

BOARD OF SELECTMEN'S MEETING
February 25, 2010 6:30PM

Quorum noted

6:28 PM: Meeting called to order by Chairwoman O'Donoghue.

Roll Call: All present, except for Roberta Place.

Pledge of Allegiance recited

Moment of Silence observed

6:30 PM The Chair discussed the abutter presence at tonight's meeting were people who were abutters to a property that is coming before the BOS tonight and will be heard tonight in executive session between 6:45 PM and 7 PM by phone, with the attorney, so they would be leaving the room at that point. She added that the BOS would willingly hear abutter comments but urged abutters the BOS would not be able to linger because they needed to attend the attorney phone conference. She asked that any speakers state their name for the record and that this is for a Consent Order. The Chair invited anyone to speak to the Consent Agreement Order.

Paul Murphy (across the street from Chad Knowles/used to have CK Landscaping) commented that the people who run the business have seemed to go against everything they were supposed to do ever since they started, such as outside storage. He added that they set up jersey barriers with storage in the wetlands area, which they didn't know about when they went to the abutter's meeting. He added that the person started running his business out of his house five months before he had a permit, which he didn't mention at the abutter's meeting because he gave him the benefit of the doubt. He clarified that, soon after October 2006, trailer trucks started bringing in jersey barriers, fill for the back of his house and wetland areas, and seemed to consistently go against every condition he needed to meet. He added that this person has been fined by the EPA and he believed more should be done there, at least a follow-up. Paul Murphy stated that he believed the business should be completely cancelled.

Jeff Kilty, 5 Melanie's Court, said that he lives in Kittery in a residential neighborhood and has approximately 500 feet that borders the property they all are talking about, which is a commercial operation going on there, with commercial vehicles entering and exiting the premises all day, diesel trucks running, pump trucks pumping fill, loading trailers...it is a commercial business going on and, as it is a residential neighborhood, he feels it should be a home business.

Scott Egers, 7 Melanie's Court, commented that he probably lives the closest to the person, as his back yard and the person's back yard are adjacent. He added that there has been three years of noise. Caterpillar – beep, beep, beep; in the middle of the night, snowplows; dust; the road is not tarred, as it was supposed to be. He said that he almost wants to move because it's so bad. He added that the person is not in a commercial area and he wished he would be shut down.

Chuck Denault commented that he spoke with Mr. Knowles on a couple of occasions about the Kittery noise ordinance and discussed that he would get home about 3 AM, as he was working the PM shift, and the noise would start around 5 AM, with the banging of the dump-trucks, the back-up alarms, with the noise getting to the point where he went out to speak to Mr. Knowles to advise him the noise had to stop and that Mr. Knowles would comply for a couple of days, then the noise would start up again. He added that complaints to multiple CEO's had taken place and he was very frustrated that this situation continues. He discussed the negative impact this business has had on wildlife from filling wetlands and cutting down trees. He spoke to his frustration that people talk with the person and it seems the situation doesn't seem to get resolved. He added that he applauded Mr. White to, at least, take the initiative to address this problem.

David Tyndall, 9 Melanie's Court, said that he supported what everyone else was saying – a lot of trucks, a lot of noise. He added that he lives next door to the

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person and he can hear the trucks constantly going, lights flashing and reiterated his support for previous testimony.

Kathy Murphy discussed that this person was constrained to pave the road, have no outside storage and that it has been turned into an industrial park. She said that there is a lot of noise and dust and she has asthma, which is seriously impacted by this operation. She also discussed that she had no problem with home businesses but that his business had become very disruptive. She discussed her concern that the gravel generated by his business and landing in her driveway impacted her home, as rocks from the person's business were kicked up when they snow-blowed their driveway. She added that she did not know if they had a hardship and that was why things agreed on were not done but they should not have been doing what they were doing. Kathy Murphy commented that the person was given a business permit but the business was supposed to be somewhat invisible and not interrupt everyone's lives. She discussed her own business and its' low impact to the neighborhood.

The Chair reminded everyone that this was not a court of law, that the BOS were very happy to hear thoughts and discussions, but that this case will be resolved in proper form and with the consent of the town attorneys. At this time, she asked if there were any questions from the Board. Hearing none, she asked for a motion to go into executive session.

6:45 PM

Executive Session

Mr. Fernald moved, seconded by Mr. Moynahan, to enter into Executive Session as allowed by 1 M RSA Section 405.6. E. "Consultations between a body or agency and its' attorney", regarding pending litigation...

VOTE

3-0

Chair concurs

7:10 PM

Out of Executive Session

Mr. Moynahan moved, seconded by Mr. Fernald, to sign the Consent Agreement as presented, contingent upon the receipt of signed affidavits of the new business owners.

VOTE

3-0

Chair concurs

At this time, the Board signed the Consent Agreement (CA). The Chair clarified that the CA would be made available as a public record once it was fully documented and recorded.

The CEO clarified that both parties and the judge had to sign the CA before it would be made available to the public.

The Chair confirmed and added that the public would be able to read it for themselves once that was done.

Approval of Minutes of Previous Meeting(s)

7:15 PM

Motion by Mr. Fernald, seconded by Mr. McPherson, to approve the minutes of February 5, 2010, as written.

VOTE

3-0

Chair concurs

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Motion by Mr. Moynahan, seconded by Mr. Fernald, to approve the minutes of February 10, 2010, as written.

VOTE
3-0
Chair concurs

Motion by Mr. Moynahan, seconded by Mr. Fernald, to approve the minutes of February 11, 2010, as written.

VOTE
3-0
Chair concurs

Motion by Mr. Moynahan, seconded by Mr. Fernald, to approve the minutes of February 18, 2010, as written.

VOTE
3-0
Chair concurs

Public Comment:

7:16 PM There was no public comment tonight.

Department Head/Committee Reports

7:17 PM The Chair invited Dan Blanchette to speak.

Mr. Blanchette clarified that the Board would be getting copies but the Town received notice this week that they did not get the alternative heat (wood pellets) grant

The Chair said that she understood that they could reapply.

Mr. Blanchette agreed and said that second requests for applications would be issued in the coming months so it hasn't been issued yet.

The Chair commented that, once it is reissued, the Board could decide if they want to reapply or not.

Old Business (Action List):

7:18 PM

A. Job Review Form

The Chair said that this is ongoing.

B. Road Commissioner Job

Mr. Moynahan said that this has been completed and passed out copies for the Board to review for input. He added that time is of the essence, as the members would see as they reviewed the package. He said that he hoped the members would take the time to review this so that the members could approve and advertise for the position at their next scheduled meeting.

The Chair said that Mr. Blanchette had pertinent information regarding this subject.

Mr. Blanchette that, tentatively, he talked with the Town Manager from S. Berwick about the possibility of sharing a public works department, which they have considered, and would be willing to discuss it further.

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Mr. Moynahan commented that that was a good consideration to explore and that the Board should not dismiss S. Berwick but should not sign up for within a 30-day period and hope it's the best for Eliot.

Mr. Fernald agreed with Mr. Moynahan that the Board needed to look at both alternatives. He said that he saw a number of problems combining the two towns, for instance, snowstorms here and in S. Berwick at the same time.

Mr. McPherson agreed with both Board members and added that the members needed to consider that, concerning facilities and equipment, Eliot was far ahead of S. Berwick and what the impact would be to the Eliot Transfer Station.

Mr. Blanchette clarified that the only thing they would be discussing was sharing the Department Head.

Mr. Fernald clarified that that would have the responsibility of the transfer station.

Mr. Blanchette agreed and said that, while the head would have responsibility over both departments, the departments would continue to be separated.

The Chair asked if there had not been some conversation with Kittery regarding this issue.

Mr. Moynahan commented that, currently, Kittery is meeting about this and reviewing the potential of doing a joint service and Eliot would be involved in those discussions.

The Chair commented that she would like to know, in general, if the Board was in favor of exploring both options.

Mr. Fernald said that he believed that, as Board members, it was their duty to look at both alternatives and find out what would be best for Eliot.

7:23 PM

The Chair commented that this was an opportunity to save the Town a bunch of money, if it's done right, and that they would explore both avenues.

C. Business Registration Ordinance – Copies of two proposals. Invite Business Development Committee to meeting.

The Chair said that the BDC had not given the Board any further input on their recommended changes

D. Police Contract - ongoing

E. Sewer Rates

The Chair said that these rates were still to be determined.

Mr. Moynahan said that they had something to present at the next meeting for the Board's review regarding sewer rates, as they stand now.

Jack Murphy commented that he wanted to give the Board a heads up that they haven't given up on the idea that the town should be concerned for recognizing the need for Eliot to look more closely at the costs for Eliot which aren't being met and that they are dipping into the maintenance fund to pay the quarterly bills. He added that, even on an interim basis, it might be good to increase the rates a bit. Mr. In light of that, Murphy said that the Sewer Committee would like the BOS to consider hiring an outside sewer consultant to help the Town figure out what those rates should be and the whole structure Eliot has with Kittery and not rely on Kittery's structuring of their rates for Eliot.

Mr. Moynahan commented that that would happen as the TIF progresses and that they would be looking at the exact concerns Mr. Murphy raised.

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7:25 PM F. March 1st Ceremony

Mr. Fernald said that there is a committee organizing the March 1st events. He explained that on Monday they would have an event starting at 8AM here at the Town Hall with the Town employees and, they are hoping, some of the public. He added that they would have a flag-raising ceremony, Star Spangled Banner, color guard, have the cannon go off, etc. He added that, after that, they would meet at the Eliot Elementary School (EES), where the kids studying the history of Eliot would give a presentation and several people will give various speeches around the creation of Eliot. He said that this would be a big event and they are hoping they will have church bells at noontime, other bells going off several times during the day and the Town Hall employees greeting the kids at EES. He added that they would then come back to the Town Hall for some light food, with displays in the hall of Eliot's past history and invited everyone to come.

The Chair said that she had to ask the Board to approve that the Town Hall be closed from 8 AM to 11 AM on that day so the staff can participate.

7:28 PM Mr. McPherson moved, seconded by Mr. Fernald, that the Town Hall be closed from 8 AM to 11 AM so that the staff could participate in the Eliot Bicentennial kick-off.

VOTE

3-0

Chair concurs

G. Sewer Project – MOU with Kittery and CLD Contract

The Chair asked the Board if they were prepared to sign the contract now or not.

Paul White said that he had two copies with him and that it had been signed by CLD. He discussed that some of the issues that one of the Town attorneys had commented on were related to insurance because there was no mention that CLD was insured for things like worker's compensation; there were no work-order changes – there was no mechanism to change the contract, if needed; the engineer recommended language in case either party wants to back out of the contract, which was added and the other thing was that there was no provision for the Town to take ownership of the engineering documents once they've been paid for by the Town. He added that all those had been cleared up and that CLD was amenable to the contract he has before him.

7:30 PM Mr. Moynahan moved, seconded by Mr. Fernald, to sign the contract with CLD, as changed.

VOTE

3-0

Chair concurs

Mr. Moynahan recommended making sure that Norma Spinney (Town Treasurer) take all the expenditures for this through the TIF account.

The Chair agreed.

New Business (Correspondence List):

#1 TO : Board of Selectmen
FROM : McEarchern & Thornhill
REF : Melinda M. Longtin et al., Roger's Point, Lot 23 – Release Deed

The Chair said that they had received a release to Ms. Longtin, that the release appeared to be in order and asked if there was anything else the Board needed to do.

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Mr. Blanchette said that the only thing left to do was for the Board to sign it.

Mr. Moynahan moved, seconded by Mr. Fernald, to sign the release deed for Melinda Longtin.

VOTE

3-0

Chair concurs

#2 TO : Board of Selectmen
FROM : Herbert Clark
REF : Proposed revision to the Firearms Safety Ordinance

The Chair asked for input about this proposal.

7:35 PM Mr. Fernald said that he thinks it says what the ordinance was trying to do in the first place and that it is much clearer. He added that regulations from the State changed often and it is hard to keep up with those changes at a local level.

The Chair asked what the Board wanted to do about this proposal.

Mr. Fernald said that this would be an ordinance change and would have to be put together to be submitted for a vote by the Town.

The Chair asked for someone to volunteer to draft wording for this.

Mr. Fernald said that he would be glad to draft language for a warrant article.

#3 TO : Board of Selectmen
FROM : Maine Service Centers Coalition
REF : Invitation to join

The Chair clarified this was a letter from the Maine Service Centers Coalition and looked to her as another lobbying offers.

It was agreed by the Board that this was informational.

7:37 PM
#4 TO : Board of Selectmen
FROM : Dan Blanchette
REF : Three possible overtime policies

The Chair recognized Mr. Moynahan.

Mr. Moynahan discussed the confusion around the language and that, perhaps, the Board could schedule a workshop about this a half hour before one of their budget meetings.

Mr. Fernald disagreed and said that he had reviewed the overtime policy, over and over again, and believes the original document is not something they did lightly. He added that he believes a lot of work was put into the original document and believes it is the best for the Town and the employees. He further said that he would like to read something, if he could, that would talk to the history of this issue.

The Chair agreed.

Mr. Fernald said that the police overtime is paid, as the policy states, hours worked beyond normal scheduled work. He added that, last May when the BOS changed the overtime and the personnel policy, the Board met with the Chief and made him change how overtime was figured and he did, then the union filed a grievance, which the Board heard on July 30th. He said that the Board voted in favor of the Union, which meant, Madam Chairman, that they voted for the old policy and overtime for the police went back to the way the contract read: "hours

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worked beyond normal scheduled work”, however, it was never changed for the employees for the Town of Eliot, but only for the police and he thinks that is unacceptable.

He moved, again, to go back to the old policy that was written for the purpose of being fair to the employees of the Town of Eliot, seconded by Mr. McPherson.

The Chair asked for further discussion.

Mr. Moynahan said that he would keep his thoughts to himself to moving backwards in time after spending a year and a half on a rewrite and coming into a union contract. He added that the policy, as written, is not good for the Town, that this is a Board of more than one person and he has stated his opinion and continues to think that way.

The Chair called for a vote for all in favor of going back to the original policy language on overtime.

VOTE
2 for-1 against
Chair recognized that the motion passed.

There was discussion regarding the next step in this process, which would be to have two readings. It was clarified that that step had already been met.

Mr. Fernald moved, seconded by Mr. McPherson, to adopt the old overtime policy, as written.

VOTE
2 for-1 against
Chair recognized that the motion passed.

Mr. Moynahan cautioned the Board to review how the expenditures are going to be seen on the timecards with the way the language is written.

7:42 PM
#5

TO : Board of Selectmen
FROM : CMP
REF : Pole Permit Application

The Chair commented that this was basically informational. She said that this is a letter from Central Maine Power (CMP) regarding moving a pole from one side of the road to the other.

Mr. Blanchette agreed and said that the Board had to approve it. He added that Mr. Shapleigh had reviewed it and was okay with it.

Mr. McPherson moved, seconded by Mr. Fernald, to approve the application permit submitted by Central Maine Power.

VOTE
3 - 0
Chair concurs

#6

TO : Board of Selectmen
FROM : Town of Oxford
REF : Proposed casino in Oxford County

The Chair said that this was informational regarding the Town of Oxford considering putting in a casino.

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7:45 PM
#7

TO : Board of Selectmen
FROM : Vicki Mills
REF : Request concerning Planning Board activities

The Chair said that the Board had a letter from Vicki Mills and she applauded Ms. Mills' work regarding the letter. She added that she was not sure what the Board could do about this request and asked for input from the Board members after saying that she tended to agree that the Planning Board grants too many waivers.

Mr. Fernald said that he believed they needed to look at each individual situation in order to make that determination. He added that, in order to discuss this tonight, he believed they should at least have the Chair of the Planning Board (PB) present to give us his input on this situation.

The Chair agreed and said that she had asked that this letter be forwarded on to the PB. She asked if that had been done.

Mr. Blanchette said that it had but that they had not had a meeting since that.

Ms. Mills said that, from what she can see in the ordinance where it mentions waivers, there are no standards by which anyone can judge how a waiver is granted. She added that she can't tell what standards she needs to meet to qualify for a waiver nor can she tell if the PB generally should have given a waiver, based on the standards. She commented that when there is an appeal there are four criteria one has to meet and it's very clear whether one has met them or not. She said that a waiver is totally different and that she thinks the ordinance even says "at will", so, if the Board likes the applicant, they could grant a waiver and, if they didn't like the applicant, then they didn't have to grant a waiver. She said she believed it needed to be spelled out in order to be fair and justifiable.

The Chair commented that she could see this evolving into a workshop with the PB at some point.

Mr. Moynahan requested the PB be scheduled to come in and speak with the BOS at the next meeting.

Vicki Mills discussed her concern around roads and said that the Town has road standards for a reason and, if the PB is waiving them, then the Town is not looking to the future when those roads may become more than just access to one individual subdivision; it may eventually become a major road. She added that, if the PB keeps waiving these things, she was concerned the Town would be stuck with issues such as occur on the little dirt cow paths in Town. She also added that she was concerned for the potential for abuse, depending on the makeup of the Board, and the way members to boards are appointed is, if someone shows up and is breathing, they are appointed. Ms. Mills said that potential members are never asked about conflicts of interest. She suggested the Town set standards and that there be specific guidelines.

The Chair clarified that the issue of conflicts of interest is extremely important and is drummed into board member heads. She said that she has not personally seen any violations of that and, in fact, members are quick to speak up to disclose anything they think might be a conflict and recuse themselves.

#8

TO : Board of Selectmen
FROM : MMA
REF : Road Insurance

The Chair said the Town might want to consider this and that the question to the Board, in her mind, is whether it would be cheaper to buy the insurance or replace the well, if necessary.

Mr. Fernald asked what the insurance was now if someone's well was contaminated and sued the Town.

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Mr. Blanchette said that the Town did not have insurance specifically for that. He added they had generally liability insurance that might cover attorney fees and, even with that, he would have to check on that. He clarified that that is why MMA has put out this special purpose insurance, which would cost about \$1200 to \$1400 per year.

The Chair asked for input from Board members, as they did have some salt intrusion into wells, currently, but was hopeful that would be self-correcting with reduced salt use.

Mr. Fernald asked if the Town had had this issue in the past.

Mr. Blanchette said that, to the best of his recollection, the Town has had only one such claim. He added that he can't remember all the details but he did remember the Town did not pay anything out on it and believes the well ended up being too close to the road. He clarified that there is a distance, under State law, that a well has to be from a road and, if it is too close, then the Town is not liable.

Mr. McPherson commented that there are steps that could be taken and, in talking with the guys out at the garage, it was suggested they could buy a smaller V-Box Sander for one of the pickup trucks and go to straight sand in Rollingwood.

Paul White asked if it would help to identify the location of the particular wells that are, say, within 30 feet from the road.

The Chair agreed that would help.

Mr. McPherson said that the two known problem areas are Rollingwood and the Jennie Lane area.

Mr. Moynahan commented that three years of insurance would pay for one well so he was struggling with the financial piece and that it doesn't seem like it's great insurance.

8:00 PM
#9

TO : Board of Selectmen
FROM : Dept. of Health and Human Services
REF : General Assistance reimbursement for FY 2011

The Chair asked if there was any question the Board had to answer regarding this topic.

Mr. Blanchette said that that would only apply if the Town wanted to change what it presently has. He explained that, currently, they are on the 50% reimbursement rate and, unless they think they will meet their threshold of \$265,000 in the next year, then there is no reason to change the 50% rate. He said that his recommendation would be to stay with the 50% rate.

The Chair, after polling the members, said that it was the consensus of the Board to take Mr. Blanchette's recommendation.

The Chair said that they are discussing the budget and she has expressed her desire to keep the municipal budget the same as it was last year. She added that she knows that is going to be hard to do because the Town's costs are going to be going up through an increase in school and county assessments and their income will be reduced because of the State allocations, among other things. She discussed that the senior citizens are requesting the Board add a special warrant to provide funds for the senior program. She asked for input from the Board.

Mr. Moynahan said that this Board spoke to the seniors and indicated the Board would put a warrant article together for them and that he is just waiting for Ms.

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Roy to provide the dollar figures she believes the senior program needs. He added that he has some language started but, without a dollar figure, he could not finish it. He reiterated that he was just waiting for Ms. Roy's information.

The Chair thanked Mr. Moynahan for clarifying that and looked forward to his wording.

8:03 PM

Mr. Blanchette said that there were a couple of items while they were discussing the budget, if the Board wanted to take any action. He said that they got a request from Eastern Trail and asked if the Board wanted to even leave this on the board, as the BOS did not even send this to the Budget Committee last year.

The consensus of the Board was to not propose a warrant for this item.

Mr. Blanchette asked the Board if they wanted to make a decision at this point on whether they want to have a wage freeze versus a 0% COLA.

It was the consensus of the Board to work on this with the Budget Committee.

Mr. Blanchette said that he would have an updated budget for the Board probably by Monday and one of the things he has done is gone down the list and list what the balance is of the reserve accounts. He explained that, when the members see a big R, then the number will be to the left of the column.

At this time, the Chair clarified to the audience that the Board was not being mean to Eastern Trail but that the Town of Eliot voters have turned them down consistently every year.

Mr. McPherson said that it was suggested to him that the Town have shutdown days to coincide with the State included in the budget.

The Chair commented that that was a possibility. She said that they have been very generous with their open hours, more so than many towns, so there is a lot to be discussed.

Mr. Fernald asked if there was something they could see – a result - for instance, does the Town know the number of shutdown days.

Mr. Blanchette said that he would check on that with Wendy, as she has to know when the offices are closed that she has to deal with in her work. He added that he believes the number is 10 but he would confirm.

Mr. Fernald said that it would be interesting to see a comparison for cost-savings.

Mr. Blanchette said he would do that.

Mr. McPherson commented that he believed the Town needed to do something about the legal fees.

The Chair said that Mr. Blanchette is working on an analysis of legal fees and what they have been expended for and believes they will have a much better handle on that when he is done.

Mr. Moynahan commented that this Board was asked 4-6 times if they wanted to move forward with certain cases, so, this Board chooses to spend the money. He said that it starts here – that, if the Board doesn't feel a case is worth chasing then that is their decision to make, that it is not anyone out there spending that money. He added that this Board made those choices based on the information they received.

The Chair agreed that Mr. Moynahan made a good point.

Paul White commented that he would like to see the Board act on his suggestion made earlier in this meeting, that they put something in the ordinance that allows

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them to recoup those legal fees and allow some teeth to deter some of these things from happening. He added that he doesn't think the Town needs to back away from these cases but have the ordinances in Town to back them up.

The Chair agreed and asked if there could be some wording developed.

Paul White said he had wording.

The Chair asked Mr. White to provide that at their next meeting.

Paul White agreed.

Mr. Murphy said that he would be interested in knowing the current status of the case, which when he was on the Board, they voted to proceed to recover the costs of the sewer repair on Riverside Avenue, which was repaired at Town expense.

Mr. Blanchette said that he just heard from Ted Small that the next step was filed with the court yesterday and that they are trying to recover about \$12,000 plus legal fees.

Selectmen's Report:

There were no Selectmen's reports tonight.

Other Business as Needed

There was no other business tonight.

Adjourn

There was a motion and second to adjourn the meeting at 8:10 PM.

VOTE

4-0

Chair concurs

DATE

Roberta Place, Secretary