan asked if this was budgeted for.

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Mr. Sylvester said that it was.

Mr. Moynahan moved, second by Ms. Place, to allow Mr. Sylvester to approve that expenditure.

VOTE

4-0

Chair concurs

Ms. Muzeroll-Roy gave an update from the last Board meeting on the police department construction, etc. She said that a couple of different things have happened in the last couple of weeks – that she has taken a different look as to where her department should be located and has decided that they are going to try to make it work with help from the Fire Chief at the fire department. She said the biggest reason is that she would not be gaining anything by moving into the police department – the room she has now is the same size she would have in the police department, she doesn't necessarily need an access door at the fire department, the stairs are okay and any seniors they do take in do know to use the front of the door. She added that she won't need to hire any construction right away, which would benefit them to move forward with some things. She added that the police department is much busier than the fire department on a daily basis – patrolmen in and out, they have conference room activity and would need to relocate their conference room activities, privacy issues, which she hadn't really taken into consideration, etc. that she and Chief Short have talked about and looked at a little bit more before going ahead with construction bids. She said that she met with Chief Muzeroll, that it seems to make sense as most of their stuff is at the fire department, they have been very accommodating. Ms. Muzeroll-Roy said that there are a couple of things they would need to do that they would need to make a decision about soon – she said she knew they were allocated \$5,000 to the construction part, which she would let the Chief speak on, and believes they could still use that money to do some work in the fire station to make their housing comfortable – he will need some storage for things they are moving out of the room and they will need storage for some things she still needs to move over.

Mr. Fernald asked about safety.

Ms. Muzeroll-Roy said that she believes they are still fine. She said that they have had rope lines created and added that most people who come in to their office know where they are, they would do some adjusting where the bunker gear is to keep people away from that, she would like to spend some of the money improving handicap accessibility. She added that, logistically, it would still work and reiterated that she would not be gaining or losing by staying at the fire department versus moving to the police station. She reiterated that there would be a little bit of spending but nothing that wasn't already allocated, if she was still able to use that money. Ms. Muzeroll-Roy said that they were already established at the fire department and another move would just disrupt their business again. She added that she would gain use of an empty office space for privacy issues with customers and there are some logistics to work out but, presently, it seems to be the best option. She did say there were a couple of things that needed to be established. She said that they needed a timeline for what will happen with the present office. She said that her stuff is still over there and they are going in and out of that office on a daily basis – their equipment and desks are still over there and they need to get them over to the new office or they would need to purchase new things because they are, in fact, infected with mold. She added that they would either need to have a cleaning company help them figure out what to do with the present desks but she doesn't want to bring things from the moldy office to a nice department and they would need to replace the chairs because they are all cloth chairs.

6:47 PM

Mr. Muzeroll commented that the fire department obviously had the quickest space for them to occupy and things won't happen overnight. He said that he agreed with Ms. Muzeroll-Roy that, if ECSD was going to have a temporary home, and he stressed temporary, the fire department may be the place to be. He clarified that the factor is that he has a different type of business, day-to-day, than the police chief – the privacy issues, people in and out, etc. He added that, with a

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minimum of rearranging and allocation of a portion of that money for safety signage, reestablishing handicap parking, having a professional evaluation of the furniture and equipment over at the office to see what could be saved, the cost to save it and whether that would make sense or to purchase new. Mr. Muzeroll said that, as far as the \$5,000 allocated for the retrofit of the police station, he thinks they could make things work for both of them if he contracted with someone local to build the two small storage rooms upstairs, which he thinks would be right around \$1,000.

6:50 PM Ms. Place asked Mr. Moynahan if the estimate they had done included cleaning any of the furniture.

Mr. Moynahan said no.

Ms. Place discussed having someone professional at least look at the furniture and see if anything is salvageable, keep what is clean and discard the rest.

Ms. Muzeroll-Roy asked if there would be an insurance claim for the problems with the building.

Mr. Hirst said that he called MMA as soon as they knew there was mold and they said there was no coverage whatsoever for damage from mold or remediation from damage by mold to either building or contents.

Mr. Moynahan moved, second by Ms. O'Donoghue, to allow the Eliot Community Service Department and Eliot Fire Department to spend up to \$5,000 for storage shelving, handicap parking striping, signage and barricades.

VOTE

4-0

Chair concurs

Mr. Moynahan asked Ms. Muzeroll-Roy if it was possible for her to inventory the furnishings over in that building.

6:53 PM Ms. Muzeroll-Roy said yes and has already found out that it would cost approximately \$400 to replace each of the four workstations.

Mr. Muzeroll cautioned people from going in and out of that building repeatedly, as the building is condemned for mold. He suggested that anyone going in there to do any work use appropriate respiratory protection.

Mr. Fernald commented that they would need to expend some amount of money to get the items cleaned and wondered if the money might be better-spent buying new items.

Mr. Moynahan agreed and said that salvaging the furniture in there, in his experience would not be realistic.

There was discussion to confirm monies would come from the facilities account and allocating enough to make sure there was enough to cover replacement of the workstations.

Mr. Moynahan moved, second by Ms. Place, to allow the Eliot Community Service Department to expend up to \$2,000 for furnishings for their department with monies to come from the facilities account.

VOTE

4-0

Chair concurs

6:57 PM Ms. Muzeroll-Roy said that the only other thing is the timeline. She said that she knew that the building committee had just been established or is being established and would like to get something going on a timeline.

Mr. Fernald said that they were establishing the building committee and then it would move forward.

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Mr. Lytle asked if they could address #5 at this time.

The Board agreed.

#5

TO : Board of Selectmen
FROM: Phil Lytle, Transfer Station Manager
REF : Bicentennial, Hold-Over Funds, Hiring at Transfer Station

Mr. Fernald read the Memo that asked that the Transfer Station be closed on Saturday, August 7th, so that employees could participate in the Bicentennial celebration. He asked for the pleasure of the Board.

It was the consensus of the Board to grant the request.

Mr. Fernald said that they had a request from the Transfer Station Manager to roll over \$4,000 from the 2009 budget to make repairs to the landfill in accordance with the DEP.

Mr. Lytle discussed the efforts to bring the landfill into compliance with the DEP and said that they would be using only enough to bring the landfill into spec.

Mr. Moynahan asked for detail clarification.

Mr. Lytle said that the pipe needing to be replaced is an old pipe that goes down into the swamp and is a storm drain.

Ms. O'Donoghue commented that there were some plantings that were included that the DEP was concerned about and asked if that was part of this.

Mr. Lytle clarified that some of the funds would be used for that, too.

Mr. Moynahan moved, second by Ms. Place, to allow the Transfer Station to rollover funds from the 2009 budget to make repairs to the landfill in regards to the DEP inspection.

VOTE

4-0

Chair concurs

Mr. Lytle discussed his request to put on two more part-time people that would be available to use, as needed, to cover for vacations, etc.

Mr. Moynahan moved, second by Ms. Place, to allow the Transfer Station to hire Robert Cresta and Barry Foley as part-time, as needed, employees.

VOTE

4-0

Chair concurs

7:05 PM

Mr. Muzeroll commented that, regarding the DOL issues, the "final, final" was all submitted the middle of June and he has been checking. He said that, if he hasn't heard something by the end of the week, he would call them.

Mr. Murphy, representing the Energy Commission and having met last night, said that they were requesting to roll over funds from fiscal 2009 into fiscal 2010 in the amount of \$356.50.

Mr. Moynahan moved, second by Ms. Place, to allow the EEC to roll over the \$356.50.

VOTE

4-0

Chair concurs

7:08 PM

Mr. Marchese said that he was asked to be the Town's sewer inspector and didn't know if it was appropriate to discuss this now or if the Board wanted to discuss it as a group but, on Monday of this week Mr. Fernald and Mr. Blanchette approved him to fulfill that role so that the already scheduled inspections could take place.

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He added that he didn't know if the Board needed to vote on it formally to either approve or deny the position and he was hoping to discuss with the Board exactly what his duties would be.

Mr. Fernald asked for Mr. Blanchette to speak to this, as it was discussed in emails and it needed to be discussed in open meeting.

Mr. Blanchette agreed that the Board should have a formal vote to approve Mr. Marchese as sewer inspector. He clarified that he sees that as fulfilling the current situation that would inspect the existing hook-ups for any violations of improper connections.

Mr. Moynahan discussed that this would certainly only be temporary to fulfill scheduled appointments based on the letter they sent out recently. He added that the Department of Public Works Director would be charged with the sewer aspect when he came on board.

Mr. Fernald said that he understood that Mr. Marchese would be temporary and added that they needed to take a formal vote to appoint Mr. Marchese to this particular task for the Town.

Ms. O'Donoghue moved, second by Ms. Place, to temporarily appoint Mr. Marchese as sewer inspector. She discussed that she did not respond to the email because she felt that would be out-of order and she was glad it was being discussed tonight, openly, and they would take a proper vote.

Ms. Place seconded Ms. O'Donoghue's motion.

VOTE

4-0

Chair concurs

Ms. Lewin commented that she wanted to say that she got one of the letters that said "fourth notice" on it and her property was inspected several months ago and her brother was there with her when that was done on the Pleasant Street property. She added that she knew it was done but there was no notation of that fact made that that was done or she would have let the Town know that fact.

Mr. Fernald said that, if that is the case, then.....

Ms. Lewin said that she did call Ms. Thain and Ms. Thain spoke with the then CEO and he remembered he had done that but she doesn't know that anyone made a note of that.

Mr. Fernald said that that was so noted.

Mr. Marchese clarified that he intended to do the inspections but, as far as enforcement goes, he would recommend that, until the CEO position is filled or the Public Works Director, they pursue enforcement of proper connections.

7:11 PM Mr. Fernald agreed and confirmed that Mr. Marches' role would be to inspect and note his findings.

Old Business (Action List):

7:12 PM

A. Job Review Form for Department Heads – Mr. Moynahan

Mr. Moynahan said that he made copies and put them in the folder files for each member to review.

B. Fire Arms Ordinance – Mr. Fernald - ongoing

C. Consent Agreement Policy Mr. Moynahan, Ms. Place & Jack Murphy

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Mr. Moynahan said that they met last week and have developed a good package they will be presenting at the next regular meeting.

D. Solid Waste Alternatives – Solid Waste Committee

No one from the committee was present.

E. Wild Brook Lane

Mr. Blanchette said that Ms. Davis called today and said that she wasn't ready to come before the Board with anything new. He added that she would be on the Action List for the next meeting.

F. Criteria for License Review - ongoing

G. Representation on Kittery Sewer

Mr. Murphy discussed that the feeling was that Eliot should be more formally represented on their committee when their committee deals with sewer issues affecting Eliot. He added that they only learn, after the fact, how much Eliot can know and what Eliot would have to do in order to live with Kittery. He further added that he understands that someone has talked with John Carter and Jon Carter answered in a rather "crisp" manner – wanting to see a signed contract – essentially, the counsel's position before they want to treat Eliot as brothers.

H. Sewer Contract Committee – Mr. Moynahan, Ms. O'Donoghue, Mr. Murphy, Mr. Marchese, Mr. White.

Mr. Marchese said that, along the lines of what Mr. Murphy had discussed, in their new sewer contract agreement with the Town of Kittery, there is a section in that agreement that does discuss representation by Eliot in Kittery and that that group needs to take a second look at that and revise that to make sure that everyone is happy with it. He added that they need to strengthen that section.

Ms. O'Donoghue commented that she thought that was especially important now that they have had their second report from the engineering study and believes it is a good time to look closely at the contract and move forward on that. She discussed her concern that, if they don't move forward with the contract, it could create more delays that might be harmful. Ms. O'Donoghue also said that she saw that the committee included Mr. White and she suggested that Mr. Blanchette be appointed in Mr. White's place temporarily, at least.

Mr. Fernald asked if that would work for Mr. Blanchette.

Mr. Blanchette said yes.

I. Skate Board Park noise – Mr. McPherson and Mr. Fernald

Mr. McPherson said that he has not seen anyone use the skate park in the last month or so. He added that he has talked to one or two neighbors and has not found anyone else who has complained about the noise. He added that he would hate to see the Town spend a lot of money and not accomplish anything. He commented that the barrier could cost \$4,000 – \$5,000 and no guarantee that it would work.

Mr. Fernald agreed and said that, even with barriers, not all the noise would be dissipated. He discussed that several members of the Board have looked into this situation a year ago or so.

Ms. O'Donoghue commented that they did have a letter from Ms. Hoyt, Correspondence #10.

Mr. Fernald agreed but said that it did address the noise but not how to take care of the problem. He asked Mr. Murphy if the Board, at that time, had made any decisions or recommendations regarding noise at the Skate Park.

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Mr. Murphy said that it was a very difficult thing and there were no solutions at that time. He added that the resolution they came to, at the time, was to strictly regulate the hours so that the citizens around would not that, after a certain time, it would stop. He discussed that, with the park needing repair, there isn't as much activity there currently.

Mr. Fernald confirmed that the Bowl, itself, is not able to be used and, as he understands, many who normally use the park do not because of the hot, humid weather. He asked Mr. McPherson to look into whether changing the hours might suffice.

7:17 pm Mr. McPherson said that he would.

Ms. Muzeroll-Roy said that the hours have been changed a couple of different times. She said that, currently, they go 9-7 and it is closed on Sundays, with most of the kids out of there by 6 PM, anyway. She added that, once school starts, it isn't usually busy until about 3 PM and they are out of there about 6 PM or 6:30 PM. She also said that she changes the hours with Daylight Savings, as well. Ms. Muzeroll-Roy commented that she doesn't think revisiting the hours was needed.

Mr. Moynahan said that they needed to do a noise reading on a day the park was slow and a day it was busy. He added that that was the only thing that would tell them what the noise levels are and find a resolution.

J. Building Committee

This will be discussed under New Business.

K. Community Building – short term & long term

This has already been discussed.

L. Eliot Shores – Legal Advice

7:23 PM Mr. Blanchette said that he did forward the letter from Mr. Hyer to Attorney Vaniotis and he was rather busy so he didn't get back to him until this week. He added that Mr. Vaniotis has reviewed the letter and feels he would like to meet with the Board, in person, to discuss this. He added that Mr. Vaniotis is tentatively saving the next regular meeting for the Board.

Mr. Fernald apologized to Mr. Hyer that this isn't progressing as fast as Mr. Hyer would like but the Board really does have to dot their "I's" and cross their "T's" to make sure they are doing it right.

Mr. Hyer said that he understood and that as long as the chain of communication is ongoing he is okay.

M. Public Works Director

Mr. Blanchette said that they went up to Augusta on Wednesday to attend the DOT Road Simplification Study and, fortunately, Joel Moulton was able to go up with them. He added that Mr. Moulton has been over to the Town Garage several times. Mr. Blanchette said that, as stated before, he has a two-week vacation coming up and pretty busy in Farmington. He added that, at this point, Mr. Moulton doesn't see, other than for special things, coming in until after his vacation, which is mid-August and start full-time towards the end of August.

Mr. Fernald clarified that he has been hired for the Public Works Director position.

Mr. Blanchette said yes.

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New Business (Correspondence List):

7:25 PM

#1

TO : Board of Selectmen
FROM: Steve Beckert, Ed Strong, Ann Shisler, Grant Hirst, Sally Lewin, Phil Lytle, Wendy Rawski, Donald Webber
REF : Request to be appointed to Building Committee

The Chair said that they have quite a few people who want to be on this committee and that the Board has discussed having a certain number of people. He said that there were nine people requesting appointment and asked for the pleasure of the Board, asking, if they can behave and get things done, does the Board say okay.

Mr. McPherson said that he thought five was what they decided but seven would be okay and that they should be residents of the Town.

Mr. Fernald confirmed that all nine were residents.

Ms. O'Donoghue said that she would be stepping down as liaison for this committee.

Mr. Fernald asked the members if they wanted to take these requests individually.

After going through a portion of the list, Mr. Moynahan commented that he was being cautious with his recommendations because the only one to have building experience was the last to put his name in and he certainly doesn't want to omit him.

There was discussion to accept all nine by the Board.

Mr. Moynahan moved, second by Ms. O'Donoghue, to appoint all nine applicants to the Building Committee.

VOTE

3-1

Chair concurs with majority

Ms. Muzeroll-Roy clarified that she would be able to attend these meetings and give input, as it directly impacts her department.

Mr. Fernald said yes.

Mr. Fernald asked Mr. Blanchette to contact the nine people to notify them and set up a time to meet, select a Chair, etc.

Mr. Hirst asked what kind of committee this would be – standing, ad hoc or advisory.

Mr. Fernald suggested it be a standing committee.

Ms. O'Donoghue agreed and said she saw this committee, going forward, handling the maintenance of all municipal buildings.

It was the consensus of the Board to have this as a standing committee.

Mr. Roy asked for clarification of what Ms. O'Donoghue meant by all municipal buildings.

Mr. Fernald said that meant all Town buildings, like Highway, and the committee would be looking at any new additions or maintenance that needs to be done.

Mr. Moynahan discussed a maintenance problem the police department has had for three years that he has not been able to resolve and department heads will be asked of any maintenance needs they may have to make sure money is out there

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each year. He added that Facilities, again this year, was not funded, so there is no money to do anything.

Mr. Roy commented that the only problem he could see with that is that the ECSD really needs to be concentrated on.

The Board agreed that the ECSD is the first priority and would be taken care of before anything else.

Ms. O'Donoghue clarified that this committee was not temporary and would be broader than just taking care of the ECSD.

7:35 PM

Mr. Murphy said that, as a member of the Energy Committee, he would like to remind the Board that they have received a grant and part of those funds were to be expended reviewing the energy, say, of the police building. He clarified that they have not received the money, yet, from the State.

Ms. O'Donoghue said that, for the record, she hoped the Energy Commission would be very much involved with this on-going committee.

#2

TO : Board of Selectmen
FROM : Laurence Bouchard
REF : Request to be appointed to Planning Board

The Chair recognized Laurence Bouchard.

Mr. Bouchard said that he was on the PB about eight years ago and had to step down due to work. He added that he has time, again, and wanted to get back on.

Ms. O'Donoghue moved, second by Ms. Place to appoint Laurence Bouchard as an alternate to the Planning Board, term to end 2012.

VOTE

4-0

Chair concurs

#3

TO : Board of Selectmen
FROM : Richard Dionne
REF : Request to be appointed to Sewer Committee

Mr. Fernald recognized Richard Dionne.

Mr. Dionne said that he saw that there was an opening and wanted to be a part of this committee.

Mr. Murphy commented that Mr. Dionne comes from South Berwick and is familiar with South Berwick sewer. He added that Mr. Dionne has attended the last two meetings and made valuable contributions.

Ms. O'Donoghue moved, second by Mr. Moynahan, to appoint Richard Dionne as a regular member to the Sewer Committee, term to end 2013.

VOTE

4-0

Chair concurs

7:38 PM

#4

TO : Board of Selectmen
FROM : Fire Chief
REF : Second Amendment to Ambulance Services Agreement

Mr. Muzeroll said that he, Mr. Hirst, Chief Short and Mr. Blanchette originally talked about ambulance services, price of services for the Town, increased costs and he has been vocal all along that he has been happy with what goes on with AMR corporately and personally and response-wise. He commented that, like any organization, there have been some hick-ups and they are addressed as they

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happen. Mr. Muzeroll said that one of the things that has been constant with them is that their level of service is greater than what the Town has been paying for. He said that he thinks they pay about \$60,000 a year for ambulance service. He explained that they are looking to maintain what they are doing right now for their service or increase their service without committing to an increase in patient care for the same amount of money. He said that, if the Board looks at the date of the initial contract of July 2005 and the ending date of 2008, then he believes this is a pretty good deal for the Town – a long number of years without any increase in ambulance service cost. He said that there was a concern about out clauses and there are out clauses in the agreement and explained that he and Chief Short do have the ability to sit down with the program director, if there are complaints, and get them resolved quickly. Mr. Muzeroll recommended that they continue the ambulance service with AMR and to extend the contract up to June 30, 2013. He added that it seems to be the trend that they are extending contracts with towns in the area – Kittery, Somersworth, Berwick have all agreed to do the same thing.

Ms. O'Donoghue asked if there wasn't some discussion with York Hospital coming up with an ambulance service.

Mr. Muzeroll said that the only he could tell the Board right now is that York is not looking to have their own ambulance service.

7:42 PM Mr. Hirst said that he has been having ongoing discussions with Judd Knox at York Hospital and what he proposes regional ambulance service. He added that Mr. Knox hasn't exactly defined what that means, yet, but if he did, it would be with AMR and he has said to Mr. Hirst that, if he could pull this off, it would be a substantially less cost than the Town is paying now. He added that he thinks it is premature to negotiate a new contract until they heard from Mr. Knox to find out what they are doing.

Mr. Muzeroll commented that that is purely speculation. He said that he has had those same conversations with Mr. Knox at York Hospital and what their corporate and business plan is, is none of the Town's business and what he is telling the Board is that it is smart money for the Town to extend the contract and if, in a two-year period, they decide to regionalize and AMR is part of that regionalization, then the Town would certainly benefit from that. He discussed the impact of holding off and maybe subjecting the Town to increased ambulance costs. Mr. Muzeroll said that he thought along the same lines as Mr. Hirst in hopes that they would get involved in a regional service in the same way that Frisbee has that has been successful.

Mr. Hirst said that the current ambulance contract runs out next June and he sees no reason to be in a real rush to do this.

Mr. Muzeroll disagreed. He said that the contract proposal is for right now and, if they hold off on it, then it would cost more money next June. He explained that an offer has been made to continue the service until June of 2013 for the same cost that the Town started paying for in 2005. He added that he agreed that the contract doesn't run out until next year and there doesn't appear to be any big rush but his mood is that he is the guy that deals with him and Mr. Hirst doesn't. He said that he is satisfied with them and he wants to stay with them for as long as he can and work out any issues they have and he believes they are still getting a great bang for their buck.

7:45 PM Mr. Hirst said that the Board established an Ambulance Study Committee and that has not even been discussed. He added that this is the first time he has seen this and reiterated that he thinks it is premature.

Mr. Moynahan said that he is always inclined to listen to department heads that deal directly and they did establish an ambulance committee – they met once – both Chief Muzeroll and Chief Short shared their thoughts on a split ambulance service and he didn't think either one of them were too fond that and, at that point, they didn't have many choices. He added that, from a business standpoint, this seems to be a sensible move securing the same contract terms that they had in

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2005 through 2013. He also added that it satisfies the department heads who have daily dealings with the service and seems to make the most sense.

Mr. Moynahan moved, second by Mr. McPherson, to amend the term of the agreement with AMR to June 30, 2013 for the same costs that the Town is currently paying.

DISCUSSION:

Ms. O'Donoghue asked if there was anything that could be adjusted, perhaps the time – does it have to be a three-year contract.

Mr. Muzeroll said that the only history he has on that is that the extension offer for everyone who has been offered the extension is for the same three years. He added that his assumption was that everyone was offered a contract extension up to three years for the same money that they are now paying.

Ms. O'Donoghue asked if there was an escape clause if, say, someone came in out of the blue with a wonderful plan that would cost half what these people charge.

Mr. Muzeroll said that he would think that their escape clause would be the end of the contract.

END OF DISCUSSION

VOTE

3-1

Chair concurs with majority

7:47 PM

#6

TO : Board of Selectmen
FROM : Don Sylvester
REF : Wildbrook Lane

This was informational.

#7

TO : Board of Selectmen
FROM : Dana Norton
REF : Inaction taken by the Board of Appeals

Mr. Norton said that, at the last BOS meeting he attended, in light of the letter by Larry Dow, the BOS suggested he go to the BOA to get that matter understood. He explained that they felt he was not within the 30-day timeframe to appeal and he told the BOA that he did not have anything to appeal because he hadn't been given any written violation. He added that he tried to express to them that he was sent to them by the BOS within 30 days and they felt that didn't qualify. He said that he came back to the BOS to see if they could make a ruling on the interpretation of the ordinance, as written by Mr. Dow's letter and also Mr. Manero, who is here and was a member of that Board...committee, that wrote that ordinance.

Mr. Fernald clarified with Mr. Blanchette that the BOS determined that the time was within the timeframe.

Mr. Blanchette said that he was not present at that BOA meeting so he would defer to the BOA Chair as to what that ruling was since the BOA Chair is present.

Mr. Cielezsko asked for clarification as to what the BOS were asking of him.

Mr. Fernald asked why Mr. Norton was not heard on his appeal.

Mr. Cielezsko said that it was the consensus of the Board that they are under a set of rules by the State and from the Town ordinance that requires any administrative appeal of either a PB decision or a decision of the CEO must be appealed within 30 days of that written decision. He explained that Mr. Norton, through evidence at the meeting, had a Notice of Violation letter from Don LaGrange in 2005, he thinks, for the same violation and he had already appealed

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that decision in 2005. He added that, in 2009, Mr. White, the next CEO, also gave him a written notice of violation letter that covered the same ground. He said that those windows for him to appeal the decision had disappeared years ago and the BOA could not address that, per State law and Eliot ordinance.

Mr. Fernald clarified that the interpretation of the ordinance, itself, which Mr. Norton wanted to express to the BOA cannot be expressed because of the timeframe.

Mr. Cielezsko clarified that Mr. Norton's current request to have that definition looked at cannot be looked at, currently. He said that, in 2005, Mr. Norton did appeal a decision by Mr. LaGrange, it was brought to their Board and that argument was raised and the issue did not rise to the narrative of granting his appeal but their minutes reflect his use of that argument during that hearing in 2005. He added that Mr. Norton's appeal was denied at that time.

Ms. O'Donoghue asked about 2007.

Mr. Cielezsko said that the next letter was in 2009. He clarified that the letters he has seen are from 2005 and 2009 but there is an ongoing thing in the file. He explained that he only addressed those two things so that he could have some reference to frame Mr. Norton's latest approach to the BOA.

Mr. Fernald clarified that the 2009 argument was that the cars are part of the inventory.

7:53 PM

Mr. Cielezsko said that he never saw a response from Mr. Norton to the 2009 letter from Mr. White and doesn't know what his response was to that letter. He added that the letter said that he had parking problems, too many vehicles, and thinks it was only a couple of things that Mr. White addressed. He further added that it was almost anecdotal to a list that Mr. LaGrange developed in 2005. Mr. Cielezsko clarified that he did not want to give the wrong impression and explained that, in general as he could not remember the exact wording, it was parking and that same sort of thing.

Mr. Moynahan referencing the discussion that took place in 2005, asked if that discussion was to determine whether the vehicles were a product of this man's business and not cars that would be illegally parked, based on the conditions of approval.

Mr. Cielezsko said that, in their minutes, reflected during that appeal, the Norton's had referred...and there was a generous number of witnesses that were for Mr. Norton...he thinks it was brought up at that meeting that, instead of using vehicle parking, that it would be a product and not true parking like a customer's car – a product of his business, just like any inventory item. Mr. Cielezsko said that the appeal was denied and clarified that all they have to show during one of those appeals is that the CEO did not act in gross negligence of the code. He added that the CEO has to be really wrong before an appeal is granted.

Ms. Place apologized to Mrs. Norton for not getting back to her precisely for this reason that she didn't have the answer to Ms. Norton's question and she hopes that tonight they would get that answer.

Ms. Norton asked if there was any chance that they could listen to the people who drafted the ordinance so that they could clarify it.

7:55 PM

Mr. Norton said that Mr. Dow submitted a letter to the Board a month or so ago, June 3, 2010, offering his explanation of the intent of the ordinance and based on that letter the BOS suggested he go to the BOA. He said that the BOA sighted cases in 2005 and 2009 and, at those meetings, it may have been discussed that the cars might be considered a product but, at those meetings, he was there to get his parking increased from 7 to 11. He added that, at one time, he had a lawyer come out to discuss the parking ordinance, saying that a garage is allowed so many parking areas per bay per square feet that has a formula and he came up

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with 22 and he went to discuss that. Mr. Norton said that he has never formally asked that any board specifically discuss the intent of the ordinance or that the cars be considered a product. He did say it certainly was, perhaps, brought up in general discussion but he never filed the paperwork asking for that explanation as he has been trying to do these last couple of meetings. He said that Mr. Dow and Mr. Manero came out to give their intent of that ordinance when they wrote it and he would like to get that discussed, if he could.

Mr. Cielezsko concurred with what Mr. Norton just said; that that is a more accurate assessment of what happened. He said that the argument came up but he didn't hinge his whole night on that...it was just one of the issues that was brought up. He added that Mr. Norton was correct in looking back over those meetings.

8:00 PM Mr. Fernald said that the BOS tried to have that come before the BOA, that particular scenario, if cars are actually part of inventory instead of just cars being there.

Mr. Cielezsko confirmed that he really did need to bring that up in 2005. He said that there needed to be a Notice of Violation (NOV) that would give him 30 days from that NOV. He added that, no matter what argument Mr. Norton uses to try to address that NOV, he has 30 days to make those arguments. He further added that that was the unanimous consensus of the BOA.

Mr. Moynahan clarified that, in 2005, the appeal was denied, so that means the NOV stood and nothing occurred again until 2009 and the same NOV, in essence, was filed.

Mr. Cielezsko clarified that those are the two examples he found, as the file is quite extensive and he did not go over the whole thing. He said that he tried to find things that had to do more with his Board in preparation for the meeting. He discussed that, sometimes, CEO actions are very slow and this one is.

8:03 PM Mr. Norton said that he had copies of Mr. Dow's letter and asked if the Board had a copy in front of them.

Mr. Fernald said that he believes the Board has seen a copy of the letter.

Mr. Norton said that Mr. LaGrange told him to keep all the cars inside the gate and keep the gate closed and that was the end of it for a year and a half. He added that he doesn't think Mr. White ever said that but he suggested that he (Mr. Norton) work the procedure, going to see the different boards and whatnot and that is what he has been doing.

Mr. Fernald asked if there was another process they needed to go through or where does this stand.

Mr. McPherson asked what this Board could do to clear this up.

Mr. Norton said that he thought that if they could recognize the intent of the ordinance as it was intended, then he didn't think there would be any problem. He added that there were two people here that drafted the ordinance and if they could explain what their intent was and the Board would agree with that intent, then they could clarify this issue.

Mr. Fernald asked Mr. Cielezsko to speak on that.

Mr. Cielezsko said that it was his opinion that this Board could not address this...that it has to be addressed through the courts. He added that he may be wrong but when one talks about ordinance issues, to reach an intent or to reach a new understanding of an ordinance, it requires judicial review. He clarified that, through his experience and as little as that is, he does not believe the Selectmen have the authority to change things like that.

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Mr. Norton argued that it was not a new interpretation but a basic understanding of it. He said that it was not a new way to look at it and not a new spin...could they just decide what it is.

Mr. Faulkner, Maple Avenue, said that it seems to him that the decisions that were made in the past were made because of an incorrect interpretation of the ordinance and everything that was done or rules that were made was done because of an incorrect interpretation of the rule. He added that, if that is the case, then is it too late to rectify the error. He asked why a board or committee or someone in this Town say that it has been interpreted incorrectly and this is what the real meaning of it is and this is how it affects Mr. Norton. He said that it would seem to him that it is as simple as that.

Ms. Shapleigh said that she thinks Mr. Cielezsko is right that the Board can't overrule this but she does believe that the Board can certainly do something with a C.A. – that seems to be the only way that this could be corrected because, by State law, the Board may not be able to overrule it. She added that, certainly with two people here who wrote the ordinance, she thinks they should be asked to explain it. She commented that, if the Board doesn't care, then maybe the public would like to hear.

8:06 PM

Larry Dow, 23 Beech Road, said that, as they have probably gathered from the discussion, he was vice-chairman on the PB when that ordinance was written and Mr. Manero was the chairman. He said that, in his letter, he made it pretty clear that, what's going on with Mr. Norton...and he responded to what was came out of the Portsmouth Herald where he saw that Mr. Norton was being charged parking places for what was behind his fence, which didn't make any more sense than, as he said in his letter, a vacuum cleaner repair shop being charged parking places for the vacuum cleaners on the shelf. He went on to use lawn tractors as an example...he said that, if someone brings a lawn tractor to a home business and they bring it out back do they get charged a parking place for that...no, of course not. Mr. Dow discussed the number of lawn mowers Agway has out in back of their business and asked if anyone knew how many parking spaces that would equate to if one followed that logic. Mr. Dow said that the logic says and the ordinance was written very specifically to say this stuff, the inventory, will be fenced...it says that right in the ordinance...and it is, it is well-fenced. He added that his feeling was, and he thinks that it's just common sense that anything on a lift or behind that fence is not an active parking place. He clarified that those four active parking places are for people to come and go, for the parts person to deliver, for people to come and talk with the shop owner and it is not meant to count all of the spaces out back for storage. He explained that this is fundamentally misinterpreted and incorrectly applied. He discussed walking through the logic to see that, using watch repair as an example, one wouldn't count parking spaces for the watches on the shelf and it was never meant to be that way. He said that, when he saw that in the paper, he said to himself that, when he was on the Board, he would always like to talk to the people who wrote the ordinance because they are sometimes hard to understand and sometimes the case the Board is hearing at the time isn't totally covered by that situation. He said that, what the Board has is two people who were involved in the writing...here we are.

Mr. Manero asked to take a different cut at this, completely. He said that he agreed with everything that Mr. Dow said but asked to be allowed to approach this, if he might, by discussing why there is a Home Business, such as Mr. Norton's, at all. He added that he thought it would be helpful to the Board to understand how they got here and why they are here. Mr. Manero said that, about six or seven years ago, they recognized that the Town was exposed because the ordinances allowed significant commercial businesses to be brought in to Town and insinuated into Village, Suburban and Rural areas. He explained that they wrote an ordinance that required that real commercial businesses, such as McDonald's or manufacturing businesses or whatever one wanted to call it, would be restricted to Route 236. He said that, when they (PB) wrote that ordinance, they recognized that, even though they were going to eliminate within the Town the ability to have certain businesses in the Village, Suburban and Rural areas,

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first to be sure the law would not be challenged and second to provide a relief for those people who needed to do certain business types of things in Town. Mr. Manero said that they added to the ordinance, at the same time, three classes of activity – Home Office, Home Occupation and Home Business. He explained that each of those were slightly more intense than the previous one. He added that the key to setting up these three classes of activity that would be permitted in their Rural, Village and Suburban areas was that the person conducting that business had to live on the property...had to be a resident of the Town living on that property. He discussed that, because of that provision, they recognized that that gave citizens of Eliot the opportunity to indulge in these businesses but that it precluded people coming in here and opening up a 24-hour hardware store operated from a chain hardware store or fast food chain or whatever, so they reached a compromise. Focusing on Home Business, he said that when they put together the logic for that, they asked themselves what it was that a home business needed to be successful. He explained that they recognized that people would come to that home business and want to do business with that business that was going to take place with a resident in the Town, either in the residence or a separate building. He commented that one of the things they would need is parking and they thought a great deal about that and what concerned them as they began to think about the parking issue was that they didn't want to have the type of situation that they have on Saturday mornings when they have flea markets in Town and the cars are parked up one side of the street and down the other side of the street. He discussed that, if they were going to have businesses that would be regularly operational, then they should set up some parking for those businesses and, for a Home Business, they set up a limit of four parking places. At this time, Mr. Manero gave handouts to the Board members and discussed it. He said that there were a couple of aspects, here, worth noting. First, he asked the question, "Did the PB do the right thing in permitting Mr. Norton to have an Auto Repair Business in a building that is on the property on which he is resident?" He said that the answer to that comes under item E, which says: Any use that is not listed in the table of land uses, section 45-290, may be permitted as a home business provided both of the following requirements are met...and the key words are "any use that is not listed in the table of land uses", which then has to satisfy (1) and (2). At this time, Mr. Manero gave out a copy of permitted land uses and said that, looking at that list, it says Auto Repair Garages and, looking to the right, the Board would find that, in the Village District, it says PB⁸. He clarified that that says it must conform with 45.456.1, which is the handout he gave the Board a few minutes ago. He explained that that is the logic trail that takes one from the master list of permitted uses down through to the paper they have in front of them, which is the definition of Home Business. Mr. Manero said that, if the Board would move down to item I, under 45.456.1, it says: "In addition to the spaces required for parking by occupants of the dwelling unit, home businesses may provide customer and non-resident employee parking spaces, not to exceed four such additional spaces per lot. All requirements of Chapter X (parking chapter) of this chapter shall apply to all parking spaces on the lot, with the exception that a maximum of two parking spaces may be located within the front setback." He said that the first two words in I are "in addition" so, four parking places are allowed in addition to the spaces required for parking by the occupants. He clarified that the reason they wrote that that way was that a person with a home business on his land may have a house set back some distance from where the home business is located and may need to come down and park in front of his business. He said that, in addition to the four parking places, there really are two more slots where parking could take place for the members of the business. Mr. Manero asked the Board to turn to the second page of his handout and discussed it, which says, in part, "...and one business related vehicle with a gross vehicle weight rating of 10,000 pounds or less shall be exempt from screening requirements." He said that, now, there are the four places, the two more that could be used by the occupants and one more undesignated space where a truck under 10,000 pounds could be stored. Mr. Manero said that, perhaps it exists, but he has not seen proof submitted by the CEO that parking in excess of this allowed amount has taken place. Mr. Manero said that, when they wrote this ordinance, he and Mr. Dow put it before the rest of the PB, who approved it. He added that they brought it before the BOS, who reviewed and approved it and sent it up to Mr. Vaniotis for him to review the legalities of it and, then, the BOS agreed to make a

8:10 PM

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warrant out of that, which was put up at Town Meeting and approved. He said that the intent of this whole thing was to allow, to the greatest possible reasonable degree, a person who is a resident in the Town to have on his property, and limited to his property, the ability to conduct a home business. He clarified that the number four for parking spaces that they came up with was certainly a "swag" number, that this was what they thought might be reasonable but there was no definitive analysis of the time scheduling of vehicles coming in and out to support that number. Mr. Manero appealed to the Board to recognize the background by which this whole set of circumstances came about and that the intent was to encourage people to have home businesses and to defend the Town from being taken to court by forcing all businesses up on Route 236 and then prohibiting nothing in Town. He said that this ordinance was the compromise that the PB came to. He asked the Board to be liberal in the interpretation of this ordinance, to recognize that Mr. Norton has run a business in Town, which has been beneficial to the Town and he has been honest with the people in Town, he's a hard-working guy. Mr. Manero said that Mr. Norton's business is a little different from other businesses and shared his experience with this business. He said that his experience has been that he would call up Mr. Norton the day before and let him know that he needs an oil change or something and Mr. Norton tells him to have the car there by 9AM. He added that, at five minutes to 9AM, his wife drives him and the car he is bringing in, over to Mr. Norton's and he pulls up in front of the business...is that being parked?...he doesn't know. He said that his wife takes him home and five minutes later or, sometimes as he looks out the rearview mirror, he sees Mr. Norton take the car in because he is scheduling his business and was the one who told him (Mr. Manero) to bring it in at 9AM. Mr. Manero said that Mr. Norton tells him to come back at 11AM, as he will have it ready for Mr. Manero. He added that he comes back at 11AM or whatever and the car is ready for him to take away. He said that he has never gone into Mr. Norton's business and probably not even allowed to go into his business. Mr. Manero commented that the parking places that are involved in this thing in other activities were meant for people who had to go inside the business and do business with the people inside. He added that Mr. Norton's business is not of that sort...he has people drive up, he moves it into an enclosed area, he does the work, people are told when to come back, they take the car away, so he suggested, considering these issues and the fact that there really are more than four spaces, there is no hard evidence that he has seen...no photographs, no specific information from the CEO that these NOV's have continuously occurred to the detriment of the Town...considering all these issues, he requested the Board be as lenient as they possibly can and find some way to help this man continue a business, which he indeed contributes to the vitality and usefulness of this Town.

8:20 PM

A member from the audience said that he finds Mr. Norton's assumption that cars are his products to be slightly ridiculous. He clarified that Mr. Norton does not build cars...he inspects and repairs cars. He said that, if he shoes horses for a living, then his product is not horses, its horseshoes...if he shines shoes for a living, then his product is not shoes but a shoeshine. He said that the voters of this Town voted this ordinance into existence, not the people who made it up and what he was wondering was what did everyone think the voters of this Town thought when they went to the poll and voted for this. He added that, if there was going to be a special exemption in this bill for auto repair garages, then it should have been put in the bill. He said that he finds it fairly ludicrous that Mr. Norton has been fighting this for six years and suddenly someone has an epiphany and..."Oh, yeah, now I remember, we specifically ruled that he could have all the cars he wanted." He added that he finds it all totally ridiculous.

8:23 PM

Mr. Faulkner said that he would like to take acception to what the gentleman said about product. He added that Mr. Dow's letter talked about the example of vacuum cleaners and four customer cars at the business to drop off vacuum cleaners to be repaired. He added that this is not an exact analogy but the person repairing the vacuum cleaners wasn't building them, but repairing them...they can have as many vacuum cleaners in their shop as they want. Mr. Faulkner said that, when a car is dropped off at Mr. Norton's, it is his product that he is working on. He commented that, if he has an engine installed in his son's car, then that car is Mr. Norton's product that he was working on. Mr. Faulkner said that, in the

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interest of full disclosure, he has done business with Mr. Norton. He added that, Saturday evening, his son's car broke down in Portsmouth and a ramp truck took it to Mr. Norton's and dumped it off about 10 PM out front, working on it Monday morning and getting it going again. He added that, anything behind the fence is out of sight and is his product...something he is working on...and he believes that in the interpretation that the customer parking places are for customers who show up and ask Mr. Norton, "Thos is what I would like to have done and when can you do it, when do you want the vehicle?" or show up and drop off a vehicle and leave.

Mr. Fernald asked if the Board had any suggestions on what direction they would like to go in next.

Ms. O'Donoghue said that two CEO's, now, have interpreted the ordinance one way and she kind of thinks that their Chair of the Appeals Board may be right in that this is a question that might have to be resolved in court. Discussing interpretation of Eliot ordinances, she admitted some of them are very deliberately flexible and she thinks they probably should be, but that also leads to questions of interpretation and that, to her, is the bottom line – the interpretation – why is it being interpreted this way or not that way and is this Board capable of making that determination.

Mr. Moynahan agreed with Ms. O'Donoghue. He said that, as he listens to everyone and he goes back and forth with this and it is subjective in it's' interpretation. He said that he did not want to wrong one person and he didn't want to wrong the wrong person and he doesn't believe this is something this Board should be making a decision on.

Ms. Place said that she believes it does all come down to interpretation and one CEO may look at it one way and another may look at it another way. She added that she doesn't know, legally, if they are equipped to make that interpretation.

Mr. McPherson said that they should change the ordinance.

Ms. Jacques, speaking as an Eliot resident, commented that she knew what the legal fees were because her husband was on the budget committee, said that she did not want any of her tax money spent on something that seems to require so little common sense.

8:27 PM

Mr. Dow said that he has really been trying to figure out what the right thing is to do here if he were sitting in their (BOS) position. He commented that he saw a statement in the paper last week that the CEO works for the BOS and the BOS approves all of his decisions. He added that he doesn't know if that was said or wasn't said but in fact if he is the BOS' employee and he has given the Board something that is questionable or maybe misinterpreted, then it is the BOS who have to decide whether to go ahead and pursue it legally. He asked, if it is fundamentally wrong, do they have to go ahead and legally pursue it. Mr. Dow said that the second thing that came to his mind was what, specifically, were they talking about on the part of the violations concern, as he has never seen them. He asked if they were talking about parking places outside, inside, or is the question something specific like Mr. Norton has too many cars behind the fence...he didn't know what that would be...but he would be very specific if he was going to proceed to figure out what would have to go to court because he honestly doesn't know.

Mr. Fernald, addressing Mr. Blanchette, said that they would be talking with Mr. Vaniotis at the next regular BOS meeting and asked if this was something they could add to the discussion with the attorney.

Mr. Blanchette said that he didn't see why not...that that was reasonable.

Mr. Fernald said that he was suggesting to the Board that they discuss this with the attorney and asked if that was something the Board would consider.

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Mr. Moynahan said that he thinks that is the last avenue they have.

Ms. Place commented that, if they follow what Mr. Dow and Mr. Manero said...the logical sequence of this, then it is interpreted in a different way. She said that their making a ruling on this would be another interpretation.

Mr. Fernald agreed and was why he thought it was best for them to discuss this with Mr. Vaniotis to make sure they do this correctly and legally or even if they have the ability to do it or not. He asked if that made sense to the rest of the Board...would that be a consensus of the Board to discuss this with Mr. Vaniotis and put it on their agenda.

Mr. Cielezsko asked to make one last point. He said that, if he is correct and the Board does not have the jurisdiction to make a determination of the ordinance, then the Board does have, as Ms. Shapleigh mentioned, the ability to have a C.A. acknowledging that the Board doesn't have their rules set up, yet, for the C.A. He wanted to suggest a reiteration of their comments to the BOS from their BOA that, because the case has an established history through the PB and the BOA, he would think it would be very relevant in forming a decision towards a C. A. to, at least, look over the approved minutes of everything that has occurred, from PB meetings and BOA , to see how these issues have been threshed out. Mr. Cielezsko said that it was their (BOA) basic premise of the C. A. that the BOS have a background to go by so that they were not running a whole new case de novo.

Ms. Place commented that that was one thing that Mr. Murphy, Mr. Moynahan and herself, in discussing the C.A., they did agree that it was on an individual basis and, so far, that is one of the concrete things that has come out of discussions. She clarified that it would not be a form thing but that every case would be looked at individually.

Mr. Fernald said that, as they know, there are guidelines that they would go by to make sure that they don't have C.A.'s to overturn everything of the BOA...that is not their purpose.

Mr. Cielezsko said that his only suggestion was to go back through the history if that is their only option left to help Mr. Norton.

Mr. Fernald said that that was a good option and thanked Mr. Cielezsko.

8:34 PM

Ms. Shapleigh said that one thing she wanted to say about C.A. was that the State does have rules on that and when the Town, then, starts writing an ordinance to work through C.A.'s, then they may take away that these are all individual situations and, as Ms. Place has said, that many of them are very unique. She added that she thought they needed to be careful to not put so many restrictions down, or so many certain criteria, that they then make it not unique and not able to grant relief. She added that she doesn't think there is anyone in the room that has been here any longer as far as following the zoning through and one of the ways the zoning was sold to this community and most people go into Town Meeting and have no idea of the ramifications of what they are voting for - that it is only the ones who have experienced it - don't know, don't study, don't come to the meetings and find out. Discussing the C.A., she was told and they told people to vote in the zoning because they could go for relief and they are taking away the relief more and more and making zoning more restrictive. She added that she didn't think it should be so restrictive that the Board couldn't address the uniqueness of the many things that come before them.

Mr. Manero asked the Board to rescind the letter of violation based upon the fact that there is insufficient evidence before the Board to support it and turn it over to some further review. He said that, at this point in time, he would ask them to stop taking Mr. Norton back and forth from this board to this board to this board.

BOARD OF SELECTMEN'S MEETING
July 22, 2010 6:30PM (continued)

It was the consensus of the Board to discuss this with Mr. Vaniotis. Mr. Fernald confirmed to Mr. Norton that they would take this up with Mr. Vaniotis and would let Mr. Norton know what happens.

Mr. Norton said that he thought that was a good decision to make. He added that he believes it was Ms. O'Donoghue who sent him to the BOA the first time – come back for a C.A. He added that he appreciated the Board's time and discussion on this and is following a logical and safe and ironclad conclusion.

8:35 PM
#8

TO : Board of Selectmen
FROM : Clean Harbors Environmental Services
REF : 2010 Household Hazardous Waste Collection Agreement

Mr. Blanchette said that this was the yearly contract that they have with Clean Harbors. He added that it has a \$10,000 limit and Mr. Sylvester had reviewed the budget and that it what was put in the budget. He clarified that the \$10,000 was the maximum and not to exceed, which is found on Page 1 of the contract.

Mr. Moynahan moved, second by Ms. O'Donoghue, to accept the contract with Clean Harbors, as written.

VOTE
4-0
Chair concurs

8:37 PM
#9

TO : Board of Selectmen
FROM : Maine Municipal Association
REF : Voting Ballot

Mr. Blanchette explained that this was the voting ballot for the vice-presidency and board of directors.

Mr. Moynahan moved, second by Ms. O'Donoghue, to nominate Sophia Wilson as Vice-President and the three Directors, as listed.

VOTE
4-0
Chair concurs

8:40 PM

At this time, the Board signed the ballot.

#10

TO : Board of Selectmen
FROM: Elizabeth Hoyt
REF : Skate Park

The Chair said that this was a letter of response from the last meeting.

Ms. Muzeroll-Roy commented that she doesn't feel this second letter is focusing on the skate park so much as it seems to be more of a personal attack and she isn't quite sure what some of the comments are even about. She said that a lot of false information was stated in this letter, mainly calling her and her telling them she didn't even knowing who handled the park, which is something that has never been stated. She reiterated that she wanted to make it clear that some of the comments in this letter are completely false. Ms. Muzeroll-Roy said that, as far as the Skate Park goes, she doesn't really know where they are at – the Skate Park is still not being used on a regular basis and reiterated that the Skate Park was put in by donations, etc. She said that she didn't know how they would pay, or get Town support, to put something up on this. She added that because of where their property is and where the Skate Park is, they would need a 50-foot fence to even make sure the noise would be contained within the Park. She said that she doesn't know what the solution is, at this point, and thinks it is kind of silly to spend the money on this and she doesn't think taxpayers would be happy if money was spent on such a thing.

Mr. Fernald asked if it made sense to look at the hours.

BOARD OF SELECTMEN'S MEETING
July 22, 2010 6:30PM (continued)

Ms. Muzeroll-Roy said no, as she has changed the hours, closed it on Sundays, she closes it if she can't come back to close it and it is an inconvenience for her to make sure she comes back at a certain time to close the Park. She added that she gets a lot of complaints that it is closed on Sundays.

Ms. Place asked how much use there was at the Skate Park.

8:43 PM

Ms. Muzeroll-Roy said that, right now, none and she really think a lot of it has to do with the heat, as it is really hot down there. She added that it could be a lack of interest – the kids that are normally down there are not down there – the kids that fixed the Park, in May, have not used it since then. She clarified that she drives by the Skate Park every day and she is seeing only one kiddo, if that, on a daily basis.

Ms. Place asked if, because of the lack of use, they should consider closing it completely.

Mr. Fernald reminded Ms. Place that no Town funds have been put into that Park.

Ms. Muzeroll-Roy commented that, by closing such a park would stir up and bring kids out of the woodwork. She reiterated that she really thinks it's just been too hot to use the Park. She said that that may change with cooler weather when school starts, as it is pretty popular, with the kids getting off the bus and heading down there until 7PM at night.

Ms. O'Donoghue asked if Mr. Murphy had sat on the Hoyt's porch and listen, himself, at one point.

Mr. Murphy clarified that that was years ago and he doesn't remember listening. He said that he thought the CEO, at that time, did some noise measurements.

Mr. McPherson suggested tabling this, for now, until such time that the Park starts to get used again so that then they could check the noise and see just what level it is.

Mr. Muzeroll said that he was the majority property owner along the border of that Skate Park, not Mr. Hoyt. He added that he did agree that his house was in a different position from theirs but he wanted to let this Board know that there is nothing going on down there other than the sounds of recreation. He said that they all should be thinking along the lines of supporting recreation in the Town. He commented that a sound that might be obnoxious to one person may not be to someone else. He commented that, if that were a basketball court lighted at night he was pretty sure there would be the same complaints down there. He said that the Board is investigating spending money on something that was not even a purchase of the Town because one person has complained. Mr. Muzeroll said that he sat in on several PB meetings, commented several times about the number of businesses along Route 236 that had noise at the maximum threshold during their whole operating time – 7 AM to 11 PM – that he could hear from his house and the Town refused to do anything other than to say they were following the ordinance for a natural buffer. Mr. Muzeroll clarified that he was not saying that it doesn't bother the Hoyts and they may be focusing on it, or whatever, but he isn't quite sure that the problem is as much community-wide as is made out to believe. He said that they certainly have their right to complain and he certainly has his right to support. He commented that, if he sits and concentrates on the noise, he finds it annoying but where are they going to draw the line. He talked about someone playing horseshoes over there and, if he finds that noise bothersome, is the Town going to spend \$10,000, or whatever it is, to put in a barrier so that he could sit out in his hot tub and not have to listen to the horseshoe noise. Mr. Muzeroll cautioned the Board that, if they were looking to spend any money on that piece of property that there are a number of citizens in the community that have had noise complaints, either industrial-wise or resident-wise that the Board has chosen to ignore.

BOARD OF SELECTMEN'S MEETING
July 22, 2010 6:30PM (continued)

Mr. Fernald discussed Mr. Moynahan's suggestion being similar to Mr. McPherson's in that, when they find the Skate Park was actually being used they would take noise measurements.

The Board agreed to this by consensus.

Mr. Fernald asked Mr. Blanchette to pass this information on to the Hoyts.

8:50 PM
#11

TO : Board of Selectmen
FROM: Bicentennial Committee
REF : Invitation

By consensus, the Board agreed to review the parade from Hammond Park.

8:51 PM
#12

TO : Board of Selectmen
FROM: Jay Muzeroll, Fire Chief
REF : Driving Records

Mr. Fernald said that two selectmen are looking into getting criteria – Ms. O'Donoghue and Ms. Place – and once that criteria is put together and approved, they would get the departments on board.

Mr. Muzeroll said that he didn't have any problem following a sound plan as long as it is driven by lawful regulation and they come up with some sort of a procedure from start to finish.

Mr. Fernald told Mr. Blanchette that they would hold off until they come up with the criteria.

Selectmen's Report:

Ms. O'Donoghue said that she got an email from the Energy Commission that discussed the Board's request to have the EEC look into the PACE Program, which is the Property Assessed Clean Energy Program. She said that the EEC has completed their investigation and that they are waiting for Efficiency Maine to do their part to move this program forward. She said the EEC could not do anything until that is complete and it is in the initial phase.

Executive Session

8:45 PM Mr. Moynahan moved, second by Ms. Place, to move into executive session as allowed by 1 M.R.S.A. Section 405(6) (A), "Discussion or consideration of employment..."

VOTE

4-0

Chair concurs

9:43 PM Out of executive session.

Other Business as Needed

There was no other business.

Adjourn

There was a motion and second to adjourn the meeting at 9:44 PM.

VOTE

4-0

Chair concurs

DATE

Roberta Place, Secretary