

BOARD OF SELECTMEN'S MEETING
January 28, 2010 6:30PM

Quorum noted

6:30 PM: Meeting called to order by Chairwoman O'Donoghue.

Roll Call: All present.

Pledge of Allegiance recited

Moment of Silence observed

Approval of Minutes of Previous Meeting(s)

6:35 PM Motion by Mr. Moynahan, seconded by Ms. Place, to approve the minutes of January 14, 2010, as amended.

VOTE

4-0

Chair concurs

Public Comment:

6:37 PM The Chair recognized Gary Sinden.

Mr. Sinden commented that he had no real updates from the County Commissioners but did say that the Budget Committee had started their deliberations, going line-by-line, and may have an answer from that as early as next Wednesday. As a citizen, Mr. Sinden asked if the Board had received any clarification on the amount of the TIF monies in reference to his question regarding tax shift benefits, there being none for the first two years.

The Chair said that they had not.

The Chair recognized Phil Lytle.

Mr. Lytle commented that, as the BOS knows from the last BOA meeting, one of the things that was brought up was the Consent Agreement (C.A.) and he wanted to reiterate that it was not the BOA's job to tell the BOS how to do the C.A. He said that. From Mr. Vaniotis' letter, Mr. Vaniotis pretty much stated that the BOS and the BOA should have some type of dialogue together. He added that the BOA did review the C.A. and will probably come in with some types of consideration but it is only to give the BOS some guidelines that the BOA sees that maybe the BOS didn't look at. He said that it is pretty much what Mr. Vaniotis said, that the BOA is the judicial branch and the BOS is the executive branch and the C.A. is the BOS' job and they should go from there.

The Chair thanked Mr. Lytle and reassured the BOA that the BOS is not inclined to overrule the BOA, either. She said that she did think it was a very good idea if the two Boards sit down and informally discuss this whole C.A. subject. She added that she was sure the BOS would be open to that at the BOA's earliest convenience. She added that there is still some confusion and guidelines are always helpful.

6:40 PM The Chair recognized Tony Manero.

Mr. Manero started by quoting two lines from the draft BOA 12/17/2009 minutes: "*Ms. Elizabeth O'Donoghue said sometimes the Board of Appeals has come to them and questioned the consent agreement, and she did not want to override the Board of Appeals.*" He said that, clearly, it was understood in the meeting that one of the issues that the BOS had chosen not to override the BOA on was the C.A. requested by Walter Woods. He added that Attorney Vaniotis clearly pointed out to all the criteria for agreeing to or not agreeing to consent agreements has absolutely nothing to do with the issue of not wishing to override the Board of Appeals. Mr. Manero commented that, since there was a three-person Board, the other vote that caused the C.A. to be refused was cast by Mr. Moynahan and Mr.

BOARD OF SELECTMEN'S MEETING
January 28, 2010 6:30PM (continued)

Manero's sense was that Mr. Moynahan thought that C.A. was too big to be considered. He referred the Board to the document – Final Draft Policy for Consent Agreements – that was voted for and agreed to by the BOS. He said that he was not going to go through the details of the whole document, except for the five criteria. He added that none of those criteria have anything to do with respecting or not respecting the BOA, in that the BOS takes an action that may be contrary to what the BOA had taken. He further said that, as was clear from Mr. Vaniotis, the two elements of government, judicial and executive, within the Town have totally different criteria. Mr. Manero said that the BOA must go on what the ordinances say and the BOS goes off entirely different criteria, which has to do with the balanced, best interests of the Town. He added that the BOS turned down, refused, denied Walter Woods' request for a C.A. He clarified that the request was not for a C.A. decision; it was merely to enter into negotiations for a C.A. He said that the end result of those negotiations could have resulted in one or the other or both sides backing away and saying they don't have a rationale for or can't agree upon a C.A., but the BOS did not do that. He said that the BOS denied them even the opportunity to negotiate with the BOS and, as he had mentioned at another meeting, in his thirty years of business experience, he has learned that, given the option, always go for negotiation, not litigation. Mr. Manero talked about where they all find themselves tonight. He said that he read the multi-page brief that has been developed by Mr. Vaniotis to defend the Town against the brief from Walter Woods' lawyers. He added that the Town is paying Mr. Vaniotis to now come in with a rebutting brief within a time certain and then Mr. Woods' lawyer will bring in a response and each of those are lawyers, expenses, dollars that are being spent on the basis that the Town wouldn't even have a negotiation with him and this is just the beginning of the trail. He said that, at the end of this, if the court denies Walter Woods and is entirely possible, then the next step for the Town is for the CEO to recommend to the BOS that, as all other means have been exhausted, remedial action has to take place by the Town fining Walter Woods. He said that the Town, itself, cannot exercise the fine but must go back to court and spend more lawyer fees to get the court to actually impose the fine. He added that, in turn, Mr. Woods will rebut the fact that he's being fined by the Town and this goes on and on and on. Mr. Manero suggested that the honorable thing to do is for the Board to consider that a mistake was made – a decision was made to deny him the opportunity to at least go into a negotiation with the Board. He said that, on the basis that a mistake was made, the honorable thing to do would be for the BOS to go back Mr. Woods and say that there was some question about the decision process of the three people who made the decision to deny and would like to invite Mr. Woods back to enter into a C.A. negotiation with the BOS, with no guarantee that that negotiation would end up being beneficial to either party. Mr. Manero commented that his experience over a number of years of dealing with legal matters in various business enterprises has been that, in a situation where a judge understands that there is the possibility of a negotiated settlement, whether in a marriage or business or whatever it is, will defer judgment by hoping that the resolution to the issue will take place and the judge would not have to make a final decision. Mr. Manero said that, to avoid further thrashing of this issue, he suggested the BOS take a very honorable step and invite Mr. Woods to come back and enter into a C.A. negotiation. He thanked the Board for their time.

6:46 PM The Chair thanked Mr. Manero and asked if the Board had any comments.

Mr. Fernald said that he believed the Town had an ordinance that stipulates that, when a C.A. is denied, then any request to revisit that denial has to be done on a timely basis, as of the next regular meeting, and believes that step was taken. He added that, at that next meeting, the BOS decided not to enter into a C.A. and that was the final step that could be taken unless there has been some change within the problem, itself, that would create a whole different situation where it might possibly go back to the BOA. He said that, depending on what the BOA decided, it might then come back to the BOS.

Ms. Place commented that she voted for that C.A. because she thought it was fair. She said that she agreed with Mr. Manero that negotiation was far better than

BOARD OF SELECTMEN'S MEETING
January 28, 2010 6:30PM (continued)

litigation and that this has the potential of costing the Town quite a bit of money. She added that she thought they should revisit it.

Mr. Moynahan heard it said that, if we, as a Town, enter into a C.A. over a plan that was altered in deeds that were changed, sets a precedent that this Board does not want to set. He said that this Board would be opening themselves up to anyone who came in with a plan to alter it and come back asking for forgiveness. He added that he believes that would be the wrong step for the Town to take.

Mr. McPherson commented that he would like to know what step the Board might take to get this back to the BOA, or wherever. He said that he agreed with Ms. Place, as he would rather negotiate than litigate. He added that, when one looks at the records, this Town has spent thousands of dollars on legal fees each year and, somehow, the Town needs to get away from that expenditure.

Mr. Fernald commented that he would not give his opinion on C.A.'s but he believes that situation, unfortunately, has passed, per the ordinance.

The Chair said that she would entertain a motion if any Board member chooses to make a motion.

Ms. Place asked if it was illegal to do anything at this point.

Mr. Fernald directed a clarification to Dan Blanchette through the Chair. He said that they have an ordinance that states in their book (Ordinance Governing Boards, Commissions and Committees) that the person who voted in the negative may reverse his decision and bring the vote back, but the ordinance says that it must be done on a timely basis and stipulates that it must be done by the next meeting.

Mr. Blanchette said that he would look that up for Mr. Fernald.

Mr. White commented that he wanted the Board to know that the brief has been submitted to his office from Mr. Vaniotis. He said that, while he could not tell the Board this case would not cost the Town money, he could tell the Board that Mr. Vaniotis believes there is a good possibility that it would not cost the Town any money, as there are insurance companies involved. He added that he does not believe that negotiation would change anything at all once the Board hears all the facts. He said that, even in a negotiation, he believed the Board would see that the right course was being taken. He added that he did not recommend that the Board take any action on this tonight, that if they really wanted to get more information about it, then that would be his recommendation. He said that then they could come back to the next meeting, voting after they know all the facts. Regarding the BOA, Mr. White said that they would never be involved again, as they made their decision, with that decision currently being appealed to the Superior Court. He added that, in the talks he has had with Mr. Vaniotis and what he, himself, knows about the case, he does not think that the Board should just assume it would cost the Town money. He added that he believes there is a very good chance that the Town would get their money back, most likely not from Mr. Woods but from the insurance companies because there has been a real mistake by the insurance companies insuring the titles on this land.

6:49 PM

The Chair wanted clarification around time and if the Board had to make a decision tonight or could the Board have some time.

Mr. Fernald clarified that the ordinance said on a timely basis and, as Mr. Manero said, the Board made a decision and Mr. Manero came to the next meeting, asking the Board to review the C.A., which was denied and the ordinance says that it must be done on a timely basis and stipulates that it must be done by the next meeting, which was done.

Nancy Shapleigh said that, at that meeting that Mr. Fernald was referring to...

BOARD OF SELECTMEN'S MEETING
January 28, 2010 6:30PM (continued)

Mr. Fernald said that that was the meeting in which it was asked that the C.A. be revisited and no one from the Board did.

Mr. Moynahan clarified that he chose not to alter his motion.

Ms. Place clarified that what she remembered was that no one said anything at all.

The Chair asked for the Board's pleasure.

Mr. Fernald clarified that he didn't think they had much choice, as they had to go by the ordinances and, until Mr. Blanchette reads the particular ordinance, he suggested the BOS should wait to make any decision.

6:52 PM Mr. Blanchette read from page 5, (11) "*Ordinance Governing Boards, Commissions and Committees: "If not otherwise dictated by law or ordinance, a motion to reconsider a prior motion of the board must be made by a member who had voted in the majority on that action. The second to that motion may be by any member who participated in the original voting. A vote to reconsider must be timely and must be taken up no later than the next regularly scheduled meeting and completed, if reconsidered, by the following regular meeting. If a vote to reconsider is passed the board may, at its pleasure, take additional testimony during their deliberation."*

The Chair confirmed, after hearing the ordinance read, that the BOS could take no further action.

Mr. Manero thanked the BOS for letting him present his case.

Department Head/Committee Reports

6:55 PM Mr. White discussed a legal violation notice regarding Dana Norton's Repair Garage on Main Street. He said this situation has been going on for a number of years and he had written a violation letter to Dana Norton last year in April. He explained the violation letter talked to the fact that he had been parking too many vehicles in violation of his Planning Board approval, making more noise than he should and working outside approved hours. He said that he has been working with Mr. Norton ever since he started working for the Town to get him into compliance with the ordinances but continues not to. He added that Mr. Norton went to the BOA in either June or July, he thinks, and the BOA denied Mr. Norton. Mr. White said that he continued to get complaints from the neighborhood and that, now, he would like permission from the BOS to seek an 80K Violation from the court. He clarified that this situation has gone on for a long time and he is at a point where something needs to be done about it.

Mr. Fernald asked for clarification from the CEO.

Mr. White clarified that he was asking for permission to file a complaint in Superior Court.

Mr. Fernald clarified that that would mean additional expenditures for the Town.

Mr. White agreed it would cost money.

Mr. Fernald said that he would like to recommend that the BOS have Mr. Norton come in and discuss this particular situation. He added that if there is no positive response, then the BOS could go forward, but he would rather take that step instead of spending the Town's money.

Mr. White agreed that would be good but his feeling was that he did not believe that would work.

Mr. Fernald commented that this violation has been going on for a while and does not believe a couple more weeks would make that much difference and believes having Mr. Norton coming in would be worthwhile.

BOARD OF SELECTMEN'S MEETING
January 28, 2010 6:30PM (continued)

Ms. Place agreed with Mr. Fernald.

The Chair commented that Mr. Norton has done a great deal for the Town and, if there was any possibility of having him comply, she would like to see that done. She added that the BOS could set a deadline and then, if he does not comply and recognizing that they could not let this violation go on forever with the impact to other residents in the Town, the Town could take further action.

By consensus, the Board agreed to have Dana Norton come in to the next scheduled Board of Selectmen meeting to discuss the violation and resolution. The Board asked Paul White to contact Mr. Norton to ask him to attend the next BOS meeting.

Mr. White agreed.

Mr. Moynahan asked that Mr. White be available, if possible, for that meeting as he thought it would be important to have all the facts presented, neighbor complaints, specifics of the violation, etc.

Mr. White agreed he would be available.

Old Business (Action List):

7:02 PM

A. Job Review Form

The Chair commented that they are proceeding with the job review form.

B. Road Commissioner Job

The Chair commented that the BOS had the Road Commissioner job description.

C. Business Registration Ordinance

The Chair said that the BOS needed to schedule this for a future meeting. She suggested that, if it is okay with the Board, they ask the Business Development Committee come in to meet with the BOS, as they have had a large part in its' development.

7:03 PM

D. Use of Town Vehicles

The Chair discussed this policy and said that the only thing she thought the Board needed to address was to vote on whether the policy concerning Town vehicles would, or would not, be applied retroactively. She did add that it was applicable with any new hirers and asked for Board member input.

Mr. Fernald agreed that that was his recollection.

The Chair said that she would entertain a motion on this. She added that she would welcome discussion but would like a motion, first, that the policy concerning the use of Town vehicles would not be applied retroactively but would be in effect henceforth.

Mr. Moynahan moved, seconded by Mr. Fernald, that the Use of Town Vehicles Policy will not be applied retroactively but will be applied henceforth.

Discussion:

Mr. Fernald said that he understood the concerns of Eliot residents regarding taking vehicles out of Town. He added that people also had to realize that negotiations in hiring people are done many times with certain things being

BOARD OF SELECTMEN'S MEETING
January 28, 2010 6:30PM (continued)

applied, such as taking vehicles home if living far away, and this needs to be respectfully considered, as well.

Mr. Moynahan commented that, while acknowledging Mr. Fernald's point, this was not something they were authorized to do by this Board – negotiating those vehicles – but that can't be taken away now, as it is too long-standing.

Ms. Place said that she still believes the policy should be done retroactively and is why she believes the policy was rewritten. She added that many citizens were upset that the police vehicles were being driven to Scarborough and Falmouth, Maine and she agrees. She reiterated that she felt it should be retroactive and not include those two vehicles.

The Chair commented that she believed, if it helps at all, that this would end up being a non-issue by summer.

Mr. McPherson asked for clarification from Mr. Fernald regarding his comments around hiring negotiations.

Mr. Fernald clarified that, when they sit down to hire police officers, they talk to them about some of the benefits that are part of being hired. He said that, over the years, it has been allowed that police officers and other personnel be able to take their vehicles home as part of the hiring negotiation. He added that he agreed that the Town should not be doing that.

7:05 PM There was discussion among the Board members that the two vehicles going out of Town would most likely be a non-issue by summer.

There was no more discussion regarding the motion and the Chair called for a vote.

VOTE

3-1

Chair concurs with majority

E. Police Contract - ongoing

Mr. Moynahan commented that they are continuing their work on this.

New Business (Correspondence List):

#1 TO : Board of Selectmen
FROM : Rosanne Adams
REF : Eliot's Incorporation

The Chair read the memo from Ms. Adams: "*March 1, 1810, (which this year occurs on a Monday) the Town of Eliot was incorporated. Have the Selectmen thought of doing anything to mark the occasion?*"

I was thinking it might be nice that day (and a great kick-off of our Bicentennial Events/year) to have all Town employees and the public gather (in or outside as the # of bodies permit) and have a short ceremony honoring the occasion. ?? Perhaps:

Pray for America (I have one.)

Raising of the Flag, and song

Pledge of Allegiance

Reading of the proclamation of our incorporation from the Mass. Legislature

Poem perhaps or short background to the day (Eric C. has collected some material so perhaps he could present the information)

Closing Benediction – local pastor

If you haven't thought of doing something perhaps you might bring it up at the next meeting? I really think it would be very important to do SOMETHING ☺

BOARD OF SELECTMEN'S MEETING
January 28, 2010 6:30PM (continued)

*Peace,
Rosanne"*

The Chair asked if the Bicentennial Committee discussed this, as she didn't want to step on any toes.

Ms. Adams said that they had not yet discussed it.

Mr. Fernald said that he thought it was a good idea and that he has been attending the Bicentennial Committee meetings. He added that he thought this would be a good kick-off for the birthday of Eliot.

The Chair said that she thought it was a wonderful idea and asked what the rest of the Board thought.

The rest of the Board was in favor of this.

The Chair asked if someone would like to volunteer to be a subcommittee and put this together.

Mr. McPherson commented that he would like to see it run by the Bicentennial Committee. He said that he would like to think they are all behind this.

The Chair agreed.

Ms. Adams said that the committee would not be meeting until just before the anniversary date and did not believe they would be able to plan this in that short amount of time.

Mr. Fernald clarified that the Bicentennial Committee is aware that this was being presented to the Board and suggested that, maybe, the Town employees could help with this.

The Chair clarified that they would do this at the Town Hall.

Mr. Fernald agreed.

Mr. Moynahan asked if there was a staff meeting next Wednesday.

Mr. Blanchette said yes.

Mr. Moynahan asked if this might be brought up at that staff meeting to see if the staff could coordinate this with other departments, so the Town Hall could take the reins and make it happen.

Mr. Blanchette agreed.

The Chair commented that the Selectmen are invited to attend staff meetings and it would be good if any two could do that. She suggested that, once plans are started, to keep the Bicentennial Committee in the loop. She added that Ms. Adams included a poem entitled The First Town Meeting, which is hilarious, and the suggestion was that this could be read at the event.

7:13 PM
#2

TO : Board of Selectmen
FROM : Melinda M. Longtin
REF : Requesting new Deed

The Chair invited Ms. Longtin to speak to her request.

Ms. Longtin gave a history of the purchase of several lots by her grandparents for back taxes owed on said lots. She explained that one lot in particular, Lot 23 even though legally purchased and yearly taxes paid since 1953, was not properly

BOARD OF SELECTMEN'S MEETING
January 28, 2010 6:30PM (continued)

recorded in Alfred at the time of purchase. She clarified that they are requesting a new deed be drawn up so that they can record it in Alfred and have clear title.

The Chair asked for Mr. Blanchette's input.

Mr. Blanchette said that he did not see a problem doing this and added that it was his recommendation that the Board contact Duncan McEachern and have him draw up the deed to make sure it is done properly.

Mr. Fernald clarified that Ms. Longtin did have a letter sent to the Cretchley heirs with no response and asked if that was a registered letter.

Ms. Longtin said that it was done through their lawyer, Bruce Whitney, and she provided the Board with a copy.

Mr. Fernald asked if she could show that the letter was actually received by the Cretchley's.

Ms. Longtin said that, according to their lawyer, one of the heirs did make contact and told the lawyer not to call his mother again.

7:17 PM Mr. White said that it was not possible to reverse the combining of the lots, if that is what she was asking for and asked for clarification.

Ms. Longtin said that it was not a matter of reversing the combining of the lots but having a clear historical title.

Ms. Shapleigh clarified that a deed that is not properly recorded can still be a legal deed as long as it has not been sold without the notice.

Mr. Moynahan moved, seconded by Mr. Fernald, that the Board do whatever was necessary to issue a new deed to give Ms. Longtin clear title to this property.

VOTE
4-0
Chair concurs

Ms. Longtin thanked the Board and let them know that she would like to donate to the Town the original document she holds of the 1937 Shadowland Company Subdivision Plot Plan.

The Chair thanked Ms. Longtin and suggested she get together with Dan Blanchette.

7:22 PM

#3 TO : Board of Selectmen
FROM : Dan Blanchette
REF : Proposed change to Personnel Policy

The Chair said that they were scheduled for the first reading of the proposed overtime policy. She clarified that, last time, they had talked about crafting new wording regarding the overtime policy, which Mr. Fernald was going to work on, and asked if the Board wanted to wait until they received that new proposed wording.

Mr. Fernald said that he believed the Board also discussed the old policy that they had was the correct policy and that was what he would present.

The Chair commented that Mr. Fernald was understood and added that there was also some discussion regarding holidays.

BOARD OF SELECTMEN'S MEETING
January 28, 2010 6:30PM (continued)

7:25 PM

Mr. Moynahan commented that it was suggested by a couple of board members, but does not believe it was the consensus of the Board, that the Board would be going back to the old policy. He said that he would change and add to the language of the current policy, that for any employee that works on a holiday, that he be paid time and a half and it was as simple as that. He added that they had discussion on this policy for about a year and a half and they are setting themselves up to pay time and a half on all earned time as it is stated right now...anyone can work at any time can work 40 hours, take 10 hours of vacation and get paid overtime on vacation time. He clarified that it is not just the Highway Department but the Police Department falls under this as well. He added that the Police Department benefits the most as the language is written, currently. Mr. Moynahan said that the Board corrected that and, to go back in time, he believes, is the wrong move for this policy.

The Chair agreed that the Board did have a long discussion regarding the language of this policy and added that that was one of the things they wanted to bring up at the workshop, i.e., some of the reasoning behind the policy, money being one of the major issues but also the reasoning, as Mr. Moynahan has addressed. She asked for the pleasure of the Board. She clarified that Mr. Fernald wants to change back to the old policy and Mr. Moynahan was suggesting we look at it again.

Mr. Fernald moved, seconded by Mr. McPherson, to move back to the old original policy regarding overtime pay.

Discussion:

Ms. Place asked if the members would then have the opportunity to change wording in that policy.

The Chair clarified that then Board would have to revisit it all over again.

Mr. Fernald said that they would have the opportunity each time it came up to make a change but every time a change was made it would have to be the next three meetings before it could actually be voted on.

The Chair agreed that was the process and asked for any further discussion.

There was none.

VOTE
2 for-2 opposed
Chair votes with the 2 opposed
and the motion fails

The Chair said that this issue would be brought up at the workshop for further discussion.

7:27 PM

#4

TO : Board of Selectmen
FROM : Grant Hirst
REF : Vision Statement – Insurance/Risk Management Committee

The Chair said that the Board has a proposed Vision Statement from the Insurance Committee.

Mr. Hirst said that he would like the Board to review the Vision Statement and either accept it or change or whatever the Board wishes to do with it. He added that that would be his bible for what he would do going forward.

Mr. Moynahan said that, in reading and reviewing this, it covers exactly the same areas of concern this Board has had all along. He added that Mr. Hirst sums it all up and is a great start.

BOARD OF SELECTMEN'S MEETING
January 28, 2010 6:30PM (continued)

Mr. Moynahan moved, seconded by Mr. Fernald, to approve the Insurance/Risk Management Committee Vision Statement, as written.

VOTE

4-0

Chair concurs

Mr. Moynahan commented to Mr. Hirst that he thought Mr. Hirst was doing a phenomenal job.

The Board concurred.

Mr. Hirst asked if this was considered an ad-hoc or standing committee.

The Chair asked Mr. Blanchette to clarify the difference.

Mr. Blanchette said that the Board would have to determine it was a standing committee and it is an ad-hoc committee of the BOS, as it is right now.

Mr. Moynahan suggested keeping it as an ad-hoc committee because the department heads that comprise the members would be changing each year.

By consensus, the Board agreed to keep the Insurance/Risk Management Committee as ad-hoc.

7:30 PM
#5

TO : Board of Selectmen

FROM : Jon Carter

REF : Memorandum of Understanding – Joint Engineering Study

The Chair said that she had a couple of initial comments. She said that there is nowhere in this document that says anything about the \$220,000 will be deducted from the original sum of \$379,000, which she was very uncomfortable with. She added that there were also no attorney comments and asked if this document had been given to the attorney for his review. She explained that that keeps coming up over and over again and could be awkward if those two issues are not clear. She invited Ms. Fryer to speak.

Ms. Fryer gave a brief overview for the benefit of the new Board members. She discussed the three documents the Board had in front of them. She said that first was a contract with SEA Consultants and they are Kittery's sewer consultant. She added that the contract is for \$119,000 and that covers work within the bounds of Kittery, of which CLD will be doing the survey and base plan preparation for SEA so that they will have one cohesive plan between Eliot and Kittery. She explained that the basis of the contract they prepared and the scope of work is based upon everything that they had between members of the Eliot Negotiations Committee, as well as John Carter (Kittery Town Administrator), Steve Tapley (Kittery Sewer Department) and the consultants. She said that the information was presented at a public meeting in December and the Town voted on it earlier this month. Ms. Fryer said that the second document is an agreement for CLD for \$83,000. She explained that that covers work to look within the TIF District, itself, as well as an investigation of the existing system across Bolt Hill Road to determine if the existing system can be improved and upgraded to address the issues the Town has with the current system and handle the additional flow from this TIF District. She added that this would be used as a comparison between that cost and the cost of going through Kittery. She said that it should be noted that the cost of going through Kittery they will also be looking at, in this study, what areas could be sewer in Kittery and the benefit of doing that is, if they determine that they could provide municipal sewer service to people in Kittery, then they would have some capacity in that major trunk line that Eliot would be investing in and that could lower the costs to Eliot. She clarified that Eliot would pay to install the infrastructure and then, at some later date, they may come and add capacity for their own sewer – they are looking at it jointly so there could be cost sharing and, hopefully, reduce the costs that would come from the TIF money. Ms. Fryer said that the last document is the Memorandum of Understanding. She explained that she had only received this a week ago and she had not been involved in the

BOARD OF SELECTMEN'S MEETING
January 28, 2010 6:30PM (continued)

7:37 PM

negotiations part of it and agreed with the Chair that this document should be reviewed by the Town attorney. Kittery has reviewed it with the Town Council and have approved it. She added that Kittery is looking for Eliot to approve it, as well, so that everyone could move forward. She added that if there are issues and the Board has questions about any of these documents or the Board feels they need to do some more detailed study, whether they sign the documents or not tonight, there will be a meeting in the near future to discuss everything that is in the documents, with any provisions that might need to be made, then they could be made at that time. Ms. Fryer said that it is SEA's intention, even if the contract is approved tonight, that that meeting would be to finalize the scope. She explained that, if there are some adjustments that need to be made to the scope or to the fee, then they could agree on that at the meeting, if needed, and alter the contract with an amendment.

The Chair reminded the Board that the Town did vote to include \$17,000 in the warrant article for legal and that should cover any attorney work needed. She said she still has concerns about that and, as the document is stated, that it will not be added onto the sum of \$379,000 but deducted from and that wording is not in the document.

Ms. Fryer said that, in the discussions with Kittery, there is an amount of money that Eliot would be expected to pay in – three different areas Eliot would be expected to pay in – but there is an area in terms of the infrastructure investment and what Kittery has agreed to but, as the Chair stated, what is not in this Memorandum of Understanding is whatever work Eliot does in Kittery would directly reduce the amount that Eliot would have to pay in the agreement.

The Chair agreed and clarified that she does want that in the document. She asked for comments from the Board.

Mr. Moynahan suggested this be reviewed by the attorney, for sure, especially having town engineers doing this and it never having gone out to bid. He added that they were banking on the fact that the Town is getting the best bargain from both companies in both towns. He said that they have no safeguard here and the least this Board could do would be to have the attorney review and make sure the contract is solid.

It was the consensus of the Board to have the attorney review these documents first.

Ms. Fryer said that, before she leaves, she would like to get a meeting workshop scheduled to discuss the scope of work for both CLD and SEA.

The meeting was scheduled for February 10th at 8 AM.

Ms. Fryer said that, regarding the Memorandum of Understanding, either the whole Board or a partial Board needs to at least meet with John Carter (Kittery) to negotiate as the Town Council has already approved it. She added that didn't think there would be a problem but believes it would happen a lot faster if there was a face-to-face meeting.

Mr. Moynahan suggested that this Board get back to Kittery and let them know that, in principle, this Board is on board with this and they are just waiting for the attorney to review the documents. He added that he thinks everyone is comfortable with this and this is just the next step in the process and that this Board does not want to hold up the process any longer than they have to.

The Chair asked for input from the CEO.

Mr. White suggested that it might be helpful for Ms. Fryer, tonight, that she know who she should contact at the Town office.

The Chair agreed.

BOARD OF SELECTMEN'S MEETING
January 28, 2010 6:30PM (continued)

7:40 PM Mr. Moynahan suggested that, based on the amount of work that's been put forth and the direction it is heading, Mr. White would be the best person with his knowledge of sewer, what he's done in Mr. Blanchette's absence and to maintain consistency, it would seem to make sense for him continue to be the point person for this.

By consensus, the Board agreed.

Mr. Moynahan suggested that it should be as the negotiating committee was before, as they should not have all five Board members at that meeting, which was himself, the Chair and Paul White.

Ms. Fryer said that she thought it was important to have all the Board members attend so that they can ask questions to Mark Thompson from SEA and to her (CLD) about the contract so that the full Board understands what is there.

Mr. Moynahan said that they would need to make sure it was publicized properly, as that would be a Board meeting.

The Chair agreed.

Jim Marchese asked if the Board wanted a representative from the Sewer Committee to attend that meeting.

Mr. Moynahan commented that the Sewer Committee is going to play an integral part during this whole process so the more they could be notified and available for all these steps he thinks was very important.

7:44 PM
#6

TO : Board of Selectmen
FROM : Sewer Committee
REF : Sewer System Mapping

The Chair suggested to Mr. Marchese that this might be a budget proposal.

Mr. Marchese clarified that the Sewer Committee was asking the Town to appropriate \$6,000 to do the mapping of the sewer system and add that information to their GIS. He added that they believe this is sewer-related and should come from the sewer fund. He said that, with the system mapped, then they could get a clearer picture of the system and move forward with their _?_ issues and try to eliminate that. He added that this is all to do with the sewer system and trying to make it a better, smoother running system.

Mr. Fernald asked Mr. Blanchette if this could be taken from the sewer monies.

Mr. Blanchette said yes, that it could be taken from the sewer monies and the money is in that account.

Mr. Moynahan moved, seconded by Ms. Place, to appropriate \$5,960, as requested, from the sewer account for the GIS mapping of the sewer system.

VOTE

4-0

Chair concurs

7:47 PM
#7

TO : Board of Selectmen
FROM : Sewer Committee
REF : Municipal Tax Increment Financing Administrator

Mr. Marchese said that the Sewer Committee feels that, if there were a point person involved, whether it be a current Town employee or if the Town decides to hire out for that position, the actual meeting the goals of the TIF might be made easier to achieve if there is a designated point person. He added that they tried to hit some of the areas in the schedule that need to be met in order to meet the TIF requirements.

BOARD OF SELECTMEN'S MEETING
January 28, 2010 6:30PM (continued)

Mr. Moynahan said that he was thinking that, between Mr. Blanchette and Mr. White, they could get together and act as one administrator. He added that the Board has Mr. White as point person for a portion of this and Mr. Blanchette, with his history with the whole process of the TIF before, did Mr. Marchese think that the combination of those two would serve that purpose.

Mr. Marchese clarified that he believes this would take considerable time and they need someone who has the time to devote to this and, if the Board decides to appoint one or two people from the Town, then they need to have their schedule adjusted so that they have an appropriate amount of time to handle this.

The Chair questioned where the money would come from to hire someone.

Mr. Marchese said that, if the Town hired someone from the outside, the money would have to come from the TIF, itself.

Ms. Place asked how much time would be needed.

Mr. Marchese explained that it would depend on the phase of where they were at. He clarified that there would be times when not much time would be required but scheduling is key, making sure that all of the proper parties are notified, making sure that the legal aspects are being taken care of, etc.

Mr. Moynahan suggested that, first, perhaps Mr. Blanchette and Mr. White could get together, review this and see if it is something they could in fact spearhead, make the time for and produce results. He said that before looking to hire outside he believes the Town has two very capable and qualified people that, as long as the time is available during the day, he would be very comfortable with them making sure this got spearheaded. He added that he thought that might be too much to ask one employee to do.

Mr. McPherson agreed with Mr. Moynahan and that they should at least let them try it to see if it would be too much of a burden and then, if it does, consider hiring someone, especially sine they don't know what's ahead of them this year budget-wise.

Mr. Moynahan agreed. He asked if Mr. Blanchette and Mr. White thought they would be able to do this.

They both said they would give it their best try.

Mr. Moynahan said that they would find out if this was manageable and might find out it is not something they could do but he believes it is worth looking at, first, and the sooner the better.

The Chair said that the Board would keep this on their Action List.

7:50 PM
#8

TO : Board of Selectmen
FROM : Wendy Rawski, Town Clerk
REF : Appointment of Sewer Committee

The Chair said that the Board had appointments to make to the Sewer Committee.

Mr. Moynahan moved, seconded by Ms. Place, to appoint all members, as listed: James Marchese (2010), Jack McDonough (2010), Nancy Shapleigh (2011), Stephen Beckert (2011), Richard Russell (2012), Russell Sylvester (2012), Grant Hirst (2013), and John Murphy (2013) to the Sewer Committee, with terms to expire, as stated.

VOTE
4-0
Chair concurs

BOARD OF SELECTMEN'S MEETING
January 28, 2010 6:30PM (continued)

At this time, the Board members signed the appointments.

7:51 PM
#9

TO : Board of Selectmen
FROM : Treasurer of State
REF : Notice of interest rate

This was informational only.

7:53 PM
#10

TO : Board of Selectmen
FROM : Road Commissioner
REF : Position at Transfer Station

Mr. Fernald moved, seconded by Mr. Moynahan, to move Roger Cullen to a regular part-time position at the Transfer Station.

Discussion:

Mr. McPherson asked how many people currently worked there.

Mr. Blanchette said that they had 4 regular employees – two full-time and two part-time, then two call-in positions.

Mr. McPherson said that he noticed in the payroll that it has been costing \$3,000/week at 52 weeks for about \$260,000 for labor at the Transfer Station and that is terrible. He added that he thought they could contract the operation out for half that money.

The Chair said that would be something they could talk about during this budget season and it would be added to the Board's workshop.

VOTE

4-0

Chair concurs

7:55 PM
#11

TO : Board of Selectmen
FROM : Fred Forsley
REF : Follow-up of telephone conversation

The Chair invited Mr. Forsley to speak.

Mr. Forsley introduced himself and said that he owned Eliot Commons, which is owned by the corporate name of Sea Dog Realty. He added that he was also involved with Shipyard Brewing Company and have been involved in businesses in Maine his entire business career and, while he went to UNH, he is born and brought up in Maine. He said that they spent a lot of time and energy getting a TIF in the Town – a 30-year TIF approved in February 2009, Eliot Commons Business TIF. Mr. Forsley said that he has had quite a bit of experience with TIFs and had one of the more successful TIFs in the State of Maine, which was a brewery site in Portland and was an abandoned site, bringing that property back and led to over 400 jobs in the State of Maine. He added that he just wanted to give people a kind of framework of how they find themselves here.

The Chair commented that it was her understanding that, right now, they are in discussing the contract because of two points of contention. She clarified that one is the benchmarks and the other is the assignability.

Mr. Forsley clarified that they had a number of meetings, with a number of discussions, probably five or six, and then, on December 30th, he actually met with Ms. Place and Mr. Blanchette to discuss the points and felt, through that subcommittee, felt they all came to a pretty good understanding on an agreement on a final document. He added that he was unable to be at the last meeting in which two documents were presented. He clarified that the document that he felt was the document he and Mr. Blanchette and Ms. Place talked about and, in his

BOARD OF SELECTMEN'S MEETING
January 28, 2010 6:30PM (continued)

opinion, had an agreement on, was the document that reflects the development agreement. He said that the Credit Enhancement Agreement (CEA) should have been signed shortly after the Development Agreement and not this long a time. He commented that, with a variety of unforeseen issues, there was a delay. He said that he had gone ahead and spent capital, working forward, and actually done a lot of progress in trying to move forward in developing the site further, such as doing market studies. He added that, that being said, he really didn't want to debate in open forum things that weren't approved, in his opinion, at the Town Meeting. He explained that, at the Town Meeting, there were a number of questions asked of him, one of them being if he needed to be assignable and he thinks he was very adamant at that meeting that he needed to be assignable and needed the time periods he was asking for because of the location of the site and the business climate at the time and he believes the people who voted on the TIF, at the time, understood what they were voting on. He added that, then, the Town looked to an outside attorney who was not involved in the process and the attorney came up with some requirements that were business decisions that were already made but the recommendations clouded the real issue of just documenting the administrative process what had already been voted on and approved. Mr. Forsley explained that the CEA is simply a reflection of the agreement between his business and the Town, reflecting the Development Agreement that has already signed by the State, the Town and himself.

The Chair commended Mr. Forsley for his accomplishments at Eliot Commons and commented that she thought his accomplishments were amazing. She clarified that, as far as the Town vote, they voted on the concept not the contract. She added that they had not seen the contract but everyone agreed the concept was a good one. She said that she believed the two points do need to be discussed and clarified. She said that she had a question around the word "unreasonably" and added that that word was not clearly defined for her.

Mr. Forsley clarified that the Development Agreement was part of the Town vote. He clarified that the word "unreasonably" is a term used in a number of contracts in which someone could interpret that it would be reasonable as long as someone has the financial capability and they are an upstanding citizen. He added that many times with real estate leases it will say one can assign this lease but would need to be approved by the landlord and the landlord cannot unreasonably withhold consent. Discussing the benchmarks issue, he said that, in his opinion, that was discussed a number of times and as a business owner it is his goal to try to develop this property and anything that prohibits him or makes it more difficult is going to make the likelihood of that happening lessens considerably or gives people less reasons to try to make it happen.

The Chair agreed and she reiterated that she highly approves of what Mr. Forsley has done but a lot of things can happen in 30 years.

Mr. Forsley commented that they all debated that and the Town voted for this TIF and he spent a great deal of time and money developing this TIF.

The Chair clarified that she was concerned for what would happen, regarding the 30 years, if Mr. Forsley should sell the property.

Mr. Forsley said that that was the reality that was discussed during the meetings in that this location for a commercial development is very difficult. He clarified that anyone would need these types of enhancement to make it happen here. He added that, as discussed in the meetings, with this location it could take from 3 to 5 to 8 years to get something developed there and then one needs that time and what one is really doing is reinvesting tax money that wouldn't be paid unless one developed the deal.

The Chair agreed with Mr. Forsley but was concerned with what would happen if someone else came in in ten years time and just sits on it. She added that she was just looking out for the interests of Eliot.

BOARD OF SELECTMEN'S MEETING
January 28, 2010 6:30PM (continued)

Mr. Forsley said that it wouldn't matter because the only reason someone would get involved with this property is in the belief they could do something with the property. He clarified that it wouldn't protect the Town by making it more restrictive but protecting the Town by making it say that Eliot is open for business and they are making it happen here.

8:05 PM Mr. Fernald asked, for his own understanding, if Mr. Forsley doesn't build a building, he doesn't get TIF money because the money is actually on the development and that is where the TIF money comes from.

Mr. Forsley agreed and clarified that the increased tax base gets reinvested so, if nothing happens, there is a minor amount of the increased tax base that would be going in from the initial investment that he has already made in the property. He said that, if nothing else happens for the next 30 years, the Town is not out any money, as it doesn't cost the Town anything. He added that, more importantly, the owner of the property would have made a huge mistake in a business venture. He added that, in order for him to be successful there, is for that property to be fully developed.

Mr. Fernald said that his concern was for the Town. He added that, if benchmarks are applied to this development, then it does nothing for the Town because, if Mr. Forsley doesn't build a building, then the Town doesn't get any monies from the TIF. He added that, if Mr. Forsley does nothing at all, then nothing happens and the Town, itself loses nothing. He commented that that is why he doesn't understand why the attorney has asked for benchmarks.

Mr. Forsley suggested that, when attorneys look at things, they create hypotheses, and when an attorney is brought in at the end of a deal after it has already been done it is his contention that the attorney is saying one could have done this and could have done that. He said that he had already spent a substantial amount of money to draw up the document and the attorney comes up with a bill twice the amount to come up with ideas of things the Board could have done. He clarified that the reality is that there are have been lot of smart people involved in this process and a lot of energy was expended and that's what lawyers do.

The Chair asked for Ms. Place's input.

Ms. Place said that she and Mr. Blanchette met with Mr. Forsley and that the benchmarks were added after the agreement was made and she wasn't sure that wouldn't end up changing the game. She added that if the benchmarks are unnecessary then the amount of benchmarks are completely out of line, especially given the economy everyone finds themselves in now.

Mr. Moynahan wanted to know the opinion of the committee on the necessity of these benchmarks.

Ms. Place said that she read through both documents and does not believe the two things are necessary.

Mr. Moynahan moved, seconded by Mr. Fernald, that the Board of Selectmen approve the Credit Enhancement Agreement, as supplied by Sea Dog Reality, between the Town of Eliot and Sea Dog Reality.

VOTE

4-0

Chair concurs

8:12 PM
Selectmen's Report:

Mr. Moynahan said that he would like the Board to entertain altering the current user sewer rates. He explained that Eliot residents are paying far less than Kittery residents and he believes this would be the time to start fixing that problem – that longstanding shortfall – so the TIF district does not pay for everything that Kittery is asking for with respect to the improvements at their facility. He added that he

BOARD OF SELECTMEN'S MEETING
January 28, 2010 6:30PM (continued)

thinks it would be smart of the Town to look at the existing sewer usage rates. Mr. Moynahan said that they would get some information from Kittery on that and hopefully come up with a recommendation as to what dollar figures, what changes, what impact to revenues, etc. and he would hope the Board would entertain making some changes.

The Chair asked for comments.

Mr. Fernald said that he agreed that the Board should look at this but was not sure they should increase the rate because of the economy.

The Chair commented that they may not have a choice as Kittery may be increasing their rates, anyway.

Mr. Moynahan said that, as the contract is written now, if the TIF doesn't happen, Kittery is still going to be after Eliot to change and alter their current contract, which includes paying for infrastructure improvements at that facility. He added that, at some point in time, Eliot residents are going to have to pay for improvements and it would be easier to start slowly now. He said that he would provide information on rates at the next meeting.

Executive Session

There were no Executive Sessions held tonight.

Other Business as Needed

8:15 PM Mr. Fernald asked if the Board would entertain him being the liaison between the Board and the Bicentennial Committee.

The Board agreed by consensus.

The Chair reminded the Board that they had a workshop on February 2nd at 5PM to bring the new members up to date.

At this time, the Board signed the agreement with Sea Dog Realty.

Adjourn

Motion by Ms. Place, seconded by Mr. Moynahan, to adjourn the meeting at 8:30 PM.

VOTE
4-0
Chair concurs

DATE

Roberta Place, Secretary