

BOARD OF SELECTMEN'S MEETING
March 25, 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)

6:32 PM Motion by Mr. Fernald, seconded by Mr. McPherson, to approve the minutes of February 25, 2010, as amended.

VOTE
4-0
Chair concurs

Motion by Mr. McPherson seconded by Mr. Fernald, to approve the minutes of March 9, 2010, as amended.

VOTE
4-0
Chair concurs

Motion by Mr. Fernald, seconded by Ms. Place, to approve the minutes of March 16, 2010, as written.

VOTE
4-0
Chair concurs

Motion by Mr. Fernald, seconded by Ms. Place, to approve the minutes of March 18, 2010, as written.

VOTE
4-0
Chair concurs

Motion by Mr. Fernald, seconded by Mr. McPherson, to approve the minutes of March 23, 2010, as written.

VOTE
4-0
Chair concurs

Public Comment:

6:35 PM The Chair recognized Mr. Sinden

Mr. Sinden, speaking as Maine State County Commissioner, discussed two items. He said that papers are now available for the Charter Commission for those who would want to be members. He explained that the process was to contact the Secretary of State's office, getting 50 signatures and getting them in by June 1st. He said that he has been going to the different towns stressing very strongly the importance of District 5 being well represented. He added that there would be nine appointed members, one from each district. He said that the first thing he noticed was that the interests of District 5 vary widely with the other districts on many issues. He added that the most glaring one over the years has been the police services, which he is convinced there is a solution to. He explained that they pay for their own police department in the millions of dollars and pay in, equally, for police services for the 14 small towns. Mr. Sinden said that he believes that issue could be corrected through the charter process and they need to have folks at the table. He encouraged people who are skilled at boardsmanship to get involved. Mr. Sinden commented that the second piece was to let Eliot know that the vote to exceed LD1 passed 4-1 and, in the end, he voted against it. He added that they are in the 45-day waiting period and, near the end of April, they will start to put county people back to work and services will start to be restored.

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Mr. Sinden, speaking as an Eliot citizen, wanted to know if the question of the TIF tax shift benefit was resolved.

Mr. Blanchette commented that they received a letter from Attorney Cook and explained that, when she talked about the tax shift amount, it wasn't the amount that was going to be in the TIF, it is the tax shift from the Town to the other entities, such as the amount that goes towards the totals for York County and the schools. He gave an example: if one has a 30 million dollar increase in one year, then the state doesn't recognize that increase that year in the state valuation but only recognizes it in its next cycle, so therefore, all the taxes of that 30 million dollars would stay within the Town and, then the following year or two, it would shift out of the Town and that was what the attorney was talking about.

Mr. Sinden discussed his concern that people would not realize that they would not get the benefit of the tax shift right away, that there would be a delay.

Mr. Blanchette clarified that the Town gets the tax immediately that first year. He clarified that, if the Town didn't have the TIF then, the second year, that 30 million dollars would then be on the state valuation and the Town's portion to the county and the school would be greater. He added that a large portion of taxes of that 30 million would go out of the municipal side. Currently, he said that, because Eliot does have a TIF, the taxes on that 30 million stays in the TIF from year one.

Mr. Sinden commented that it seems counter-intuitive and different from what was stated at the meeting. He asked for a copy of the letter from Attorney Cook.

Mr. Blanchette said that he would provide a copy of that letter.

Mr. Sinden said that, on August 13 (when he was a member of the BOS), the Board took two actions with regard to the Credit Enhancement Agreement for the Eliot Commons TIF: one was to have it reviewed by a Town attorney before discussing it with Eliot Commons people and, secondly, when completed, that the Credit Enhancement Agreement would be presented to the people as a warrant article at Town Meeting, which was passed 4-1. He commented that the statement that the Board was fully authorized to sign that isn't really true. He added that that needs to be presented to the Town.

The Chair clarified that, if the Board was constituted the same way as it was back then, then what Mr. Sinden was saying would be true. She added that this is, essentially, a new Board and, anytime it is a new Board, there are new rules. She said that, according to the Town attorneys, the Board had a perfect right to assign folks without putting it to the Town.

Mr. Sinden commented that the Board doesn't become a new Board until July 1 and that is why there is no new vote for officers. He said that two members were replaced but the Board continues until July 1 and a new Board takes over. He added that, until that vote is overturned in some way and he didn't know how it could be overturned because it was long past time for a vote to reconsider...

The Chair said that the Board would look into the point he raised and thanked him for his input.

Department Head/Committee Reports

6:40 PM The Chair commented that the Board had a request for the Planning Board to come in and invited the Planning Board (PB) to speak.

Mr. Beckert spoke, saying that there were four members from the PB here tonight and, if it was the Board's pleasure to take the PB out of order on tonight's agenda, the PB members would appreciate that. He added that they came tonight, at the

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Board's request, to discuss the Vicki Mills letter and, if the Board would allow him for the record, the PB did take an official vote to have him as their spokesman tonight and would like to make a statement on behalf of PB before any discussion happens. Mr. Beckert said that the PB was very concerned about the precedent that was being set by having the PB come in to discuss an application that has already been approved and gone 5 months beyond the approval date, has gone beyond the appeal date and said that there are appeal timeframes for a reason. He said that they had public hearings, as required by the ordinance, and had no comments from any members of the public, there was no appeal filed by any members of the public on the particular application and reiterated the OB's concern that they are a quasi-judicial Board and now discussing a letter that outdates a specific application that has already been acted upon and decided and has moved far beyond the timeframe for public comment and passed well beyond the timeframe for appeals. Mr. Beckert said that the PB was more than willing to take questions from the BOS on the letter.

The Chair asked if there were any questions from the Board at this time.

Mr. Moynahan asked why several things were waived on this particular application.

Mr. Beckert said that he did not know if the BOS had reviewed the entire application on the particular Eventide Subdivision, which is what Vicki Mills' letter was referencing, but clarified that that application first came to the PB in April of last year and was a real mess that was dumped in the PB's lap to correct that had been approved by previous CEOs'. He added that it had been disapproved by the current CEO and the applicant was directed by the current CEO that he would have to come before the PB, so the PB had a situation that was less than appealing, if you will, to start with. He said that, as with every application, the PB reviewed it to see if it met the requirements of the ordinance. He clarified that they are allowed, by ordinance, to waive certain sections of the ordinance, and that they do have criteria that they look at before they waive anything. He added that they went through every waiver request and that this particular application started in April of 2009 and did not end until October 2009, so was not a rush-rush type of situation. He added that everyone could read the minutes that show several meetings of the discussions and deliberations held by the PB for this application, along with the final vote, its' reasoning, and the Notice of Decision that was specific to the different sections of the ordinance. Mr. Beckert said that there are several things in Ms. Mills' letter that go back to a decision that was handed down by Justice Brennan. He commented that it is easy to take things out of context, but Justice Brennan said that there was no evidence that a waiver had been granted in that particular instance and he didn't say that waivers couldn't be given but that there was no evidence that a waiver had been granted. He clarified that Justice Brennan implied that, if a waiver had been granted, then the situation would have been different in that particular case. In addressing those issues in Ms. Mills' letter, Mr. Beckert clarified that the PB did act well within the ordinance and said that they do look at every waiver request on its' individuality and how the ordinance, in turn, affects the request and can the PB grant the request and still meet the intent of the ordinance while granting the waiver. He added that they are a quasi-judicial board with legal implications around decisions and appeals. He commented that, in this particular instance, Ms. Mills never sent anything in during the whole process, never questioned anything and her standing in an appeal to the Board of Appeals most likely would have been denied, as per the ordinance, she would not have had standing for something on River Road unless it is brought to the BOA by five members of the public.

The Chair asked if that criteria was written down anywhere.

Mr. Pollard said that Mr. Beckert stated it pretty well. He explained that, what they require of each applicant is, if a waiver is requested, the PB asks the applicant to request it in writing and provide a justification and that is made a part of the record for that application. He clarified that a lot of the waivers dealt with road issues on that subdivision. He added that there would be no new road constructed as a result of this subdivision, there was a pre-existing dirt driveway

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in place that pre-dated 1978, which gives the PB broad latitude to waive, and the applicant acknowledged on his plan that the road would never become a public road and he would not request that it become a public road. He explained that would service two of the four lots in that subdivision and the other two lots would be serviced directly from River Road. He added that was a good part of the justification and why it was acceptable. He discussed waiver requirements under the subdivision ordinance and read Section 41-67 Waiver of requirements: "Where the Planning Board finds that due to special documented circumstances of a particular plan, the provision of certain required improvements is not requisite in the interest of public health, safety and general welfare, or is inappropriate because of inadequacy or lack of connecting facilities adjacent in proximity to the proposed subdivision, it may waive such requirements, subject to appropriate conditions." Mr. Pollard said that appropriate conditions as the PB understands it and has always applied it are at the discretion of the PB. He added that, in their Notice of Decision letters, they most always apply conditions to the approval. He explained that that is the approach the PB uses and they look at each application based on its own special circumstances and whether it is reasonable or not to waive. He also said that there is no precedent set in any application because each case is unique. Speaking to the Justice Brennan decision, he said that Attorney Vaniotis advised the PB that they should consider waivers on applications such as the particular case under discussion.

6:53 PM The Chair said that she wanted to make it clear to everyone that the BOS have no power over the PB. She did add that they do have a concern for the citizens and, when a problem is raised, the BOS need to investigate. She thanked the PB for their information.

The Chair invited Ms. Mills to speak.

Ms. Mills commented that she believed the Board clearly misunderstood the purpose of her letter. She explained that it wasn't about subdivisions but about the PB's use of waivers. She said that the guidelines Mr. Pollard read for granting a waiver, in her opinion, were too subjective and would not hold up in court. She added that she doesn't believe the people in Eliot realize the power the PB has taken with these waivers. She said that, along with knowing that, the other purpose of the letter was to question whether the PB acted accordingly to the guidelines in granting the waiver.

The Chair recognized Mr. Sinden.

Mr. Sinden said that he was concerned for the same reason Ms. Mills discussed around the use of waivers, in general. He discussed the MMA, particularly the PB manual, and said that it is quite clear in the law that the PB may waive ordinances under certain circumstances. He added that they may not waive zoning ordinances or dimensional standards established by a zoning ordinance but other ordinances they can waive if the ordinance gives them that permission. He added that the ordinances must establish standards that clearly define when and how and why a waiver may or may not be granted. He said that it is clear to him that the threshold standard is hardship and the person requesting the waiver has to establish hardship. He said that they are clear that hardship may not necessarily follow the state law regarding appeals boards and variances but a definition for these types of hardships needs to be defined and he has not been able to find any definition for that in Eliot ordinances. Mr. Sinden said that "at the discretion of the PB" is not a standard and has no protection from abuse.

The Chair recognized Mr. Pollard.

Mr. Pollard said that he reread the letter from Mr. Vaniotis and there was a paragraph in it that spoke quite nicely to what Mr. Sinden was talking about that discussed York v. The Town of Ogunquit. He read: "A waiver of subdivision standards under subdivision ordinance is not the equivalent of a variance under zoning. So that a hardship case where there is no other economic use for the property, should it not be granted, is a variance standard. Consequently, waivers under a subdivision ordinance are not subject to the statutory undue hardship

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standard with boards of appeal are required to apply to zoning law.” Mr. Pollard said that the PB rights are clearly established, this letter is available as it is a part of the public record and he was sure Mr. Beckert would be happy to provide a copy to the BOS. He added that it is a 3-page letter specific to the particular case but a lot of it talks to waivers, in general.

The Chair recognized Ms. Shapleigh.

Ms. Shapleigh said that she wanted to say, for some of the folks that have moved into Town since zoning was originally passed, that zoning was voted down the first time and many folks were convinced to vote for this because they were told that, if they had certain circumstances and didn't fit in the little boxes that were being created by the zoning, then one could go to the appeals board and get a variance and the PB could grant a waiver or variance if one didn't meet some standard. She added that she believes most people in this community believe in live and let live and let people do what's reasonable with their land.

The Chair recognized Mr. Sinden.

Mr. Sinden said that he agreed with Mr. Pollard regarding undue hardship but he clarified that, further than that, it is clear that they need to establish a definition in Town ordinance as to what the standard will be for PB waivers. He added that the discretion of the PB is not a standard and he believes it is throwing the ordinances out of the window.

The Chair recognized Mr. Beckert.

Mr. Beckert said that, with all due respect to Mr. Sinden's comments, these ordinances have stood and been adjusted and have been voted on by the Town since the early '70's. He added that they have been changed to meet the needs of the people in this Town, they have the language that is acceptable by the State of Maine, acceptable by the State Planning Office and acceptable by the attorneys that have been defendable in court. He commented that, to have an ordinance that takes away the right for the PB or BOA to grant waivers under certain circumstances or undue hardships would be a travesty to the citizens of this Town. He added that this ordinance, as Mr. Pollard said, was applied by the PB to each individual application on an individual basis that come before them and they are not a precedent-setting board and the courts would tell the Board that. He reiterated that what they do on one application doesn't mean that automatically has to happen on another application. He emphasized that one has to look at each case on its own merits. Mr. Beckert said that those members that are not new have been to the PB training and seminars put on by the State Planning Office and that, reiterated at the state level, PBs have the latitude, per the ordinance, to grant waivers while making sure to the best of their ability that each and every application comply with the ordinance. He added that one cannot make everything comply with that ordinance, as there are certain circumstances on every application that are different and that is why the ordinance has those provisions included. He reiterated that that was why the ordinance has a 30-day appeal provision for a PB or CEO decision. He added that there are certain things in there not only to protect the Town but to protect the residents of the Town that this ordinance was put on the books to protect, able to use it and abide by it. He commented that the ordinances are looked at on a continuing basis and, with the passing of the Comprehensive Plan last year, the ordinances will be changed even more. He added that the Town works with Southern Maine Regional Planning (SMRPC) in revising ordinances so the PB is not just pulling things out of mid-air or on a whim but per the ordinance, which is the law in Eliot, and how the ordinance applies.

The Chair recognized Ms. Mills.

Ms. Mills said that she believes it is one thing if one is using waivers in special circumstances and it is different if one is using them as a general rule. She added that she had attended some of the meetings and, at one meeting, Mr. Pollard went

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down through every waiver that the applicant should ask for and she believes that was totally inappropriate.

The Chair reiterated that the BOS has no power over the PB. She asked if any of the members had questions or comments.

Mr. Moynahan said that he believes they have done exactly what they were asked to do by the resident, this Board is not the one to answer the questions raised and the PB came in on their own time to address the concerns. He added that, if change was going to happen, it would not be from the BOS but from the people.

The Chair recognized Mr. Place.

7:07 PM

Mr. Place commented that there are checks and balance built in so that when the PB looks at each application, individually, no matter how many conditions they place on that application at some level they would reach the need for some level of discretion in applying the ordinance. He added that, to counteract that, there is a 30-day appeal period that allows the PB decision to be challenged. He said that there is no setting precedent by the PB and they don't have the chance to abuse any power because that can always be appealed. He added that he believes the process is right where it should be.

The Chair recognized Mr. Pollard.

Mr. Pollard said that it is his belief that the PB is there to enforce the ordinances, as written. He added that it is not, however, their job to hinder an applicant as they move through the process and, in fact, he believes it is their job to offer assistance in terms of how the ordinance is interpreted or how the ordinance is written as part of their public meeting process. He explained that he, as other vice chairs before him, writes the Notices of Decision and motions to approve or disapprove and, as part of that, he keeps track of pertinent items in an application, for a subdivision in this case, so that they have a checklist of all the items an applicant is required to meet. He said that, as part of the process as they move through the application, he keeps track of those items that have been met and items that have not been met. He added that what they frequently do to keep applications from taking an extended period of time is to walk through, at the conclusion of the hearing of an application on any given meeting night, those items the PB considers open items that the applicant should be prepared to discuss at the next meeting. He explained that, as part of that process, he typically says to the applicant that he will need a request for waiver for the following items because the applicant has informed the PB he can't meet them. He reiterated that they do this for every applicant, that that is a normal part of the process and has been done at least 15 years, to his knowledge.

The Chair hoped he understood that this Board was concerned with the will of the people and the will of the people did approve those ordinances as they are written. She added that, if she were still on the PB, she would be asking if they could start rewriting some of the ordinances to make them clearer. She commented that some clarity might help the people better understand what's going on with the PB.

The Chair recognized Mr. Beckert.

Mr. Beckert said that the PB is in the process right now of working with SMRPC to revamp the subdivision ordinance.

Mr. Fernald thanked the PB for coming in and explaining the situation, bringing the BOS up-to-date on how the PB handles waivers, etc. He also thanked Ms. Mills for bringing up her concerns. He commented that this has been a good discussion.

7:12 PM

The Chair recognized Mr. White.

Mr. White reminded the Board of his email memo to them regarding the Fernalds and the payment of their court judgment/fine. He explained that she came in to his

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office and asked if the BOS would agree to a \$50-a-month payment plan, which he and Mr. Blanchette calculated would take about 7 ½ years to pay. He said that the decision was up to the Board and that is what Ms. Fernald said she could pay.

Mr. Moynahan said that he thought that was unacceptable. He said that they had dealt with her and this process all along and 7 ½ years would just prolong this whole issue. He added that he thought 1 ½ to 2 years was more reasonable.

Mr. Fernald said that, when she came before the Board, they had discussed a way of asking her if they could at least make payments, as they were not receiving any monies at all. He added that the fact of the matter is that, if they are paying anything at all, \$50 or whatever, maybe that is all they can afford.

The Chair said that her question was what were their alternatives.

Mr. Moynahan questioned what would happen if the payments were not received and what costs would be incurred by the Town chasing down a \$50 payment.

Ms. Place commented that, if indeed, they can only make a \$50 monthly payment and they make an effort to pay that amount, then she doesn't see any reason why they shouldn't accept that.

Mr. Fernald commented that, if the Board sets too high a payback amount, then they might not get paid at all. He added that he believes that, if they can afford that small amount, then that is something in the positive that the Town would receive.

Ms. Place said that she thinks they need to try it, as they won't know until they do try and find out how sincere Ms. Fernald is.

Mr. White said that the Board might consider talking with the attorney about the collection of funds like these. He added that this is a difficult process to go through and could actually spend the same in attorney fees trying to collect it. He suggested the Board might want to put some language into this agreement they are setting up with the Fernalds that has some teeth in it, such as placing a lien on the property if payments are not received.

By consensus, the Board agreed to add the suggested language to the agreement with the Fernalds.

Mr. White commented that the Fernalds might sell their property at some future date and the Board should make sure they pay the fine off when they do, that that language would be good to add, as well.

Mr. Moynahan asked who was going to draft the agreement. He asked if they were going to hire an attorney or is this something they could do in-house. He asked if Mr. White could draft something for the Board to review.

The Board agreed to have Mr. White draft an agreement and then the Board would review, then vote to approve the agreement.

7:19 PM The Chair recognized Ms. Darr.

Ms. Darr commented that, for her next writing for the Town, she was going to include information about bed bugs, as they have made a resurgence in the country. She added that, with the upcoming yard sale season, she was going to get information out on what to purchase and not purchase from those yard sales, how to clean any clothing or linens purchased, and what to do if one suspects they have them. She added that she was also going to promote the use of helmets for cycling, both motor and pedal. She was thinking of having a poster contest at the schools on preventing brain injury. She added that she could use some money out of her budget to have a prize for the poster contest.

The Board liked her idea.

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The Chair commented that it was delightful to have Ms. Darr on board.

Old Business (Action List):

7:24 PM

A. Job Review Form

Mr. Moynahan said that this was being worked on.

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

The Chair said that they have the draft two and that will be coming to the Board shortly.

The Chair said that, while the PB was still in attendance, the Business Development Committee sent to the PB some ordinances adjustments, changes, suggestions in January of 2008 and they would love to get some response from the PB.

Mr. Beckert said that they have spoken to members of that committee, Mr. Chagnon in particular, that he was before the PB, again, at the last meeting on other issues and they told him they would have a workshop with the BDC on the first PB meeting in April.

C. Community Service Pick-Up Use

Mr. Blanchette said that the Community Service is now using a Highway pickup. He added that that pickup needs some repair work before Community Service has it full time, as it was damaged from branches falling on it during the last storm. He said that the red pickup needs repairs as it was also damaged from a falling branch and that is being worked on. The Highway Department will be assigning their pickup, once it is repaired, to Community Service, which will leave the red pickup available.

The Chair said that they could discuss it again once all repairs are made.

Mr. Blanchette said yes.

D. Police Contract

Mr. Moynahan said that the last two meetings had been cancelled and so this was still ongoing.

E. Member to Seacoast Energy Initiative & Alternate

The Chair asked if anyone had heard from Ms. Islip on who she wanted appointed. She said that she knew the name of the member but not the alternate.

Mr. Blanchette said that, if the Board knew the name for the member to be appointed, then they should appoint that person tonight.

The Chair clarified that she received the name by email but nothing official.

Mr. Blanchette clarified that the deadline is April 1.

The Chair asked if they could call her tomorrow and get that information officially from the committee.

Mr. Blanchette agreed to call her.

Mr. Moynahan said that there were a few things he thought they should add to the Action List:

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CMP information added to the Town website

TIF/feasibility study approval presented to BOS

Department of Public Works position – outsourced or advertised, schedule meeting with S. Berwick supervisor – done by April 1

Selectmen's policies revisited for awareness – example is department head language to be read and made aware of.

Schedule workshop with BOA dealing with Consent Agreements

Sewer Contract with Kittery

Combining town positions/outsourcing with surrounding towns

Firearms Ordinance – Mr. Fernald lead

New Business (Correspondence List):

#1 TO : Board of Selectmen
 FROM : Anthony Bullis and William Cullen
 REF : Consent Agreement

The Chair invited Mr. Cullen to speak.

Mr. Cullen introduced himself and explained that he and his family were here tonight to discuss a 10-year-old subdivision. He gave a history of the subdivision: purchased land in 2000, went to the PB in 2000-2001 with a sketch plan and the PB advised it would be illegal because they didn't meet the 1,000-foot road length, they explored two options with Mr. Mabey (prior CEO) and chose to do a family subdivision, according to Mr. Mabey's affidavit he said "doing a family subdivision was completely legal under local ordinances and state law. Before signing the plan, I consulted with Chris Vaniotis, the Town council, concerning the requirements for this family subdivision. He concurred with my assessment that the Cullen/Bullis Plan did not run afoul of the Family Subdivision Statute", the Cullen/Bullis Plan identified the family members who would own the lots and their relationship to them and also included the names of the family members lots were gifted to, deeds were given to all these individual people, from 2001-2005 they worked every year on the subdivision, building the road to Town specifications although not required to and inspected by engineers, a building permit was issued in 2004, an occupancy permit was issued in 2005 and his daughter and son-in-law live there now, a second building permit was issued in 2004 and received an occupancy permit, in 2005 the road was paved and had a final inspection, they applied for another building permit in 2006 and was appealed by an abutter who had lived down that road all along with never an indication there was an issue, the Board of Appeals upheld their right to have the subdivision, they went to Superior Court and Judge Brennan agreed that they could have the family subdivision, it went to Supreme Court and that court remanded it back to Superior Court, the Board of Appeals and down to the current CEO for a Finding of Fact, the current CEO stated that it was an illegal subdivision, they appealed it all the way back up again and that is where they are today. He clarified that this is a 13-lot subdivision and that three lots have houses on them with one of them being contested. He added that five lots currently have valid building permits and they were here tonight to discuss a C.A. because there doesn't seem to be an end to this. He didn't know what they would do with the house or the five lots that have valid building permits or what they were going to do with taxes that were paid on lots that aren't lots. He asked if they could get that back from the Town. He said that this thing is full of legal hurdles and problems. He explained that they and everyone involved in this have spent a ton of money and he just thinks it is time to try to come to a conclusion with this whole process.

7:35 PM The Chair asked when the Remax Real Estate sign put out on Beech Road.

Mr. Cullen said that was in 2005.

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The Chair commented that that gave the impression that this was not a family subdivision.

Mr. Cullen made it very clear that they deeded all the lots to family members. He said that two of them live there now and one house is rented. He talked about the changed economic impact to his family and that they were going to sell two lots so that they could put two granddaughters through college.

The Chair asked if Mr. Pollard was a relative.

Mr. Cullen said no, that he was renting. He added that the two pertinent lots are tied up because there is a question of whether they are legal and he believes they are legal. He added that his daughter and her husband are living in one of the houses, that their kids are grown and moved on and they would like to sell and downsize. He said that, with no disrespect intended, he believes Mr. Mabey did a great job and gave them the right information. He added that Mr. White has the right to make his own opinion. He emphasized that the law is vague, as are so many of these laws, but everyone suffers.

Ms. Place asked if that for sale sign was for one lot.

Mr. Cullen said yes and added that they have never transferred or sold even one lot in the subdivision in 10 years.

The Chair recognized Ms. Bullis.

Ms. Bullis spoke about their hope that they and their kids would be able to make a living and hold onto some of these lots so that they could all live there. She said that they don't want to live there anymore, that she doesn't want to live there anymore. She said that they need to find some kind of solution because right now they are paying huge taxes and they have no choice but to stay there because there has to be a decision made. She added that she felt as though they were being held hostage.

Mr. Moynahan said that, with this, they chose to go through the motions as far as the legal actions that were required, which has happened more than once with no end in sight yet. He added that that creates issues for the Town, the abutter and the developer and agrees it is time for this to stop and go away. He commented that he did not believe the CEO should have signed the plans and the Town needs to take accountability for poor decisions made by code enforcement. He added that the Town sets people up for failure sometimes and there is hardship there for everyone involved in this and expenses for everyone, including the Town. Mr. Moynahan said that the process has been followed as it was intended to go and agreed with the folks that this has gone on long enough. He said that this is what the C.A.'s were designed to deal with.

Ms. Place agreed.

Mr. Fernald asked for clarification regarding the permit issued for the third house.

7:40 PM

Mr. Cullen said that they obtained the permit for the third house, issued by Don LaGrange, who also asked for an opinion from Mr. Vaniotis.

Mr. Fernald asked if all the additional five lots were deeded to family members.

Mr. Cullen said that they all were and added that all 13 lots were deeded to family members. He explained that what they proposed was, with the five existing lots with building permits, and the three homes, saying that they had a mortgage of almost \$200,000 just for infrastructure for just two of those homes, that they would like to sell some of those lots and get out of the big homes they are in and just clean this up. He added that there are five remaining that would not be valid lots. He clarified that they were not looking for any compensation but just want a resolution. He said that there were a lot of back taxes and, in talking to attorneys,

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they think this is an interesting case – paying taxes on a lot that isn't a lot - and the only ones making any money are the attorneys. He added that they don't want to go there anymore – they have had enough of that.

Mr. Fernald clarified that, as he agreed, Mr. Cullen, et al, would reimburse the Town for all legal expenses.

Mr. Cullen said yes.

Mr. Fernald asked if anyone knew how much that amount was.

Mr. Cullen said that Mr. White mentioned \$12,000 and asked if that was correct to Mr. White.

Mr. White said that they have what was spent this year but Mr. Cullen is right that this has been going on for quite a few years. He added that, in the early years, he believes the Town was taking a back seat and did not incur a lot of cost. He said that they could certainly find that out what is the total cost.

The Chair clarified that the Board needed to only decide to enter into negotiations tonight, was that correct.

Mr. White said not, that they were here to decide the terms of the agreement would be. He clarified that, if they are not ready to decide on those terms, they could go to another meeting but that is their decision.

Mr. Fernald asked if Mr. White wanted to speak.

7:43 PM

Mr. White commented that, if he spoke, it would only be to the facts and, if the Board would like to hear some facts, then he would speak.

Mr. Fernald commented that facts were good.

Mr. White said that the two affidavits presented were by prior CEO's in this case and they were presented at the request of Mr. Cullen and his family. He added that he didn't want to comment on why they did that as he believes those CEOs firmly believed that what they did was right. He commented that, in talking with Mr. Vaniotis about this whole process, he firmly believes that what they did (family subdivision) was wrong. He said that he never asked Mr. Vaniotis, during this whole process, whether he gave advice to Red Mabey or Don LaGrange and allowed them to think that what they were doing was right. He commented that he would really like to see that come out as there is no real evidence to show that Mr. Vaniotis has done that. Mr. White said that he has not seen any letters issued by Mr. Vaniotis nor has Mr. Vaniotis volunteered that he said this or this or that at any time along the timeline. He said that, if Mr. Vaniotis' role is important to the Board, then they should ask him for input regarding this. Mr. White said that the court has ruled on all of this, as is shown in the papers he gave the Board, and they did rule that it was a violation of the subdivision law and that is why these folks are here tonight asking for a consent agreement. He added that, if the court had decided the other way, then they wouldn't be here. Mr. White commented that, whether Mr. Cullen can make a case to this Board that he didn't do anything wrong, the fact is that the court said that they did something wrong. He said that there are five building permits and there are five extra lots. He added that, in talking with Mr. Vaniotis about this, originally Mr. Cullen would like to have all the lots and talked with him in the office and told him that Mr. Vaniotis suggested that, if those were included in the five lots that don't have building permits and are part of this 13-lot subdivision, that the five lots could be appealed when issued a building permit. Mr. White said that the Town should not be involved in kind of sanctioning or approving or trying to include in this C.A. the lots that don't have any building permits. He clarified that those five lots were, in essence, illegal lots because they were determined by the law court to be illegal.

Mr. Fernald clarified that there are three lots with homes built on them and another five lots with building permits.

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Mr. White agreed.

Mr. Fernald additionally clarified that Mr. White was talking about the other five lots regarding the ones that don't have building permits.

Mr. White agreed. Regarding those building permits, the fact is that the Town issued those permits and issuing a permit is like a contract with somebody until it is appealed and that is why Mr. Vaniotis said that, through the C.A. process include those five lots that have building permits.

Ms. Place said that, looking at this timeline and looking at the two affidavits that were submitted by Mr. Mabey and Mr. LaGrange, Mr. Mabey and Mr. LaGrange were, in essence, speaking for the Town, the office of the code enforcement.

Mr. White said that they wrote those letters just last year.

Ms. Place said that, when they issued the permits, when they signed off on plans, they were speaking for the Town.

Mr. White said that there was no question in that that was true.

Ms. Place said that, in just looking at the timeline, there is no doubt in her mind that these people were not out to circumvent the laws in any way, shape or manner. She clarified that this was, in essence, a Family Subdivision and they were led down the garden path if, in essence, those CEO's were wrong and it isn't the Cullen's fault. Ms. Place said that they should have a C.A. and this Board should work with them to figure out what that should be.

Mr. Moynahan moved to agree to a Consent Agreement with William Cullen and Anthony Bullis with the number of lots, as depicted, three building lots and five lots with current building permits and with the legal fees that the Town has spent to-date on that subdivision. Mr. Fernald seconded the motion.

7:48 PM

The Chair acknowledged that it had been moved and seconded and said that there needed to be some discussion, in her mind, still. She added that, in this letter requesting the C.A., Mr. Cullen has written "We have tried to work out an agreement with Ms. Mills but her requests are completely unrealistic. We will continue to discuss this with her but at the moment that does not seem possible." She said that that seems a little harsh, perhaps, and asked if Ms. Mills wished to speak, as she would be affected by the C.A.

Ms. Mills said that her attorney has assured her that they can overturn this C. A. in court. She added that she did have something prepared that she would like to read to the Board (see letter submitted from Vicki Mills). She read her letter and asked that the Board not enter into a C. A. with these people at this point and time.

Mr. McPherson asked Ms. Mills if she lived in that subdivision or in that area.

Ms. Mills said that she lives on the same road that the subdivision comes through. She added that, when she originally built there, she was the only house down that road and their subdivision goes beyond her driveway.

The Chair asked if there were any more comments. She added that they do have a motion and a second, so, if there is no further discussion, the Chair would entertain a vote.

No one wished to speak.

The Chair clarified that they would have to enter into a C.A. with the details to be determined by this Board because nobody has mentioned anything about...

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Mr. Moynahan clarified that his motion included the number of lots as well as all legal fees incurred, to date, with this subdivision.

The Chair thanked Mr. Moynahan for his clarification and asked for a vote of the Board members.

VOTE

4-0

Chair does not concur

Mr. Moynahan discussed that the Board would need to execute language for the C. A., asking the CEO to compile the dollar figures so that, then, both parties could sign the C.A. He added that there is still another step in this process to occur.

The CEO agreed and clarified that that step was to come back to the next meeting for signatures.

7:55 PM

#2

TO : Board of Selectmen
FROM : Grant Hirst
REF : Harbormaster

The Chair invited Mr. Hirst to speak.

Mr. Grant said that part of his function is to find ways the Town could possibly get hurt financially and, in keeping with that, he has been trying to get certificates of insurance to prove that people who provide services to the Town are properly insured. In talking with Harold Place, Mr. Place told Mr. Hirst that he was unable to get insurance at all on his own boat. He added that Mr. Place had a claim with his boat while moving a Town mooring and had to pay for it himself. Mr. Grant said that what concerned him was that he was operating a boat part of the time for the Town of Eliot on a US Coast Guard navigable waterway, which involves marine maritime law and admiralty and he doesn't know what the coverage is through the MMA. He said that he doesn't dare ask them without the permission of the Board. He didn't want to bring it to their attention without having assurance that that was okay. Because Mr. Place can't get insurance on his boat of any kind due to his work with the Town, Mr. Hirst suggested to the Board that the Town needs to think about the Harbormaster function, whether it should be continued, whether Mr. Place should continue to do it, whether the Town should hire someone who is properly insured to do it or whether they should refrain from doing anything at all. He also said that he should probably asked about MMA coverage and, if they have it at all, it most likely is minimal.

The Chair commented that Eliot doesn't have their own boat and everyone agreed that would make a big difference.

8:00 PM

Mr. Fernald commented that, years back, there were agencies that had boats available that were committed to towns through police organizations and the Coast Guard and might be something the Town should look into. He suggested that Mr. Hirst contact the Police Chief and see what might be available for Mr. Place.

Mr. Hirst said that he believes the Chief has been looking for a boat but he doesn't know if he has been successful. He added that there are military surplus boats that are very good but the question would be where to put the boat and who would run it. He commented that maybe they could hire Mr. Place as a Town employee to do it so the Town doesn't have to worry about the Worker's Compensation situation.

The Chair commented that Mr. Place knows all the ins and outs of the moorings and that would be an advantage.

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Mr. Hirst said that, right now, the Town has a boat that is uninsured through no fault of Mr. Place operating in conjunction with very large ships, some of which carry propane, and with potential for accidents, as well. He added that it is a nasty situation and he believes action needs to be taken.

Mr. McPherson commented that Eliot is not the only Town on the waterways in the State of Maine and there have to be other towns faced with this same issue. He suggested contacting the towns and said that Mr. Place would most likely know quite a few to contact because he is a member of the Harbormaster's Association.

Mr. Atwood said that Kittery has a boat and they have a harbormaster and could share services with Kittery.

Mr. Moynahan commented that the Town could look at contracting it out, as was said. He added that there are local marine contractors that do this and they have insurance.

The Chair commented that she didn't see the possibility of buying a boat in this economic environment.

Ms. Jacques asked how often the boat was used for harbormaster work.

The Chair commented that, during the summer, she would think he would be pretty busy and out every day checking moorings, permits, etc.

Mr. Fernald said that he thinks that would be something they need to ask Mr. Place.

Mr. Hirst said that it was worth pointing out that the Town pays him a fairly substantial stipend for his Harbormaster duties and, if the Town did not have to incur that cost, then the Town might be able to use that for contracted services.

8:05 PM Mr. Moynahan said that the Board needs to add insurance to their Action List to make sure this gets resolved.

Mr. Hirst asked the Board if they wanted him to speak with the MMA or just keep silent.

Mr. Moynahan asked if this would potentially open up a can of worms.

Mr. Hirst said that it could.

Mr. Moynahan recommended that they not talk to MMA just yet.

The Chair said that the Board would do some exploring first.

Mr. Moynahan said that he would speak with Riverside Marine to get some information and the Board could look into Kittery, as well. He agreed to take the lead on this.

#3 TO : Board of Selectmen
FROM : Grant Hirst
REF : Alarm and Sprinkler

The Chair said that they have been discussing the alarm and sprinkler systems in the budget meetings. She clarified that Mr. Hirst was saying at the bottom of his memo that the sprinkler system should be higher than the alarm system in the order of priority.

Mr. Hirst said that that was his opinion, yes. He said that, if one doesn't have an alarm coming from a building that's on fire, then that is trouble. He added that he would rather have modest alarm and sprinklers operating. He also said that a sprinkler system for the Town Hall building is more critical and they have enough

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money in the \$16,000 to pay for the system and some alarm system work, enough of an alarm to detect water flow in the system and fire alarm operating.

#4 TO : Board of Selectmen
 FROM : Jim Atwood
 REF : Summary of Ascertainment Letter

The Chair said that the Board was pleased with the progress made with Comcast and invited Mr. Atwood to speak.

Mr. Atwood said that he would need a liaison from the Board because, as they go forward with negotiations, it would behoove the Board to have a representative there while negotiations are going on.

The Chair agreed, as any signing off would be done by the Board of Selectmen, as it does not go to the Town.

Mr. Atwood said that the letter from Attorney Scully would be attached to the Ascertainment Report and forwarded to Comcast after the Board approves it and signs it tonight. He added that he would be glad to answer any questions.

The Board agreed they were pleased with the Ascertainment Letter.

Mr. Fernald asked if there would be other additional costs coming down the road.

Mr. Atwood said no and that, if they can negotiate the revenue source from Comcast, then that would offset any and all costs to put in the public access channel.

The Chair commented that what she thought interesting is that they never got any franchise payments with the original agreement, as she understood.

Mr. Atwood agreed and said that, additionally, that original contract said that everyone in Town would be serviced at some point in time, that got dropped out of the loop and it was put back in with this agreement to make sure people who want service will get service.

Mr. Moynahan clarified that the retrofit of the Town Hall and maintenance of equipment would incur additional costs.

Mr. Atwood said that that would come out of the revenues from Comcast. He added that the only caution he wanted to advance to the Board was that they would see a big chunk of money coming in, that it would be going into the General Fund and they would be tempted to spend it on other things. He said that, if they did that, they wouldn't have public access. He said that that money should be designated for public access equipment and services.

Mr. Fernald asked Mr. Blanchette how this should be handled.

Mr. Blanchette said that this, like all funds that come in, and they need a vote of the Town to expend it. He added that it would be up to the Board that, in writing the warrant article, that those monies go specifically for the public access. He said that the Town could vote no and could vote to apply it to general taxes.

Mr. Fernald clarified that this was something that would happen right away.

Mr. Atwood clarified that this wouldn't happen until next year and the equipment wouldn't be bought until next year. He added that next year's budget would reflect all of this. He explained that this year is the negotiation of the contract and money would start being collected between now and next year.

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Mr. Fernald asked if this would require someone to be responsible for the equipment, etc.

Mr. Atwood said that he would think that the committee would move forward on the equipment and bring to the Board any contract vendors they might have to hire to retrofit the building.

Mr. Fernald asked, once that was done, who would run it.

Mr. Atwood said that it was up to the Board to hire a person or contract it out. He added that the franchise fees would pay for purchase, maintenance and staff.

Mr. Moynahan clarified that that was what Mr. Atwood was talking about as far as being careful with the monies.

Mr. Atwood agreed. He discussed contracting someone to come in and run the system for a temporary period of time until they get their feet wet and understand what they are doing.

Mr. McPherson asked if the Town really needed this.

8:13 PM The Chair said that this is something the public has asked for for many years.

Mr. Atwood commented that they did a survey of the entire Town, had three public hearings and the vast majority (over 78%) who responded wanted a public access channel and a bulletin board so that they know what's going on.

Mr. McPherson asked 78% of how many replies.

Mr. Atwood said that he wasn't sure but he thought it was about 30% to 40% of the Town.

The Chair said that they Comp Plan survey asked that same question and it was an overwhelming response and they got over 500 responses.

Mr. Atwood talked about the benefits, such as people having access to Town meetings that couldn't physically attend, having educational programming and seeing class plays rebroadcast.

Mr. Moynahan moved, second by Ms. Place, to sign the Town of Eliot Summary of Ascertainment and Community Needs, as presented.

VOTE

3-1

Chair concurs with the majority

Mr. Moynahan commented that he thought Mr. Atwood was still waiting for a volunteer from this Board as a liaison for this committee and his plate is quite full.

Ms. Place asked what it would entail.

Mr. Atwood said that they meet the second Wednesday of the month at the Town Hall at 7PM and they would be meeting with Comcast as soon as they get back to the committee. He added that she could come to all the meetings or just the negotiating meetings.

Ms. Place said that she would be the liaison.

8:18 PM Mr. Fernald commented that it was his hope that this would not deter people from coming to Town Meeting.

Mr. Atwood said that he didn't think it would but would actually encourage people to get more involved in Town affairs instead of not knowing what is going on. He added that people would be able to see board meetings, educating the

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people as to how their Town works and what is going on, as well as public announcements.

The Chair clarified that, in order for people to vote, they have to attend the Town Meeting in person.

Mr. Atwood said that they were still looking for an additional committee member.

#5 TO : Board of Selectmen
FROM: Jim Atwood
REF : Proposal for the Town of Eliot

This was included in the prior correspondence discussion.

#6 TO : Board of Selectmen
FROM : Vicki Mills
REF : Planning Board

This was discussed during the Public Comment period.

#7 TO : Board of Selectmen
FROM : Business Development Committee
REF : Proposed Ordinance Change

The Chair said that this was informational.

#8 TO : Board of Selectmen
FROM : Maine Emergency Management Agency
REF : Geospatial Data

The Chair said that this was informational and that a copy should be forwarded to EMA in Eliot.

8:22 PM

#9 TO : Board of Selectmen
FROM : Comcast
REF : Channel Lineup Changes

The Chair commented that Comcast was changing their channel line-up, again, and raising their rates.

Mr. Fernald commented that he noticed that the Computer Committee has negotiated with Comcast for Town internet service and believes they are going to be saving the Town \$1,850 a year as a result. He said that they did a good job.

#10 TO : Board of Selectmen
FROM: DEP
REF : Relocate Float Storage Timber Frame

The Chair said that this was informational.

#11 TO : Board of Selectmen
FROM: Piscataqua Region Estuaries Partnership
REF : PREPA Form

The Chair asked if Mr. Blanchette needed Board approval to send this out or to respond.

Mr. Blanchette said no and added that the assessment is in the office, two thick books, and this explanatory memo came with it.

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The Chair asked if this was being returned to them for their information.

Mr. Blanchette clarified that this was what was completed and what they found in the study.

#12 TO : Board of Selectmen
FROM: Dan Blanchette
REF : Warrant

The Chair clarified that they did not have a budget and warrant yet.

Mr. Blanchette agreed and said that they would need a meeting next week.

Mr. McPherson asked to be reminded what Mr. Moynahan's task was - as far as the Harbormaster discussion.

Mr. Moynahan said that he was going to talk with Kittery and a local marine contractor.

Mr. McPherson commented that he felt they kind of left Mr. Hirst sitting on the shore and it seems to him that they should check the Maine Register and find some Maine towns in the same situation Eliot is to find out how they have resolved this.

The Chair commented that she thinks Mr. Moynahan is making a good start on that with talking to Kittery.

Ms. Shapleigh said that Mr. Place's wife is the Town Clerk in Kittery and should be able to help.

The Chair said that they could also check with York.

Selectmen's Report:

There were no Selectmen's reports tonight.

Executive Session

There was no executive session held tonight.

Other Business as Needed

Mr. Blanchette said that he had a couple of things. He said that, without going into executive session, policy on comp time requires that person accumulating over 24 hours of comp time needs to get approval of the Board. He clarified that they have a clerk that is or will be shortly over the 24 hours and that person is planning to use the comp time in April. He added that they need official approval from the Board for that person to continue accumulating above the 24 hours.

The Board agreed to this by consensus.

Mr. Blanchette said that the information he was giving just came in this past week and is on the Carson Lawsuit. He explained that the Carson Lawsuit is regarding the sewer line damaged down on Riverside Drive and that the Town has gone to court to try to recoup our damages from the contractor. He added that the court is insisting they go to mediation, which is not unusual. He said that they need one or two selectmen to attend the mediation, which would most likely be during the day.

8:30 PM Mr. Moynahan and Mr. Fernald volunteered to go to mediation.

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Mr. Blanchette said that he would get the time and date information for them.

Mr. Moynahan discussed that Ms. Roy had raised the issue of structural problems with the Community Service building and that the building is in dire need structural repairs. He added that it is unsafe and a liability. He also said the barn was unsafe, as well.

The Chair said that that was something they needed to keep in mind when they were finalizing the budget.

Adjourn

There was a motion and second to adjourn the meeting at 8:32 PM.

VOTE

4-0

Chair concurs

DATE

Roberta Place, Secretary