BOARD OF SELECTMEN'S MEETING
August 12, 2010 6:30PM

Quorum noted

5:30 PM: Meeting called to order by Chairman Fernald

Roll Call: Mr. Fernald, Ms. O'Donoghue & Ms. Place present. Mr. Moynahan & Mr. McPherson absent.

5:31 PM:

Executive Session

Ms. O'Donoghue moved, second by Ms. Place, to enter into executive session as allowed by 1 M.R.S.A. Section 405 (6) (E):…consultation with attorney…

VOTE
2-0
Chair concurs

6:17 PM Out of Executive Session.

Pledge of Allegiance recited

Moment of Silence observed

6:30 PM Mr. Fernald said that he would like to change the agenda to go directly to New Business (noting there is no correspondence with Correspondence #1) - Frank Hyer and make note that Mr. Manero has sent in two letters: to Board of Selectmen's attention. He asked Mr. Vaniotis (Town attorney from Bernstein & Shur) to help with this issue.

New Business:
6:31 PM

TO : Board of Selectmen
FROM : Frank Hyer
REF : No correspondence

Mr. Vaniotis brought everyone up-to-date with this case. He said that, currently, the case is pending in the Maine Superior Court, which has been brought by Eliot Shores, LLC and Mr. Valdez and Ms. Robinson as plaintiffs that is an appeal from the decision of the Superior Court, which had upheld the decision of the Eliot Board of Appeals (BOA), which in turn had upheld the decision of the Eliot Code Enforcement Officer (CEO), that the way the land has been conveyed – it has four lots in the Eliot Shores development – was in violation of the subdivision statute. He added that, in the pending case, the appellants have filed their brief (and represented by the same attorney), the Town filed their brief today – taking essentially the same position in the Superior Court, which was that the BOA and CEO, respectively, had made the correct decision in the law. He added that the next step is that the opportunity exists for the appellants to file a reply brief, due at the end of August, then the case is ready for decision by the court. He explained that the court's timing and rendering of the decision is, at that point, anybody's guess and there are two possible routes for the Maine Supreme Court to take and the Maine Supreme Court consists of multiple justices. He said that they could schedule oral arguments, which most likely would take less than an hour, or they could decide the case on the briefs that have been filed. Mr. Vaniotis said that, either way, it is up to the court when it issues a decision, as there is no time clock that runs on the court. He clarified that his prediction was that they were looking at a decision perhaps late fall or early winter, as it won't be ready for the court to consider until September, oral argument would push that until October, and it sometimes takes the justices a few months to make up their minds, write an opinion, etc., so that it where they stand, procedurally.

Mr. Fernald, addressing Mr. Vaniotis, said that there are other avenues for this issue, for example, the appellants could get together, putting this back together and make it correct, making it back into a condo association and that, itself, would help rectify the situation and asked Mr. Vaniotis to expand on that concept.

Mr. Vaniotis said that, if one looked at the Notice of Violation (NOV) letter that Paul White (then CEO) wrote in 2009, it says that the way to remedy this is to restore the properties to end up with three dwelling units on a single lot with some sort of a condominium arrangement, and one lot, which currently doesn't have a house on it conveyed out, which was the first one conveyed out to, he believes, the Manero Trust. He added that that was based on his interpretation of a letter written by former CEO Don LaGrange, which he interpreted as meaning that there could be two lots there and not four because the four wouldn't comply with certain zoning requirements and also wouldn't comply with certain subdivision road requirements. He said that that was what Mr. White decided and that was what the appeals was to the Eliot BOA, which agreed with that interpretation; it was appealed to the Superior Court, which agreed with that interpretation. Mr. Vaniotis said that he believes it has been the Town's position all along, both from the CEO, the BOA and the courts that, if these property owners got together and reconstructed this development in a line with that original 2005 letter from Mr. LaGrange, then there would no longer be a violation. He clarified that there were several property owners involved with several views of this and because pieces of the lot have not been conveyed out it would require an agreement among all those property owners and, possibly, a court order at some point.

6:36 PM Mr. Hyer, addressing Mr. Vaniotis, said that he was one of the property owners and that he has not co-joined this suit, not a part of this suit, and presented to the Board a month and a half ago requesting that they quiet his title and allow them the remedy that was initially anticipated for the separation of the lots, which was the backlot provision. He clarified that he made a special point not to get involved in the lawsuit. He added that his family has been tied up in this for four years and that there has been a NOV on the property for two years. Mr. Hyer said that he has asked to gain access to Mr. Vaniotis so that this could be discussed and the Town has refused to allow him to gain access by the virtue of the fact that they feel like he would add to the cost of Mr. Vaniotis' billable hours. He added that he has offered to pay Mr. Vaniotis' billable hours to resolve this issue and he has yet to hear anything back from Mr. Vaniotis about that. Mr. Hyer clarified that they were so marginally close to the zoning ordinance on this that it doesn't make sense that the Board would hold them hostage on this any further. He said that he bought the property with the approval of the CEO, who gave them building permits, and there has been a gray area about how these properties were to be actually separated out or were to remain as a PUD. He added that it is clear that, if one looks at the plat, the way this was divided, it was intended that the backlot provision be used. He clarified that it was sold to him as that as an understanding. He said that the bottom line was that, if this reverts to a condominium, then he would pursue this against the developer who would pursue it against the Town and they would go back around this again. He said that, if there is an incentive to resolve this in a matter that is fiscally responsible, then they have a mechanism to do that and that is a C.A. Mr. Hyer said that there is little or no reason for them not to use that at this time to get this behind them.

Mr. Vaniotis wanted to make it clear, first of all, that he understood that a lot of people were in a very difficult position here and this was a very, very messy situation which was created quite a few years ago. He said that all he could say at this point was that, understanding the arguments that they were making, those points had been reviewed by both the local BOA and the Superior Court Judge, who has agreed…

Mr. Hyer interjected that his position has not been discussed at all, as he has not been a part of that law suit and, forgive him for interrupting, what he has actually reviewed…what he has actually disagreed with is the idea that, in fact, this property should be divided as four lots, substandard lots by the Town's assessment and he understands that, in less than a five-year period of time, and that's the whole of it – that's why there is a violation.

Mr. Vaniotis agreed and added that that was what the BOA and Superior Court have agreed on regarding the NOV.

Mr. Hyer said that what he wanted to point out was the level of culpability that the Town shares in this…that Town officers share in having created this. He added that, if need be, he would pursue this in the State of New Hampshire's courts, which are significantly more lenient to his position than they would be…and he really doesn't want to make this adversarial…they have been too close to having this resolved, too close to actually fulfilling everything that is necessary within the zoning ordinance, to continue with this. He clarified that this has gone on for four years and his family has been held hostage…it can't go on any further. Mr. Hyer said to Mr. Vaniotis that there is no reason why he should advise the BOS against a C.A. to quiet this.

Mr. Vaniotis clarified that he was not advising the BOS against a C.A. or for a C.A….that is ultimately their determination to make but he could say at this point that there are four parties that would have to agree to a C.A. because the entire property is involved and two of those parties are currently appealing in the Maine Supreme Judicial Court. He said that, if those parties want to withdraw that appeal or put it on hold for discussions to go forward, then they could certainly ask for that. Mr. Vaniotis said that they actually have to respond to folks who have brought suit against the Town of Eliot challenging the Town's determinations and that is all they are doing…is responding to that.

Mr. Hyer reiterated that that is not what this discussion was all about and is not why Mr. Vaniotis was asked to be here. If he might, Mr. Hyer clarified his understanding was that the intent was to actually sit down with Mr. Vaniotis to discuss whether the C.A. would be a viable mechanism to resolve this and maybe he is mistaken but when he read through the minutes from their session two meetings ago it was pretty clear that that was the intention. He added that, when he talked with Mr. Blanchette about it, it was pretty clear that was the intention of bringing Mr. Vaniotis in to review whether or not the C.A. was the appropriate mechanism to resolve this.

Mr. Fer4nald clarified that he could not tell Mr. Hyer what was discussed in Executive Session but the Board did understand and that's all he could say.

Mr. Hyer said that if this ultimately comes down to working this out in public relations then he was going to make sure that they got everyone involved, on paper, and they know exactly where everything started and where everything is going. He added that, if the intent is to make sure that funds…resources…are used in a judicious manner to resolve situations like this, then let's use those resources effectively and get it over with. He added that he is certain that, if they sat down with the other two parties who are co-joined in the lawsuit and have a discussion, then he was sure they could get those folks to say, "Let's stop that right now, if in fact, we could get this resolved through the C.A." He asked Mr. Vaniotis if that was a discussion they could have.

Mr. Vaniotis said that, ultimately, the Town's decision to enter into, or not, a C.A. is with the BOS. He added that, having worked with this Board for a long time, if all the parties in this development could come up with something that satisfies the law, then he doesn't think there is an issue any longer. He also added that there were a lot of discussions that did occur, which he was not involved with but the CEO was, along with several parties in this development before it ever went to court and that didn't produce any resolution.

Mr. Hyer commented that they were very close to a resolution on a number of occasions and they found that one or another party had a very difficult time relinquishing certain control issues.

Mr. Fernald said that he wanted to let others speak.

Mr. Manero said that he has observed upon a number of occasions that, when a court is faced with a case that, if the court comes to realize that there is a remedial action that can be taken by the people before the court, then more times than not, the court is willing to postpone or suspend or wait for an outcome to allow the parties to work it out among themselves. He suggested that, if all four parties to Eliot Shores understood that and if they were to withdraw their court cases and appeal to the judge to make no judgment until some sort of accommodation, negotiation, C.A. or whatever was pursued within the Town to try to remedy this at the lowest possible level, he believes those four parties might be willing to postpone or defer or whatever the proper name is their legal action, which is headed for the Supreme Court of Maine. Mr. Manero asked that the BOS and Mr. Vaniotis consider moving in that direction and allowing the four to come to an agreement with the BOS. He added that it really is an agreement among the four owners because it would be them who would have to change their deeds or whatever action would have to be taken, if he was correct.

Mr. Vaniotis agreed and said that Eliot Shores LLC still owns some of the property, too, and some of the common areas.

Mr. Manero agreed and added that his sense was that, if Mr. Woods saw a path by which to negotiate this at this point, he would be willing to at least enter into the negotiations. He clarified that that is no guarantee that the negotiations would end up with a C.A. but the courts might be willing to hold off and the people who are applying to the courts may be willing to suspend their suits for a period of time to allow this negotiation to take place. He said that, if the negotiation took place and they were able to reach some sort of agreement among themselves, understanding that the negotiation would consist of a contract with an offer and acceptance and some sort of consideration. Commenting on consideration, he said that he understood that someone along the line would have to pay some money to have a contract. He said that he thinks that a middle ground could be found rather than the track they are on now, which would delay this whole process for some indefinite time because, once the Supreme Court decides on this in the State of Maine, then that does not necessarily mean that is the end of the legal trail. Mr. Manero said that, rather than going down that trail, they have an option open to them to negotiate this…"Why not do that?"

6:47 PM Mr. Hyer said that he has also talked with the developer within that past two months and he is in agreement that there would be some sort of a fine levied if there was a C.A. reached. He added that, if the C.A. was not the mechanism, then they have also talked about the fact that they could take this before the PB as a subdivision. He discussed that they had three of the four members present tonight and he suspected they could come to some understanding around that whether, if in fact, the objective was to go before the PB as a subdivision. He commented that, given the fact that this has been mapped out very carefully to fulfill the zoning ordinance in almost every measure, with the exception of time, then it would seem that the C.A. would be the appropriate vehicle. He asked forgiveness for talking out of turn about this as he was emotional about this and his family is in turmoil about this but explained to Mr. Vaniotis that they are currently in a rented home and his daughter is in a private school while they try to get this squared away…there is significant hardship…and he has asked the Board to quiet this and he asked Mr. Vaniotis to try to work with them to try to figure a way to quiet this. He reiterated that they are not so far off that it cannot be resolved.

Mr. Fernald said to Mr. Hyer that that was exactly why they had Mr. Vaniotis here tonight. He asked Mr. Vaniotis if there was anything he wanted to respond to.

Mr. Vaniotis clarified that this is the last stop in the Maine court system, that they decide if there is no further avenue of appeal on this decision of whether or not this is a subdivision…that will be the last stop and the final determination. He informed everyone that the Maine Supreme Court does not always say yes to requests for continuances from the parties – it's a panel of seven judges (an appeals court) and their attitude is, typically, that the negotiations have happened below at the Superior Court but…they may…and he has seen them do it – if all the parties to the law suit were to go to the court and say that they would like to have several more months to negotiate this, then that is certainly something worth asking. He added that the court may say no and say they would decide this issue anyway but that would be something that could be asked. Mr. Vaniotis said that that is not something that the Town could do unilaterally – only the parties to the lawsuit, which includes Eliot Shores LLC, Robinson and Valdez.

Mr. Hyer clarified that that doesn't include him or Mr. Manero.

Mr. Vaniotis agreed and that Mr. Hyer has apparently not elected to appeal from the BOA decision so they are not parties to the lawsuit. He added that they would, however, be affected by the lawsuit because, if the court says that this is a subdivision, then the fact that they weren't parties to the lawsuit doesn't change the fact that it is a subdivision.

Mr. Hyer said that that doesn't preclude him from the next bite of the apple, which would be him taking another shot at…

Mr. Vaniotis clarified to Mr. Hyer that that expired 30 days after the BOA rendered its decision. He said that people can't appeal a BOA decision forever – there's a 45-day time limit. He added that one thing the parties…and when he says the parties – the Town is only the regulatory agency…which means the people who own property in the subdivision might want to consider mediation among themselves – hire a mediator to try to mediate this dispute as to what they would do to remedy the situation, whether it was to come in for a subdivision approval, go to a condominium, somebody gives up a lot, whatever. He added that those are all various things that might be done.

Mr. Fernald commented that that might be the best avenue for them to go and was what the BOS tried to suggest before.

Mr. Hyer said that they have tried to come up with a solution, here, between the three of them and his sense is that they are all in agreement to some degree. He said that he could not talk for Mr. Manero, that he hasn't talked as clearly with him, that he has had discussions with Ms. Robinson and Mr. Valdez about this and thought that Mr. Manero would like to see this resolved as a condominium or PUD and he thinks there is a sense that it is not the ideal situation for the other property owners. He reiterated that he did not want to make this a mediation session and understood that…

Mr. Fernald interrupted and asked Mr. Manero if he was willing to sit down with the other property owners to negotiate.

Mr. Manero said that he was always willing to sit down and have sat down on numerous occasions. He added that Mr. Hyer would acknowledge that, as recently as 10 days ago, he made an offer in writing to the group to get together and discuss the issues at hand.

Mr. Hyer agreed that Mr. Manero did and clarified that it was prefaced with one conclusion and he think he tried to point out in subsequent letters that this has to be an open conversation and not a monologue. He did agree that they certainly have the opportunity to come together to talk about this. Mr. Hyer said that the reason he has asked the BOS to use the C.A. as a mechanism to quiet this is that

he thinks there are issues that relate to the creation of this and there are issues that relate to certain other matters that he thinks make it difficult to resolve.

Mr. Fernald said that, as far as C.A.'s go, it is a very complicated issue. He said that he thinks that the best avenue, noting that other Board members would speak, was for him to get together with Mr. Manero to see if this could be resolved and make it go away.

Mr. Hyer asked if the BOS had any suggestions for them.

6:53 PM Ms. Place said that she thought it would behoove all the parties if they could come together and at least discuss this. She added that they could not discuss a C.A. until all the parties agreed on something. She added that it seemed there needed to be some kind of mediation and it doesn't matter, at the beginning if everyone seems to be at opposite ends…they are all trying to get to the same place, trying to resolve a situation and it involves something that is very important to all of you and that is where they need to begin. Ms. Place said that, perhaps, a C.A. would follow that but the Board couldn't even consider that until all the parties get together and agree on something and, hopefully, they could all get into the same room…that would be a beginning.

Ms. O'Donoghue said that she believes the C.A. is not the way to go at the moment, but might be eventually. She added that right now, it is in the courts and it is up to the parties if they want it out of the courts as they have the power to do that and the Board cannot do anything further at the moment, as it is in the courts.

Mr. Fernald asked Mr. Vaniotis to comment on this.

Mr. Vaniotis said that, certainly, this is one step that, if the property owners got together with a neutral and that would be a higher mediator who would attempt to help them reach a resolution on how they would divide up their separate property interests. He added that that would then be a step to be able to come to the BOS and say that all five parties are in agreement and then the BOS could consider a C.A. He clarified that the dilemma the Board is in is that they can't talk about a C.A. with five property owners who haven't agreed among themselves.

Mr. Hyer said that part of the problem is that they have asked for some guidance from the Town of Eliot and from the counsel as it has not been clear, in talking with Mr. White, what the Town would like them to do or how they could steer this to a viable conclusion, save the idea of a condominium, which is an unacceptable solution to at least two of the five parties.

Mr. Fernald, addressing Mr. Hyer, said that that is in the past and now he does have some recommendations and that is why the Board asked Mr. Vaniotis to come tonight, understanding that it is a complicated situation and the Board hopes that they move forward from here and not backwards.

Mr. Hyer thanked the Chairman but said that, in all fairness, all he has told him is to get back together and talk with the other property members without suggesting which direction they should move to actually come to a solution which is, unfortunately, the problem. He reiterated that they could all sit together in a room and they could all throw their four different conclusions at a wall and see what sticks but, if they don't know in fact what the Board thinks is an appropriate path to get beyond this, then it is a little more difficult for them to actually move forward.

Ms. O'Donoghue asked Mr. Hyer what was the first suggestion made to him by the CEO.

Mr. Hyer said that the first suggestion involved his returning his deed and title to the developer and pursuing that as a lawsuit, which he has already talked to the Board about. He said that the developer is an LLC – it's an empty corporation with no assets – so that is not a viable alternative to him.

Ms. O'Donoghue asked if it hadn't it been suggested to Mr. Hyer that this could all go away if they put it all back as it was originally.

Mr. Hyer said no because what is not clear, what he bought into is not what she was telling him he should subscribe to.

Ms. O'Donoghue clarified that she wasn't telling him anything but asking the question.

Mr. Hyer agreed and apologized. He clarified that what he was saying was that the other remedy that the Town had for him was to allow this to revert to condominium status.

Ms. O'Donoghue suggested he start there, as he had to start somewhere.

Mr. Hyer reiterated that that is not what they bought in to.

Mr. Manero said that the two options, other than reverting back to exactly what Mr. LaGrange approved, one would be to go with the back lot arrangement, which they have discussed many times, but the difficulty with that is that one first needs a front lot that has to meet certain criteria and there is no front lot. He said that a second option would be to move to a subdivision and he believes a subdivision is an absolute impossibility, as it would not be allowed and Mr. LaGrange recognized that from the beginning. He explained that there is insufficient land to create the lots and the distance from the entrance of the property and Greenwood Street, Clark Street, Aqua Avenue, none of those distances are met and that issue was specifically denied by the BOA. To summarize, he said that the two options that they would be getting together to discuss would be three: first, the subdivision and he doesn't see how that could take place; second, he doesn't understand how back lots could be created when there is no front lot and there is not a mechanism in place, at this point, in which to create a front lot because there is too much common land; third, the option is to go back to exactly what Mr. LaGrange approved and this is the key that he would like to get across to everyone – if they returned to that, then, because of the Eliot Shores Declaration, the Eliot Shores Homeowner's Association has broad powers to modify the common lands and could even go to the point of voting the PUD or condominiums out of existence. Mr. Manero said that the key to success in this whole thing is to go back to exactly what was approved, establish the fact that there is a PUD or condominium or whatever one wants to call it, that was established in 2005 and go back and through the covenants, which gives them broad power, to redistribute common lands in order to create within the 4.6 acres enough land dedicated to themselves that they could agree to, among themselves, to satisfy the requirements. He concluded that he doesn't know how to do it any other way.

7:02 PM Mr. Hyer asked to respond. He said that this entire problem was created because the two previous developers who owned this property tried to get a subdivision or a condominium approved and were stonewalled, in large measure, by the efforts of Mr. Manero, acknowledging that Mr. Manero did recuse himself…

Mr. Fernald interrupted to say they were not going to go back to that.

Mr. Hyer said that he understood, apologized, and asked to finish one point. He said that, when the seven-unit condominium that had a conditional use permit expired, that development was appealed and ultimately failed. He clarified that

Mr. Manero recused himself from that, as he should have but following that, he actually sat down and talked to the developer about how he could actually separate this out and the mechanism he talked about using to separate this property was the back lot provision. He added that that is why, if one looks at the plat, the property is divided into one-acre parcels. Mr. Hyer said that they do have adequate land and that they have .6 acres for the necessary travelway. He said that this was very carefully carved out – Mr. Manero knows the zoning ordinance very well. He said that, if the Board talked to Mr. Woods, Mr. Woods has explained to him that the person who actually created that with the back lot provision in mind was Mr. Manero. Mr. Hyer said that it was a bit disingenuous for him to hear that the back lot provision is not the appropriate mechanism to use.

Mr. Fernald ended the discussion, saying he understood. He asked for Mr. Blanchette's input.

Mr. Blanchette asked if Mr. Vaniotis would send him a list of mediators and he could forward them to the appropriate parties.

Mr. Vaniotis said that they could certainly do that. He told his client, the Town, that the Town would not be the mediator in this, that the mediator has to be a true neutral but they could certainly come up with a list of names of the people who could do this. He clarified that it doesn't necessarily have to be a lawyer, although it might help to have a lawyer under these circumstances because there are complicated legal issues involved, but there are lots of people doing mediation in Maine who are not lawyers but who are trained as mediators.

7:07 PM Mr. Hyer asked Mr. Vaniotis if they were willing to pay for his time, recognizing he was a busy man, would it be permissible to gain access to him so that they could run some of these issues by him. He asked if they could work through a mediator and come up with something that they think is a viable solution and he told him that he has actually had his attorney send things to Mr. Vaniotis and he never responded to him. He added that, in part, he was told by Mr. White that that was because the Town didn't want to incur additional legal expenses. He said that if, in order to get the ruling he needs to find out if they are moving in the right direction he has to sue the Town, if that is the only mechanism he has and that seems silly and he doesn't want to do that.

Mr. Vaniotis clarified that he has never received anything in writing from Mr. Hyer's attorney…they have had a few telephone conversations and basically his conversation with the attorney is that this is in litigation and other people are in charge of the litigation so there is really nothing much he could do under those circumstances. He said that his advice would be that the parties need to sit down first and when the parties have come up with some scenarios then with the blessing of the BOS that it might be appropriate to get the Town's representatives involved to review those scenarios to see if there was something that could be fit within a C.A. He explained that what the Town's official position had to be right now is what the BOA, the CEO and the Superior Court Judge said, which is that that original 2005 letter from Mr. LaGrange outlined how the development could occur. He said that what he thinks he was hearing from the BOS was, if the parties could come up with something, then the Board would certainly entertain some possible resolution but the Board can't do that until the parties agree internally because it's their property – the property owners at least have to be on the same page.

7:10 PM

TO : Board of Selectmen
FROM : Dana Norton
REF : No correspondence

Mr. Fernald said that there are several situations going on in Mr. Norton's case and he was going to ask Mr. Vaniotis to update everyone on what the situation was.

Mr. Vaniotis gave a procedural update, saying that Mr. Norton had been through a number of proceedings with the PB and the BOA and there are a couple of issues that are coming out of those, one of them is the number of cars that can be parked on the property that can be placed behind the fenced-in area on the property and they had a fairly clear PB condition of approval on that and his understanding on that is that Mr. Norton has asked the PB on, he thinks, two occasions, to change that and the PB has declined to do so. He added that they also had some issues about hours of operation that are being raised as to whether the business is in compliance with the PB's conditions concerning hours of operation. He said that the new development they have now is that the McKinneys, who are neighbors, have filed a complaint in the York County Superior Court (YCSC) asking the court to enter a declaratory judgment that Mr. Norton is in violation and directing the Town to take enforcement action in order to correct those violations. He added that that complaint was filed three days ago or early this week, so nothing is happening in the court, yet…the complaint has simply been filed. His suggestion to the BOS was that, one way or another, Mr. Norton needs to be a party to that lawsuit that has now been filed because it his property that the use of which is now being questioned. He added that that may present an opportunity, either in the judicial system or, again, by some kind of private mediation to see if there is some way to resolve this dispute short of spending a lot of time in court. Mr. Vaniotis clarified that the Town had the ability to do that on its own and said that Mr. Norton would certainly have the right in this pending lawsuit to do what's called "intervene", which is to make himself a party to the lawsuit, as well, so that, ultimately, they could get a determination from a judge, some sort of an order, as to what is and is not allowed on that property.

Mr. Fernald commented that this would allow Mr. Norton to tell his side of it as far as how Mr. Norton sees his cars as being products, etc.

7:12 PM Mr. Norton commented that he didn't really understand. He said that Mr. Manero and Mr. Dow explained what their intent of the ordinance was and their intent was that the cars behind the fence were considered a product…so isn't that what the ordinance is.

NOTE: At this time, Mr. McPherson arrived.

Ms. O'Donoghue said no, that isn't what the conditions of approval said.

Mr. Norton expressed his confusion at her answer and said that conditions of approval could be changed.

Mr. Vaniotis said that the conditions imposed by the PB could be changed but his understanding is that the PB has declined to do that.

Mr. Norton said that, perhaps, the letter that Mr. Dow wrote did go to the PB and that they saw that letter. He clarified that he thought that the letter that Mr. Dow wrote explained the ordinance pretty carefully, didn't it.

Mr. Fernald agreed that it gave his opinion, yes.

Mr. Norton commented that he wrote the darn thing. He discussed that the other way this might be resolved was if he was allowed to make use of the off-site parking, which is permissible, and he was told by both CEO's to get off-site parking. He added that he can't use the American legion off-site parking, which was one of the only ones that they suggested would be in compliance – they suggested he could use Spinney Shellfish, Joe's Repair, the Place??? garage up

here, but he said that Mr. Norton could not use the American Legion, which is the only one that is within 100 feet and is in compliance and he has yet to get a ruling as to why he can't use the American Legion for his off-site parking.

Mr. Fernald asked if he went to the PB with that.

Mr. Norton said that this was all such a __?__ to him, he thought he did…

Mr. Fernald said that the ordinance indicates that it is four no matter where they are parked.

Mr. Norton said that it doesn't say that.

Mr. Fernald clarified that what they were discussing was Mr. Norton's next step.

Mr. Vaniotis reminded Mr. Norton that this was not a Home Occupation, this is a Home Business, which was how it was approved, and there is a separate section of the ordinance that contains the performance standards. He said that his recollection was for one of those standards was that no more than four customer cars would be parked on the premises. He added that he understood that Mr. Norton was trying to draw a distinction between customer cars and cars being worked on but the ordinance says four and the PB, in its condition of approval, referred to four.

Mr. Norton asked if this would precede a C.A.

Mr. Fernald said yes.

Mr. Norton asked who he needed to see now.

Mr. Vaniotis explained to Mr. Norton that there were a couple of options. He said that Mr. Norton might want to consult a lawyer, as there are important rights he has that are involved here. He reminded him that there is a lawsuit filed in the courts right now and filed by the McKinneys, which does have the potential to impact his property. He said that he has proposed to the Board to actually bring Mr. Norton in to that lawsuit, clarifying that he didn't have to hire a lawyer, that the McKinneys are not represented by counsel in the lawsuit. Mr. Vaniotis said that, as long as he is not a corporation but an individual doing business, then he doesn't have to hire a lawyer to represent him. He explained that, as that lawsuit proceeded, the Town would say to him what they think are the violations, Mr. Norton would respond to that and the McKinneys would have their input and, ultimately everyone would get in front of a judge, either in a formal court room hearing or, what very often happens in the YCSC, is that the judges invite the parties to come in for a settlement conference. He added that, out of that settlement conference, they could end up with something that everyone agrees to, which ten gets signed by the judge and becomes the court's order, so it is a little like mediation. He reiterated that the Town does have that pending lawsuit and the Town has to deal with that.

Mr. Norton asked if shouldn't be getting some papers about the lawsuit.

Mr. Vaniotis explained that he has not been named in the lawsuit. He said that the Town is going to take the position that he must be named in the lawsuit because it effects his property. He added that, unless the McKinneys voluntarily agree to add Mr. Norton as a party and file an amended complaint, then the Town is going to file a motion to bring him in to the lawsuit.

7:17 PM Mr. Norton said that he needed to think about that for a while, as he doesn't really understand all of that yet.

Both the Chair and Mr. Vaniotis told Mr. Norton that he would be notified of actions taken, with respect to his property, by the Town.

Ms. Norton said that she and her husband never got any notice of this meeting and the only person who has ever made any complaint is Caroline and Mike McKinney for things like her husband jump-starting a 90-year old lady's car on Sunday so she could go to church…

Mr. Fernald said that they could not hear the complaints tonight because they could not do anything about those.

Ms. Norton asked if there was any legal paperwork or if it was just verbal at this point.

Mr. Vaniotis said that he had a copy of the complaint with him that he might share but needed to make sure he didn't give away his only copy. He asked Mr. Blanchette if he had a copy.

Mr. Blanchette said that he did and would make a copy.

7:20 PM Mr. Norton received a copy of the complaint from Mr. Vaniotis.

TO : Board of Selectmen
FROM :
REF : possible consent agreement on Old Farm Lane

7:21 PM Mr. Fernald requested that Mr. Vaniotis help on this, as well.

Mr. Vaniotis said that, as the Board knows, this is a case that has been going on for a number of years, involved two trips to the Maine Supreme Court (MSC) and, in the end, the Town's position was justified by the MSC and there was a determination that there was a subdivision. He explained that this was unlike the Eliot Shores issue in that these property owners have gotten together and reached an accord as to how to resolve the case and is one that his office has reviewed and feel is in the Town's best interest to do. He added that the Town would be completely reimbursed for all the attorney fees that have been spent over the past five years, which total over $23,000. He said that both property owners who were involved in the litigation have signed on to this. Mr. Vaniotis said that what was in front of the Board tonight was a Consent Order, which with a few other papers, they would file at the YCSC, if the Board approves it.

Ms. O'Donoghue moved, second by Ms. Place, that this Consent Order between Cullen, Bullis and Mills be approved by the Board of Selectmen and that the Town's attorneys be authorized to file the Consent Order in York County Superior Court.

VOTE
3-0
Chair concurs

Approval of Minutes of Previous Meeting(s)

Motion by Mr. McPherson, seconded by Ms. Place, to approve the minutes of July 15, 2010, as amended.

VOTE
2-1
Ms. O'Donoghue opposed
Chair concurs with majority

Motion by Ms. O'Donoghue, seconded by Ms. Place, to approve the minutes of August 3, 2010, as written.

VOTE
3-0
Chair concurs

Public Comment:

7:26 PM Ms. Shapleigh commented that she believes the Town needs to make more of an effort to resolve some of these problems because, as a taxpayer, she resents the hours and hours and hours this Board has to work with the attorney. She said that it seems they have a lot of problems with the zoning and that zoning needs some serious changes or updating. She added that it is not really to the Town's advantage to have this issue with Eliot Shores continue on as long as it has. She commented that she thinks the Town is responsible for previous CEOs, as the Town pays them to do his job and, once those decisions are made, another CEO should not be allowed to come in and change the rulings of the previous CEO. Ms. Shapleigh said that that is happening over and over again and she believes that will suck the Town into more and more lawsuits and she believes the Board needs to take a long look at that.

Mr. Sinden said that he was concerned with the whole subject of the Town's immediate past CEO…certainly he reviewed incidents from the past but, in every case, his ruling was sustained by the BOA and the Superior Court and the Supreme Court. He added that they have had problems in the past with CEOs but the immediate past CEO did his job well, did his job accurately and reiterated that his opinions and rulings were upheld by the courts. He said that it really disturbed him to hear that he was terminated for losing credibility, which was all that he could get out of that meeting at the grange hall, because he moved too much dirt or was accused of moving too much dirt in the Town of Raymond. Mr. Sinden said that, if losing credibility was such a serious issue, the Board immediately, as a first action, replaced him with a person with no credibility. He commented that they replaced him with a person who was fired in her previous employment for stealing over $6,000 from her employer in a similar type of job…

Mr. Fernald said that they were not going to get into personalities…

Mr. Sinden continued by saying that she falsified her application process…

Mr. McPherson called a point of order to the Chairman…

Mr. Sinden said that he was just stating facts, that he has the court documents with him and the newspaper articles with him…

Mr. Fernald said that that was a personnel matter and Mr. Sinden knows it is a personnel matter and it is not something that needs to be brought up…

Mr. Sinden said that this was a public matter…

Mr. Fernald reiterated that this is a personnel matter and, if that person was going to be accused, then that person needs to be present.

Mr. Sinden said that that person was convicted and pled guilty and paid restitution…

Mr. Fernald tried to gavel the meeting to order…

Mr. Sinden said that this was all printed in the public press so, if the Board was talking about credibility in a CEO, then the Board really had to weigh this issue.

Mr. Fernald told him that that was enough.

Department Head/Committee Reports

There were no reports.

Old Business (Action List):

7:30 PM

A. Job Review Form for Department Heads – Moynahan - ongoing

B. Firearms Ordinance – Fernald

Mr. Fernald noted that he had had the request for committee members place on the Town website.

C. Consent Agreement Policy – Moynahan, Place, Murphy

Mr. Murphy said that it was very near completion and was awaiting input from Ms. Place and Mr. Moynahan, plus make some additional changes in the typing, which requires Ms. Thain who is on vacation. He added that the y would want a walk-through with the BOS because there is a lot of new information that they would want to consider. He explained that he had created a working folder that included case studies, philosophy, legal notes, and a one-page index of policy and procedure.

D. Solid Waste Alternatives – Solid Waste Committee - ongoing

D. Wild Brook Lane – ongoing

Mr. Blanchette said that he had been in contact with Ms. Davis and that she wouldn't be ready with their information until the next meeting. He added that he has tried calling Mr. McKenzie and gotten nowhere and that he has sent a letter and gotten nowhere, but they do have his address, and his next step is certified mail.

F. Criteria for license review – under Correspondence #12

G. Representation on Kittery Sewer – ongoing

H. Sewer Committee Contract – Moynahan, O'Donoghue, Murphy, Marchese & Blanchette – ongoing

I. Skateboard Park noise – McPherson & Fernald – ongoing

J. Building Committee

Mr. Fernald said that they had been waiting until the Bicentennial Week was over and that they would be notifying people after the 14th.

7:35 PM Mr. Hirst said that when the Board set up the Building Committee they also added that this committee would oversee the maintenance of Town buildings and he was wondering if the Board would enlighten him on what they meant by that – did they mean all Town assets or simply structures.

Mr. Fernald said that they meant structures but not things like the fire tower behind the fire station. He added that that would be clarified at that first meeting.

K. Community Building – short term and long term

Mr. Murphy commented that a suggestion was made within a group that were down at the #8 Schoolhouse that McPherson Hall at the Eliot Congregational Church might be an available spot for the ECSD on a short-term basis, with good accessibility and numbers of rooms, etc.

L. Eliot Shores – legal advice – completed

M. Public Works Director

Mr. Blanchette said that he is still on vacation and may need another full week or so at his former job but, as soon as he can start transitioning, he will.

Mr. Blanchette suggested taking some items off the Action List and the Board agreed to remove J., K., L. and M, as they are resolved.

New Business (Correspondence List):

7:40 PM
#1 TO : Board of Selectmen
FROM : Jenny Isler
REF : PACE information from EfficiencyMaine

Mr. Murphy said that the Energy Committee met last night and voted to have him speak tonight. Mr. Murphy read an article from the Weekly Sentinel, which discussed a public hearing held in Kennebunk on the PACE Program. He explained that PACE stands for Property Assessed Clean Energy and this program allows homeowners to take out loans to help pay for home energy savings improvements and also allows the loan to be transferred to new buyers if it is not paid off at the time of the sale of the home. He discussed that only towns that had an ordinance to support the PACE Program would be eligible and the committee has a draft ordinance for the Board to look at.

Ms. O'Donoghue commented that she would have to more thoroughly review the packet of information but this is important and she thinks that with the new EfficiencyMaine approach, that this is something that the Town might very well want to be part of. She asked if the Board would want to have someone from EfficiencyMaine come to talk about this.

Mr. Murphy said that the Energy Committee was planning to have someone come down to hold a public meeting and public hearing as part of a move towards adopting an ordinance at the November elections.

Ms. O'Donoghue said that, since that was November, they would have to move fairly quickly on this.

Mr. Blanchette said that he thinks a public hearing would have to be held 15 days prior to the vote but he would have to look that up to be sure.

Mr. Murphy said that this would be a referendum vote, rather than a Town Meeting vote.

Ms. O'Donoghue said that the week of the 10th to the 16th looks like it would be about right but that would be verified.

7:50 PM
#2 TO : Board of Selectmen
FROM : Grant Hirst
REF : Amendment 2 to ambulance contract

Mr. Fernald said that Mr. Hirst was asking the Board to reconsider their vote of July 23rd on their acceptance of the amendment to the ambulance contract.

Ms. O'Donoghue said that she was wondering if they could reconsider at this point because she thinks the date has gone by, unfortunately, and the Board has already signed. She expressed her personal regret for acting in haste because, in April, they did have a lengthy discussion with Mr. Grant about the various options that they might have in the way of ambulance services and, without understanding why, when the thing came through she signed it without really thinking and she apologized to Mr. Grant for that because it was not, in her opinion, a correct move on her part.

Mr. Hirst said that he would like to point out to the Board that part of their incentive to do this was the representation by the Fire Chief that the Town would save some money and insulated from future rate increases during the term of the extension. He pointed out that the contract amendment did not say anything about rate guarantees and the contract, as amended in 2006, applied a cost increase factor of the consumer price index (CPI). He said that the amendment they signed the other night, which was amendment two, said all other parts of the contract remain as stated and that means that that is in conflict with what the Fire Chief represented. He added that it does not appear that the Town has any guarantee against an increase in price.

Mr. Blanchette said that he did talk with the Fire Chief specifically on that and what he was saying, what he meant to say, is that the base price for the service that they are getting hasn't increased. He added that, if the Board recalled, what he was talking about was that he felt that the base price in the contract was for a certain level and the Town was getting far above that. He explained that the Fire Chief's worry was that, if the contract was completely reopened, then the company would want to raise the base price to the level they are actually giving. Mr. Blanchette clarified that he could not speak for the Chief and he would hope that, if the BOS were to do anything in reference to this, then he would hope that the Board would delay until he could be present, as he is on vacation and could not attend tonight.

Ms. O'Donoghue clarified that they had another year on that contract.

Mr. Blanchette said that they had until June of 2011. He confirmed that the contract has been signed and delivered.

Mr. Fernald commented that it was a done deal.

7:53 PM
#3

TO : Board of Selectmen
FROM : Jennifer Fox
REF : Eliot Open Space Committee

Mr. Blanchette said that he jumped the gun and she will be on the agenda for the next meeting – August 26, 2010.

#4

TO : Board of Selectmen
FROM : Maine Department of Transportation
REF : MDOT paperwork for URIP Program

Mr. Blanchette said that this is the yearly statement from the towns that the monies are being spent for certain things and they have to list down what the monies were spent for last year. He clarified that they got just under $50,000 and they could certainly see that the Town spent that on Governor Hill Road and

Knoll Road. He said that this is the statement that the Town has to sign. He clarified that it needs to be adopted and signed by the Board.

Ms. O'Donoghue moved, second by Ms. Place, to adopt the Community Services Division from the Maine Department of Transportation.

VOTE
3-0
Chair concurs

7:55 PM
#5

TO : Board of Selectmen
FROM :Shannon Clifford Davenport
REF : Request for refund

Mr. Fernald said that she was requesting a $9.86 registration refund for the cost she incurred as part of a program that was instituted by ECSD, which was cancelled. He added that he had correspondence from ECSD that explained that the software ECSD uses to accept registrations charges a fee, depending on the program, which fee goes toward the licensing contract. He clarified that, in the past, the ECSD has not refunded that money because it does not go into the Enterprise Account.

Ms. O'Donoghue said that the only thing she thought they could do in this case is to write to Ms. Davenport and explain that the fee goes to the software company and not the ECSD.

Ms. Place said that she would like to know if the fee is clearly stated.

Mr. Fernald said that it was and explained that on the web page where one registers it is indicated that a certain percentage is incurred if one uses the service.

Mr. Murphy said that they have a customer for one of the Community Services programs who must apply online, not at the Town office, and she must pay an application fee in addition to the program fee, itself, and this fee kind of disappears into the computer company.

Mr. Fernald agreed. He explained that she didn't incur any fee for the program, itself, but a fee to register for the program online.

Mr. Murphy asked if that was a common thing nowadays.

Mr. Fernald said that he didn't know how common it was now.

Ms. O'Donoghue and Mr. Murphy both said that it didn't seem right.

Ms. Place said that she thought they should refund Ms. Davenport the money and felt it was ridiculous that she should have to pay a fee when it was cancelled by the ECSD.

Ms. Place moved, second by Ms. O'Donoghue, to refund Shannon Clifford Davenport $9.86 and a letter of apology.

VOTE
3-0
Chair concurs

8:03 PM
#6

TO : Board of Selectmen
FROM : Maine Department of Conversation
REF : submerged lands application

Mr. Blanchette said that this was notification that Gregory Power has applied for a Submerged Land Easement. He explained that this is actually a renewal and that

they have had their dock there for a while, that the easement expired in December and they are applying for a new conveyance.

#7 TO : Board of Selectmen
FROM : Maine Public Employees Retirement System
REF : Note from Retirement System

Mr. Blanchette reminded the Board that there was a substantial increase in the amount they pay in to the retirement system just this past July 1st and, throughout the past seven years, he thinks, they have been using up the ongoing balance or surplus and now they are getting into the specific towns. He said that he was able to get the update for Eliot that shows a balance of about $89,000 and, later on this year, they will send the Town paperwork that will ask the Town how they want that money…do they want it credited to the Town, as they have been doing, over the next ten years to keep the percentage they pay in less than what it actually is or do they want it back in a lump sum or some other way they may come up with.

8:07 PM
#8 TO : Board of Selectmen
FROM: Joan Macomber Anania
REF : Request for purchase of property

Mr. Blanchette said that there were a couple of issues. He commented that, for those who know a little bit about Woodbine Avenue, there is a little spot of land that is called the Town Landing just as one approaches the river on Woodbine and it goes away from the road and in front of this house. He said that he doesn't know if they have any documentation readily available that shows how the Town acquired it so, if they were to consider selling it, then he suspects they would need to do a substantial amount of legal research. He added that, through the motion, he believes it would first have to go to the Conservation Commission (CC) to see if they even want to consider this. He said that he didn't know if the Board wanted to send this to the CC first or whether the Board even wants to sell this property.

Mr. McPherson said that that right-of-way to the river has been used over the years by a number of lobster fishermen and he wouldn't be in favor of selling any of it.

Ms. O'Donoghue said that one of the things that has been discussed in the Comprehensive Plan is that the Town wants more access to the river by the residents, not less. She added that this is a right-of-way and does the Town have the right to sell a right-of-way.

8:11 PM Mr. Blanchette said that it would probably have to go to Town Meeting. He added that he would have to research it but he does not believe the Board has the right to sell this property and that it would have to go to Town Meeting.

Ms. Place said that she thinks they should hold on to this property.

Mr. Murphy said that he has looked at that property quite a bit and marvels at its usefulness. He added that it is very close to the road, about 30 feet, with a very gentle slope right down to the water where people could walk down there and one of the nicest little spots to access the river that he knows of. He added his sense that they should hold on to this property.

It was the consensus of the Board to hold on to this land.

#9 TO : Board of Selectmen
FROM: ?
REF : Proposed draft for yearly check of driver licenses

Mr. Fernald said that the committee did a nice job on this draft. He suggested that, because it is a draft, that it should be sent to all department heads for their comments before going any further.

Mr. McPherson asked, if they adopt this, then what does it do for them…what does it do if they do and what does it do if they don't. He added that he did not like this idea, that it left a sour taste in his mouth.

Mr. Fernald said that they should send this to department heads for their input and that, then the Board could make a decision.

Ms. O'Donoghue discussed the legal impact to the Town in the event of an accident with a Town employee driving would be more without this check. She added that this check would show that the Town employee has a valid driver's license.

Mr. McPherson said that that would prove he/she has a valid driver's license today, but what about tomorrow. Mr. McPherson discussed that he and a lot of other people have a Class A License, which holds him and these others to a higher standard, and this check seems like a double standard to him.

Ms. O'Donoghue said that this draft says, " …*of the proper type and class for the types and classes of vehicles to be driven."*

Mr. McPherson said that he can get into his passenger car and, as long as he was under the .8, then he was legal, but getting to the Town Garage and getting into the snowplow, then he comes under the other standard of .4.

Mr. Fernald said that they would send this to the department heads and see what they say about this draft. He added that his concern was that the check would only be done once a year, that the status could change tomorrow or next month and the Town wouldn't know for a year.

8:16 PM

#10 TO : Board of Selectmen
FROM: Comcast
REF : Channel line-up changes

This was informational.

#11 TO : Board of Selectmen
FROM: York County Community Action
REF : Request to meet

Mr. Fernald said that he thought it would be good for the Board to meet with them and the Budget Committee so they need to set up a date.

Mr. Blanchette suggested the first meeting in October.

The Board agreed.

#12 TO : Board of Selectmen
FROM: MMA
REF : Request for legislation ideas

Mr. Fernald asked the Board to review this and bring back any ideas they would like to take up.

8:17 PM
#13 TO : Board of Selectmen
FROM: Mr. Blanchette?
REF : Discussion of CEO/LPI position

Mr. Blanchette said that Ms. Pelletier is acting as interim CEO, Heather Ross, from Kittery, acting as the LPI (local plumbing inspector) and helping Ms. Pelletier review building plans. He added that they have Mr. Marchese doing sewer inspections so that covers a lot of territory but it doesn't cover everything. He said that Kittery does not have a building code so Ms. Ross did not want to cover that in Eliot because she isn't familiar with that so, right now, the Town is missing that part of it. He added that he has tried to contact South Berwick, Roberta Rossinni, but she has been on vacation until this week. Mr. Blanchette said that he believes they already share someone with North Berwick. He said that the whole of it is that they need to decide how they are going to proceed – does the Board want to advertise the position, does the Board want to talk with some of the towns about sharing – the Board needs to decide what they want to do with this position.

8:20 PM Ms. O'Donoghue said that her first inclination would be to talk with other towns to see what's available for sharing. She added she was concerned with the costs to the Town having all the different people along the way. She suggested getting in touch with Paul Schumacher to see what ideas he might have.

Mr. McPherson said that he thought that sharing would be a good direction to look in.

Ms. Place agreed.

Selectmen's Report:

Ms. O'Donoghue asked Mr. Blanchette if they had gotten the new floodplain maps.

Mr. Blanchette said that he has not seen them.

Ms. O'Donoghue said that three out of the last four years Eliot has had very heavy rain in fall and spring and there is a lot of low-lying land. She added that one of the things that is pretty important for the emergency management plans is that they have something in place to either mitigate any possible hazards or to actually correct the situation. She explained that they could get funds from the government for mitigation of these hazards if they are all certified. She said that she received her certification today, which she received from the Emergency Management Institute, takes about an hour to complete online and she believes it is important that they get up-to-date on this. Ms. O'Donoghue commented that they did have to be thinking ahead and not just for ice storms, which they always get, but flooding, as well, and they have a lot of people who could be in danger and suffer property loss.

Mr. Fernald asked Ms. O'Donoghue to forward the information to the Board members.

Ms. O'Donoghue said that she had one thing with her from Robert Baldwin, York County Emergency Management Director, and he says that the Eliot community can receive disaster assistance from FEMA but they can't compete for preparedness grants without meeting the NIMS compliance.

Other Business as Needed

There was none.

Executive Session

8:28 PM Ms. Place moved, second by Mr. McPherson, to move into executive session as allowed by 1 M.R.S.A. section 405 (6) (F) "…records received by a body…general public prohibited…"

8:43 PM Out of executive session.

Adjourn

There was a motion and second to adjourn the meeting at 8:44 PM.

VOTE
4-0
Chair concurs

_____ _____

DATE **Roberta Place, Secretary**