

BOARD OF SELECTMEN'S MEETING
October 22, 2009 6:30 PM

Quorum noted

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

Roll Call: All present

Pledge of Allegiance Recited

Moment of Silence Observed

Approval of Minutes of previous Meeting(s)

6:37 PM Motion by Ms. Place, seconded by Mr. Moynahan, to approve the minutes of October 8, as written.

VOTE
2-0
Chair Concurs

Motion by Mr. Moynahan, seconded by Ms. Place, to approve the minutes of October 12, as written.

VOTE
2-0
Chair Concurs

Motion by Mr. Moynahan, seconded by Ms. Place, to approve the minutes of October 19, as written.

VOTE
2-0
Chair Concurs

Public Comment:

Mr. Sinden updated the Board regarding last night's York County Commissioner's meeting. He said that the Commissioners approved and submitted to the Budget Committee a budget of \$18,500,000. He added that the caucus is now full for the first time in anyone's memory. He clarified that they have 60 days to determine the actual budget and the actual levy to the towns and that, at the county level, it is the Budget Committee that has the actual say. He said that the submitted budget is about \$400,000 less than last year. He added, however, that part of the shortfall might be made up by federal funds. He said that the budget, as submitted, will replace some, but not all, of those laid off so that some of the services will be restored. He emphasized that this budget is "proposed" and that he doesn't know, at this point, which services will be restored.

Department Head/Committees Reports:

Mr. Short asked to discuss a couple of issues. He stated that they are currently going through the hiring process and doing background checks and he was asking for guidance from the Board. He explained that one of the officers is currently an officer in another community. He added that the State of Maine, a few years back, addressed time in service for officers and if five years or under then the hiring community has to pay for the training experience. He stated that this particular officer has two years experience in police work and the current buy-back the Town would have to pay to the current community he works for would be \$23,000. He explained that, up to this point and even with adjustments to the schedule, the police department has been averaging 50 hours of overtime a week, since July 1. He stated that they have around \$5,800 left from the overtime monies that were appropriated and so they are going through that at a pretty rapid rate. He stated that they made adjustments to get fixed overtime of 15 hours a week, at a minimum, as people take vacations, sick leave, etc. Mr. Short stated that, if the Town hires someone who doesn't go through the Academy but has to go through the Academy, then he still has to continue to fill the shifts. He stated that the Academy starts

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in January and, by the time they finish the Academy and field-training process, it would be August before they would get that person out on the road and reduce overtime. He also added that, at their current rate, he was projecting they would spend another \$62,000 in overtime and, even in a best-case scenario, they would spend around \$20,000 in overtime. He stated that this hire, as he is a fully trained officer, would be about a two-week field training time, then out on the road and potential savings over the timeframe of potentially \$40,000. He did add that it could be a little less but the impact would be immediate. Mr. Short clarified that he doesn't want to go any further in the process of hiring this person if the Board doesn't want to allow the buy-back. He added that the bottom line is that they are going to go over on their overtime no matter what and the only other option would be to leave the Town uncovered. He clarified that it a matter of how much the Town wants to mitigate versus how much they are spending. He added that he believes they would see a reduction as it would create an overlap in shifts and reduce overtime.

Ms. O'Donoghue asked where the money would come from.

Mr. Short stated that it would have to come from the budgeted position under the Union account.

Ms. O'Donoghue asked if they had that figure.

The CEO stated that the total unexpended balance was \$240,000. He clarified that the salary, car, etc. were all lumped in to this total. He added that that is what the Chief is using to offset overtime expenses.

Mr. Short stated that he could continue to go the way they were going and spend a fair amount of money on overtime or reduce that with this hire to fill the vacancy.

Mr. Moynahan asked if the Police Department could work to get overtime down to 10 hours a week with the 40-hour a week hire to fill the current vacancy.

Mr. Short stated that those 15 hours aren't really a true representation because they aren't filling a 10-hour shift, as they cut those shifts in half and sometimes there is only one person working.

Mr. Moynahan asked if the Police Department could function with the same 50 hours reconfigured to the 40-hour vacancy hire and 10 hours of overtime a week.

Mr. Short agreed that he thought they would be able to do that.

Mr. Moynahan clarified that, if this potential hire would cost the Town money, does the Town have enough and would they appropriate it out of the labor budget. He added that he believes that he would be comfortable, based on the discussions, that the Department would work within the confines of the budget and pay this, and still be okay.

The Board agreed that the Police Chief could move forward with the new hire.

Mr. Short discussed that the stimulus money is finally in from a county-wide grant and the Eliot Police Department got \$14,000 that they were going to use to offset the money that was cut from the Cruiser Reserve Fund. He added that they put out bids for a cruiser and received back some bids. He stated that they have a cruiser with 120,000 miles on it that would either go into a trade to defuse some of the cost of the cruiser or he would propose to the Board that they might keep the car, stripped out, to have it available for the CEO during his job. He clarified that he didn't need a vote but just to let him know if they wanted him to do that and he would keep it.

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The BOS decided to have the Chief hold onto the car until the Board could assess the costs and if it was worth keeping the car.

New Business:

The Chair recognized Paul White, CEO.

Paul White discussed the email regarding Town of Eliot v. Knowles. He stated that this was in regard to the complaint the Town filed in court. He clarified that the Town filed two complaints and they are coming up on the same day, on November 2. He added that it concerns Charles Knowles in regards to a Planning Board (PB) approval for a Home Business and a requirement was that he not store any material or equipment outside and that he pave his driveway. Paul White stated that the owner did store things outside for at least a couple of years and never paved the driveway so the owner was issued a Notice of Violation (NOV). He added that the owner ignored the NOV, 30 days went by, then Mr. White came to the Board of Selectmen (BOS) and the BOS decided to pursue this issue. He explained that Ted Small (Town attorney) took the case and the Town has been waiting for a court date. Paul White stated that the email, from Attorney Bartlett, says that Mr. Knowles has sold his business, that the business doesn't operate anymore and is abandoning the PB approval. He clarified that that is fine but the problem is that the Town has attorney fees they have extended and he assumed the Town would like to recoup those fees. Paul White stated that Ted Small was asking the Town if the Town would like to dismiss this or not, he thought the answer would be no but wanted to bring this to the Board to make sure that is the case. He asked if there was anything else, such as fines, the Board would ask from the judge.

Mike Moynahan asked the CEO if the building would still be approved for the particular use.

Paul White stated that that was another reason to go to court, as the judge would rule on that and the Town would get that ruling in writing that the owner was abandoning the PB approval for that use.

The Board agreed that they wanted to move forward to court with this issue.

6:40PM

Paul White updated the BOS regarding the ongoing issue with Mr. Fernald on Spruce Lane where they have refused to move their fence. He added that, over the last several months, they have reluctantly complied somewhat and there are still a couple of areas where they have not complied. He also added that he would go to the property the day of court and take pictures for the judge. Paul White stated that he has not heard anything from their attorney. He stated that he does know a survey was done by Easterly Survey but they have not completed paying for it so Easterly Survey has not released that survey to the Fernalds. He added that it is his understanding that they are making arrangements to pay that. He commented that he had been pushing for a survey last year so that the Town knew what the encroachments were and he believes that the Town will eventually get the survey, as the Fernald's are willing to give it to the Town. He added that the Town attorney subpoenaed the survey and the company refused to release it because they have not been paid for it yet. Paul White stated that the other part of the settlement is going well, as they have cleaned up their junkyard and not created another one, but there are some issues that remain. He added that no one has been living in the house for around a year, which has relieved some of the pressure on the neighborhood. He stated that the big issue was the fence, as they placed it directly on the travelway, the Board of Appeals (BOA) heard the case and denied the appeal and the appellant did not appeal it any further. He clarified that he brought this back to the BOS and the BOS decided to pursue this in court.

6:43PM

Paul White stated that he had a request for a Request for Consent Agreement. He stated that the BOS now has a policy in place and that policy says that the

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person has to go through the BOA and, once the BOA has ruled, the person can make a request to this Board. He added that the principle, Walter Woods of Eliot Shores, LLC, is present tonight and he has requested a Consent Agreement, which Mr. White prepared a summary of to explain the situation to the BOS. He stated that he met with all the involved parties and they talked about all the options. He explained that the plan developed a single 1-acre lot and, then, another lot that had three condo-type lots on it for people to share in common land and have the right to build on. He went on to state that the violation, as clarified in his NOV letter, was that they went a step further than the plan and actually deeded out portions of the land instead of retaining it as common land, creating little pieces of land that were less than the minimum lot size for the zone. Paul White stated that one of their options was to comply with the plan and that the other option was the Consent Agreement route, whereby the parties involved would be allowed to keep the lots as they are currently with deeds per a Consent Agreement with the BOS.

He stated that the Town attorney costs, so far, are \$9,500 and he has estimated \$2,500 to draft and produce a Consent Agreement for the BOS to approve and sign, for a total of \$12,000 and Mr. Woods has agreed to pay that amount.

He added that the Board could decide to not enter into a Consent Agreement or enter into a Consent Agreement with fines, as well. Paul White stated that he and the parties have been working on this for over a year and it is not an easy thing to grasp all at once. He added that the people in the room who are owners of the property have a pretty good idea what is going on now and the BOA, at first, did not have a good idea but did after the 3-hour hearing. He stated that he included in his Memo a lot of information associated with this issue, including one page of the BOA minutes where they BOA members voted.

The Chair stated her confusion over it being classified as a condominium and asked Mr. Manero to clarify.

Mr. Manero stated that this plan was for a Planned Unit Development (PUD) and the question from the beginning has been what exactly a PUD is and what exactly a Condominium is and what exactly the difference is between these two. He added that neither of these are defined in Eliot ordinances. He went on to state that the Town has things similar, such as the way the ordinances reduce lot size for assisted living, and the special conditions associated with multi-family dwellings. He added that, when he first got involved with this, he was unfamiliar with a PUD and so did some research to learn what it was. He stated that Walter Woods has the definition of a PUD and he believes tends to substantiate what is happening in this situation. Mr. Manero stated that the CEO was exactly right if one looks at it purely in terms of the original piece of land that the CEO said had to remain in one integral piece, with the exception of Lot D. He reiterated that the CEO was correct that deeds were passed but they were passed many, many years ago and, in the course of time, when deeds were passed, buildings were built, mortgages were taken out, certificates of occupancy were issued by the Town for the home that is there and the rest of the people assumed that what was meant by the PUD was...

6:50PM

At this time, Walter Woods requested a few minutes to give a prepared presentation to clarify the issue.

The Chair stated that this was not originally on the agenda and asked what the Board's preference was.

The Board agreed they would hear Walter Woods for a few minutes.

Walter Woods introduced himself and gave copies of his presentation to the members of the Board. He discussed the background of the property by stating that before he purchased the property Piscataqua Landing, LLC had an approved 7-unit condominium on the pertinent property and he had to come to

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the Town because the conditional use expired. He commented that he did not move forward with construction on that property until a year and a half later because he was looking to acquire the marina land next to this property to combine those properties to build an assisted living community. He explained that he discovered they could not meet the offset road requirements. He stated that, after that conditional use was denied, he had a discussion with Mr. Lagrange (former CEO) to decide what the best use of the pertinent property would be that would meet the Town ordinances. Referring to the letter, from Mr. Lagrange, dated February 7, 2005, Mr. Woods stated that the CEO guided him in the direction of meeting the code in developing this PUD. He commented that the plan was signed by Mr. Lagrange on January 31, 2005 and the plan was recorded in the Registry of Deeds February 4, 2005. Walter Woods stated that he got all the approvals and Mr. Lagrange felt everything was in order, he had Easterly Survey do all the survey work, the boundaries, met all the building setbacks, etc. Referencing the letter of February 7, 2005, he stated that Mr. Lagrange referenced this project as a PUD, Tax Map 6, Lot 63, and again in the first sentence the former CEO referenced this project as PUD. He pointed out the areas of the letter that clearly say the project is not a subdivision and that Mr. Woods could "rely upon this as a determination by me, as Code Enforcement Officer for the Town of Eliot,...". He discussed that he explained the history as that was important to show that he had made every effort to comply with all Town ordinances. Walter Woods pointed out the second piece of paper in his submission, which gave the definition for a PUD. He referred to the particular wording "..., and buildings are often on smaller lots in order to free more common space.", so the PUD he submitted was, in his mind, a PUD based on this definition because he knew what a PUD was. He added that, even though a smaller section of land was deeded out during that timeframe, the majority of land was in common along with roads, driveways, water, sewer and common utilities. Walter Woods stated that the third sheet he gave the Board is a smaller version of the plan that was developed and is named a PUD. He clarified that he doesn't believe Mr. Lagrange erred in his decision in moving forward with this plan, nor does he disagree with Mr. White that, today, Mr. White sees this as a subdivision. He clarified that what he sees is that he doesn't believe Mr. Lagrange understood what a PUD was compared to a condominium, meaning that, if Mr. Lagrange had said a PUD could not be done because a PUD, by definition, says that they have a separate lot on there, but it could be a condominium and that would work. He stated that the letter that is at the top could be read and viewed and interpreted in two different ways, as one piece of property or as a PUD, based on the PUD language. He reiterated that he believes Mr. Lagrange did not understand and he (Mr. Woods) moved forward in good faith selling three small plots of land, one with a home on it, and that it has been 4 ½ years then, all of a sudden, this issue was brought to bear. He clarified that everyone involved in this has done everything possible to resolve this problem to try to meet Mr. White's concerns. Walter Woods stated that he has spent over \$10,000 in attorney fees as of today to try to resolve this problem and move forward. He concluded by reiterating that he was not saying that Mr. Lagrange erred in his decision but honestly believes the former CEO did not see the difference between a PUD and a condominium because, if the former CEO had said to him that he wanted to see condominium on that heading then he would have sold everything as a condominium. Walter Woods discussed the requirements of the Consent Agreement. He clarified that this plan was not done to circumvent the subdivision ordinance but with the former CEO's professionalism in the Town's ordinances to develop the best approach for the pertinent property and meet the letter of the law at that time. He discussed the serious impact to the property owners because of the violation issue and stated that the only responsible thing, as a lot owner, as he feels responsible to the three parties caught up in this situation and his last resort, would be to be granted the Consent Agreement. He stated that he was willing to pay the \$9,500 attorney fees to the Town and the \$2,500 fee for the Consent Agreement. He added that he was not in favor of having to pay a fine because he did not feel this was

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something he had done to circumvent this issue. He reiterated that he has paid over \$10,000 in attorney fees over the past several months and that he and Paul White have been working diligently to try to resolve this on an amicable basis. He concluded that he did believe that putting condominium as the heading on this project and selling it as such would have resolved this issue and they would not be here this evening.

Ms. Place asked what precipitated the NOV being sent.

The CEO stated that he had first become aware of this situation when he sat down with Mr. Manero to talk about what Mr. Manero perceived as the next step in the process of that plan and that was in early November 2008. He added that he had sent letters to Mr. Woods, etc., giving him and others a chance to explain why they thought this plan was legal. He stated that, for several months, they had worked with the attorney and tried to come up with a different way to look at this, such as the backlot provision, etc. and, in Mr. White's opinion and the Town attorney's opinion, and that failed. He added that, at that point, he put a NOV letter together so that Mr. Woods would have a way to appeal it and find out whom the BOA agreed with, as he could have been off, too, and the BOA agreed with his determination.

Ms. Place asked how the plan, itself, first came to the CEO's attention.

The CEO stated that Mr. Manero had come into the office, with the plan, as he wanted to change the lot lines on the plan and said to Mr. Manero that he thought there might be an issue with the plan and asking how the plan got to be this way with the small deeded-out lots. He added that he started looking into it at that point.

Mike Moynahan stated that he would like to have some more time to review this before the Board decides an action. He added that this is a bit more complex than just trying to rubber stamp something and saying it's fine or it is not. He clarified that he wanted to review the information more to be comfortable with the position he decides for this issue.

Ms. O'Donoghue asked if there was any way to fix this other than with a Consent Agreement.

Walter Woods stated that it could be fixed and he was willing to go by the direction that the code asks him to do. He added that, obviously, as he has sold to several people.....

The Chair clarified that she saw that it was nobody's deliberate mistake nor is anyone speaking criminal at all here but just asking if it can be fixed.

Walter Woods commented that he and the others had discussed converting this back to a condo prior to the CEO issuing his violation letter and deed the land back to Eliot Shores and change the by-laws of the association to outline that land as their common land to utilize as they see fit. He added that the problem with that was that the mortgage company involved with Romona Robinson and Luis Valdez appeared unwilling to take the deed with actual land and convert it and the property owners did not want to be involved in a condominium, as they felt owning that land under them would give them more surety that that was their space. He added that he believes the owners have an issue moving toward a condominium scenario because they have had experiences in the past that they didn't like the condo scenario. He added that Mr. Hyer had the same feeling. Walter Woods stated that he believed he and Mr. Manero did not have that feeling and that they had been working to try to resolve the problem but because they couldn't get everyone to agree with the move to a condominium, that was when this NOV letter was issued in June. He commented that they had looked at other options, such as the backlot provision and they thought they had Mr. White on board with the backlot option. He clarified that they did have two units on this property to begin with,

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which he tore down and taking those two units, putting them on the lot and, then, Mr. Manero's take-out that would have been only one lot to that point, which would then have been the backlot. He commented that they could not convince Mr. White. Walter Woods stated that, at that point, he had spent over \$10,000 and that any more effort would have included more discussions, more attorneys, opinions and this needed to be resolved as Mr. Harding wants to construct his home and his family is in limbo right now. He added that Romona and Luis were looking to refinance to move on in their lives and it has just been a very difficult circumstance. He also added that he wants the Board to know that they have, as a group, done as much as they could do with four families trying to resolve this. He stated that this would be the only and simplest solution for the folks, not necessarily for the Town, as the folks are in a hardship because of what has happened.

The Chair asked what changed it, initially, from a condominium to a PUD.

Walter Woods clarified that, originally, it was a PUD, as that was what he was building at the time and further clarified that, if the former CEO had told him at the beginning that a PUD would not work then he would have created it as a condominium project from the beginning. He added that his intent at the time, was to have that land broken off and he would not dispute that. He explained that Mr. Lagrange agreed with that based on how the two existing buildings would be handled and he did not feel Mr. Woods was creating a subdivision because of that. He stated that he didn't just draw this plan and tell the former CEO this is what they decided.

The Chair recognized Tony Manero.

Tony Manero stated that the deeds on this land go back 40 years or so and, during the course of time, people have acted in good faith and made deep financial commitments. He added that to undo that at this point would be deeply complex. He commented that, with the Consent Agreement, people will own the lands to which deeds have been passed and, if this land is converted back to a condominium in its purest form then they would move back to where all the land is in common and the buildings themselves would be situated on common land where people would only own down to 6 inches underneath their homes and that would erase all the land that everybody thought they owned. Tony Manero stated that, in this situation, converting this back to a condominium people would only own the building out to the outside walls and the roof up above them, which would mean that the condominium association is no longer responsible for painting the house and fixing the roof. He added that would be the individual owner's responsibility, while the common land would remain. He commented that, as he looked back over the history, he did not see that anyone at any time deliberately set out to evade the ordinances. He stated that there is already thousands of dollars expended to resolve this and, to pursue this, if the people who own these deeds don't agree then it would end up going to court to protect what they have invested in. He discussed that it was his belief that there would be no negative or adverse impact to the neighborhood, that they acted under the best information had by everybody, they proceeded and it turned out they were wrong. Tony Manero stated that life is made up of things that are wrong and he would hope that the Board would agree to grant the Consent Agreement and allow them to pursue their lives, as they have been dealing with this for 4 ½ years.

Tony Manero stated that they were not and are more like what is described in the definition of a PUD, which are areas of land with a significant portion of the land are common areas and common to everybody.

The Chair reiterated that she was trying to get back to how this could be fixed.

Tony Manero stated that, in all honesty, the best fix at this stage, considering what a messy situation it has become, is to have a Consent Agreement and

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agree that the lots are as they are, let people pursue their lives and determine the degree to which people acted improperly and assign penalties for that. He added that they, as a group of homeowners, recognize the Board may wish to have penalties involved. He stated that he and other homeowners have agreed to, at their own expense, pay for any fines assessed.

The CEO stated that he wanted to bring the Board back to what they are here for. He stated that the BOA has already ruled that the violation letter, in essence, is correct. He added that Walter Woods has a right to file a complaint within 45 days with the court and he has indicated he does not want to do that and that is why Mr. Woods is here tonight. He clarified that the Board's options are to not do anything at all, which would essentially ask them to go back and do something different and has been part of the discussions tonight or to consider a Consent Agreement. He further added that, if the Board wants to table this to another meeting the result would still be the same. He added that the Board might learn more about this violation and whether the Board might think it willful or not but the end result would probably fairly close to same as it is tonight. He explained that they would look at the attorney fees, which Walter Woods has already agreed to comply with and the only thing that is not on the table, yet, is how much money regarding a fine. The CEO stated that, if the Board wants more time to think about the fine or read the minutes of the meeting, etc. that's fine, too, but the Board will eventually get to the point of deciding whether they want a fine or not. He added that the opportunity for this group of people to speak before the Board is very important but the BOA already ruled on this. He also added that this is pretty much a done deal, as Walter Woods has said he was not going to go to court and is really here to settle this and the Board has heard some testimony tonight that the other owners want that, as well. The CEO reiterated that, if Mr. Lagrange's plan had been followed, there would not be a violation but the plan was changed because they deeded things out in legal descriptions that went around sections of land. He stated that Mr. Lagrange did not indicate on his plan that that would be allowed to do so, whether he understood all that stuff or not, the BOA has already ruled. The CEO stated that he believes the Board's task is to look at this, applying the criteria in the policy, as to whether it was willful or not, and try to decide whether a fine should be assessed and, if yes, then how much. He added that, if the Board cannot decide on an amount of money tonight, then table it but, if they could, then go ahead and do that tonight.

Walter Woods stated that not only has his attorney reviewed this plan prior to it being recorded at the Registry but three other attorneys have, as well, all four real estate attorneys, and if any of them had felt this would be a problem they would have raised the issue. He clarified that the CEO can say that the BOA have already made their decision but his presentation to the BOA wasn't directed in reference to why the problem exists but the appeal was in reference to the NOV and the letter from Mr. Lagrange can be read two different ways. He added that, in reference to the CEO saying this plan is changed, he disagreed. He clarified that the plan is the exact same plan that Mr. Lagrange signed and recorded from day one, so there has been no attempt to change the plan or mislead anyone.

The Chair recognized Gary Sinden.

Gary Sinden stated that, as the BOS know, he was involved in the construction of the policy and throughout the discussion of that policy they discussed it as a means to settle clear-cut minor matters without going to court. He added that he was concerned about this case for a couple of reasons. He stated that the first real test of the policy is occurring without it being on the agenda so that people cannot be here to see how the policy is administered. He added that his greater concern was that this is a complex case involving interpretation of ordinances and definitions of terms and that is exactly what the courts are for. He also added that he believes this is a case that should properly move from the BOA to the courts to be resolve because it

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will establish, procedurally, how the BOS policy is administered in the future and also establish definitions of ordinances without counsel to help them fully understand the issue. Gary Sinden stated that they have been working for a year and the BOA labored for three hours to come to their decision and he thinks it is important that the BOA's decision be recognized and the complexity be recognized and this move on, properly, to the courts if they want to move it at all.

The Chair recognized Nancy Shapleigh.

Nancy Shapleigh stated that, as a taxpayer, she wondered what kind of liability the Town was accepting in this when the word of one CEO could be overturned by a later one. She added that it seemed to her that the rules were being changed after the game had started again, something that seems to happen many times. She stated that, as far as these people with mortgages, if anyone in this room has tried to deal with a bank, lately, it would be forever before they could make any changes to their mortgages. She added that they are responsible for what the people who work for them do and she would like to see this work out in an amicable way, not in a fine and who's guilty and who isn't guilty. She stated that that is what the BOS could do with a Consent Agreement. Nancy Shapleigh commented that the Town doesn't have to run to court every time there is a disagreement. She added that it's easy to say that but it's awfully hard to pay the bill.

Mike Moynahan asked Walter Woods if the deeds that were issued change the make-up of the plan that was approved. He asked if the lot sizes or setbacks change once the deeds were issued, which deeds were done after Mr. Lagrange approved the plan.

The CEO stated that the plan does not show what the deeds reflect. He added that the deeds reflect the metes and bounds descriptions and individual ownership. He stated that the plan clearly says on it that it is a limited common element and that it is more in relation to a condominium than an individual lot.

Walter Woods stated that the CEO was incorrect and he could point out that the plan does show what the deeds reflect.

The CEO reiterated that this has all been through the BOA and he wasn't sure this was something that should be debated at this level. He stated that if Mr. Woods wanted, they could do it at another meeting. He also stated that, regarding one CEO's opinion versus another's, he has never disagreed with what Mr. Lagrange has said for this project. He added that what happened, and what the BOA agreed with, was that it is different from what Mr. Lagrange had said.

7:26PM Motion by Mr. Moynahan, seconded by Ms. Place, to table this discussion and decision and put on the agenda at another time.

VOTE
2-0
Chair Concurs

The BOS stated that this item would be placed on the agenda for the November 12, 2009 BOS meeting.

7:30PM Paul White stated that this was not on the agenda but it was a simple matter. He stated that the Sewer Committee met last night and they had some questions about the particular timeframe to start the TIFF. He added that he wanted to get a letter from the Town attorney that states that legal requirement.

The Chair stated that they would put that on hold as there was something coming up on the agenda that would speak to that.

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#1 TO : Board of Selectmen
FROM: Mike Eardley
REF : Interest to be on Energy Commission

Mike Eardley stated that he moved to Eliot with his wife and son in June from Colorado. He added that he works in the energy industry, is interested in energy and was glad to see an energy commission in Town. He added that he stopped in to a couple of meetings and discovered they were welcoming new people with open arms so he wanted to join them.

Mike Moynahan commented that this was a perfect fit, the background is there and he has shown an interest.

7:32PM Motion by Mr. Moynahan, seconded by Ms. Place, to appoint Mike Eardley to the Energy Commission, term to expire 2012.

VOTE
2-0
Chair Concurs

#2 TO : Board of Selectmen
FROM: Maine State Planning Office
REF : 2009 Comprehensive Plan

Ms. O'Donoghue announced that the State Planning Office has approved Eliot's Comprehensive Plan, stating that it was complete and consistent with the Growth Management Act. She added that the Town could now move forward with establishing an implementation committee. She added that, with the Board's permission, she was going to announce that the BOS has openings for the committee and invited people to make suggestions for people they might know and to let Barbara know. She asked the Board what numbers, mission statement, etc., do they want for that committee.

Mike Moynahan suggested that, at a minimum, the Board should determine the size of the group. He stated that he would think they would have their own mission statement and their task would be simple and that is to implement.

The Board agreed to start with seven.

#3 TO : Board of Selectmen
FROM: Eliot Conservation Commission
REF : Request to carry over funds

7:37PM Ms. O'Donoghue clarified that unexpended appropriations from their budget be carried over to the next fiscal year and would be specifically designated for Eliot mapping expenditures for the coming year. She stated that, usually, this kind of request comes in once a year in June. She added that, just this one time, she would be inclined to allow it and asked for Board input.

Mr. Moynahan asked which year's budget they were asking to be rolled over or every year.

Ms. O'Donoghue stated that it could not be for every year. She believed the funds were from this year to next year and whatever is unexpended so far but she wasn't sure.

Ms. Place wanted to have clarification of what funds the Conservation Commission was referring to.

The Chair asked Jack Murphy if he had any information.

Jack Murphy stated that he believes it is from last year, which got delayed and somehow forgotten.

BOARD OF SELECTMEN'S MEETING
October 22, 2009 6:30 PM (continued)

The BOS agreed to have the CEO clarify which funds were being requested.

The CEO agreed.

#4 TO : Board of Selectmen
FROM: Dan Blanchette
REF : Carry Over Accounts

Ms. O'Donoghue stated that they had another carry over and have no explanation for this. She asked the CEO to look into it.

The CEO agreed.

#5 TO : Board of Selectmen
FROM: Eliot Police Dept.
REF : Selectmen's Policies

Ms. O'Donoghue asked if the Police Chief would like to speak to his letter.

Mr. Short stated that the letter was a request to get clarification on the policy released by the BOS about take-home vehicles for the Lieutenant and Detective and the question is whether that is a retroactive policy or was it meant to grandfather those two positions.

Mr. Moynahan stated that it was his recollection that it would be applied moving forward, not going backward.

Ms. O'Donoghue added that this was a condition of their hiring, as well.

Gary Sinden commented that he did not recall that there was any agreement to grandfather. He added that he wasn't saying that wasn't appropriate but that during the discussions the BOS agreed to table that until the policy was created as the BOS could not grant or create an exception until the policy existed. He added that it was his belief that, if that was the sense of the Board, then they should have a vote to officially establish that or not.

Mr. Moynahan stated to the Chair that it was discussed but that he agreed the Board should take the action now that the policy exists.

Motion by Mr. Moynahan that the two police officers who currently hold those positions are grandfathered to use the vehicles and any hires who take those positions later are subject to the terms of the policy.

There was discussion on how this issue came about and it was clarified that it was a condition of their hire by someone but was not authorized by the BOS.

The Chair asked for a second to the motion.

There was none and the motion failed.

Ms. Place stated that it was her understanding that the BOS changed that policy to prevent the taking of vehicles back and forth.

Ms. O'Donoghue agreed and added that there was a situation that was one that was felt that it was the Town's mistake and that the policy that the BOS was working on was to apply to new hires, not current hires.

Mr. Short agreed there was no policy other than past practice within the Police Department. He stated that it was the Board's decision on whether they make new policies retroactive or not. He added that he doesn't believe this is just a matter of where those two people are traveling but goes to the future, as well, on how they define where vehicles should be located regarding residential issues. He reiterated that he was asking for clarification from the Board as to whether this was being made a retroactive policy.

BOARD OF SELECTMEN'S MEETING
October 22, 2009 6:30 PM (continued)

7:45PM Motion by Ms. Place to make this policy retroactive.

There was no second and the motion failed.

The Chair recognized Gary Sinden.

Gary Sinden commented that the Board did not need a motion to make something retroactive, as a policy is a policy. He stated that, if they would make an exception to the policy, then they would need a motion to override.

Ms. O'Donoghue asked if the members wanted to make an exception for these two people.

Motion by Mr. Moynahan to make an exception to the policy for the two current cases only.

There was no second and the motion failed.

The Board agreed to get more information/input before making a final decision on this matter.

#6 TO : Board of Selectmen
FROM: Maine State Planning Office
REF : Right-of-Way Discovery Grants

8:02PM Ms. O'Donoghue clarified that they had missed the deadline for applying but that the Board should take a look at this in the Spring as these are good grants that would fit right in with the Comprehensive Plan.

#7 TO : Board of Selectmen
FROM: Maine State Planning Office
REF : Shore and Harbor Technical Assistance Grants

Ms. O'Donoghue reiterated that this type of grant might be helpful in developing the Comprehensive Plan, as well, and that they should look at this in the Spring.

#8 TO : Board of Selectmen
FROM: Dan Blanchette
REF : Deputy General Assistance Director

Ms. O'Donoghue stated that they have been asked to appoint Kathy Pridham of Kittery as Deputy General Assistance Director while Dan Blanchette is away. She added that Ms. Pridham has agreed to do this and it would be very helpful to have her in place during Dan Blanchette's absence.

Motion by Mr. Moynahan, second by Ms. Place, to appoint Kathy Pridham of Kittery as Deputy General Assistance Director in Dan Blanchette's absence.

VOTE
2-0
Chair Concurs

#9 TO : Board of Selectmen
FROM: Dan Blanchette
REF : Selectmen's Action List

8:06PM Ms. O'Donoghue clarified that much of the list is still pending but the Board does need to schedule reviews for Department Heads (#6).

Mr. Moynahan suggested using the date of hire to set the schedule. He also stated that they need to make sure the Department Heads are doing their reviews.

BOARD OF SELECTMEN'S MEETING
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Regarding #'s 3 & 4, Mr. Moynahan wanted to get the Jenkins proposal and Gagnon's current so that they could review and decide whether to move forward on. He asked the CEO to get those two items for the Board. He also discussed getting a group of three people together to discuss the Road Commissioner job description and pay scale as time is running out. He added that the three people could include one Board member, Bill Shapleigh and someone from the public.

Orland McPherson suggested Bud Cornelius because of his highway background.

Mr. Moynahan agreed.

Ms. O'Donoghue asked if Mr. Moynahan wanted to head this up and get it going.

Mr. Moynahan agreed.

#10 TO : Board of Selectmen
FROM: Dan Blanchette
REF : TIFD Article

Ms. O'Donoghue stated that this article would be included in the January Special Election.

The Chair recognized Gary Sinden.

Gary Sinden stated that this was the second time and same proposal that has come before the Board. He added that the last time they looked at it, the Town attorney said that each expenditure must be brought to the people for approval and not create a fund that could be spent at will by this Board or anyone else. He asked if there had been a new recommendation or opinion from the attorney since then.

Ms. O'Donoghue stated that they had gotten a declaration at a recent meeting but she didn't remember which one.

Gary Sinden stated that any expenditures to Kittery must be based on a signed sewer contract. He added that no monies can be spent in Kittery.

Ms. O'Donoghue stated that the lawyer's statement said that it could be.

Gary Sinden stated that it was only if the sewer contract was signed.

Ms. O'Donoghue disagreed and that the wording reflects as it applies to the TIFD.

Mr. Moynahan stated that at the most recent sewer meeting or workshop they had it was determined that the monies spent in Kittery was still part of the sewer contract but not the entire contract. He clarified that because there are still discrepancies in the contract, they are taking it out of the Phase I of the sewer contract, with a Phase II, so that they can actually get the true costs for the feasibility study, etc., so it is still consistent with that portion of the contract and does not hold Eliot hostage because they are not obligated, nor is Kittery, for the remainder of the contract.

Gary Sinden reiterated that no contract exists until the parties sign it. He stated that he believed the Board was jumping the gun on this.

Mr. Moynahan commented that the Board was supposed to have that part of the declaration or portion of the contract before them tonight for Board approval to send to Kittery for their review this week and it just isn't in the file.

BOARD OF SELECTMEN'S MEETING
October 22, 2009 6:30 PM (continued)

Gary Sinden stated that the sewer contract had to be approved by the people at Town Meeting. He added that they agreed as a Board that that would happen.

Mr. Moynahan stated that the contract agreement read "by the Town of Kittery, Maine, the Town of Eliot by its Boards of Selectmen." He added that that is what is written and just commenting on what is there.

Gary Sinden reiterated that the whole discussion by the Board has been that that contract would go to the people for approval, a multi-million contract.

Mr. Moynahan clarified that they couldn't get a contract without an engineering study, couldn't get engineering done without a feasibility study and one couldn't get a feasibility study without paying money and couldn't spend money unless a sewer contract was signed. He added that none of this would occur because they keep chasing their tail and going around in circles. He stated that breaking out a portion of the contract was a smart thing and should have been done a long time ago. He stated that expending that money would let us move forward and actually hold them to a dollar figure this Town could present to the voters, then the voters could approve to spend that money or not. Mr. Moynahan asked if they should consult with the attorney every week on the feasibility study to appropriate smaller, incremental funds or offer this article that limits the expenditures but does get this project going. He stated that they had already approved the administrator, as Dan Blanchette would be the administrator of the TIFF District and why couldn't they lump-sum that portion. He added that they would not be spending any more taxpayer money than what is already available in the TIFF District for moving forward to see if this is even going to be doable. He also stated that, if they don't spend that money, then they would not be able to do even that.

Gary Sinden stated that, on the floor of the Town Meeting, it was decided that the document that went to the state was amended and that Dan Blanchette would not be the administrator and that this Board would be the administrator. He added that the wording, here, doesn't say a word about Kittery, and what the Board was proposing is that \$488,000, 98% of it, would be given to Kittery.

Mr. Moynahan disagreed and clarified that \$60,000 would be for the feasibility study and that the contract was broken out into two parts. He reiterated that that documentation/language should have been part of their file tonight and it was not.

Gary Sinden asked when that was decided, when that was created.

Mr. Moynahan stated that that came from the sewer negotiations that the Board had last week.

Gary Sinden stated that the Board really had to do a couple of things. He added that they had to look at the recommendations from the attorney, again, because his memory is crystal clear on this and those documents are right on his desk. He added that the Board should get it so the people could see it before they pass on this.

Mr. Moynahan reiterated that the documentation should have been in the Board's packets tonight.

The Chair asked the CEO to explain.

The CEO stated that he did have it in his office, that Mr. Blanchette gave it to him in a folder, and that he wasn't sure he was supposed to have that at the meeting tonight. He added that, if that is the case, he could go make copies of it and give it to the Board.

BOARD OF SELECTMEN'S MEETING
October 22, 2009 6:30 PM (continued)

Mr. Moynahan commented that it should have been ahead of time and not at the last minute.

Ms. O'Donoghue suggested tabling this until the next meeting as the Memo was very clear.

The Board agreed to table this to the next meeting to get everyone on the same page.

8:18PM Ms. O'Donoghue stated that there was an additional issue, not on the agenda, which she thought would be fairly simple and is a liquor renewal license. She clarified that this was for a renewal of a liquor license for Katrina's Restaurant. She clarified that the applicant had no problem with neighbors, etc., and that she was just coming for a renewal.

Mr. Moynahan moved, seconded by Ms. Place, to renew Katrina's Restaurant liquor license.

VOTE
2-0
Chair Concurs

At this point, there was discussion and activity around the documents the BOS needed to sign tonight.

The CEO brought to the Board's attention that there was a letter regarding the Voter Registration Appeals Board vacancy from Sandra Smith, with her wish to be appointed to that vacancy.

Ms. O'Donoghue stated that that was an honorary position and she does not remember ever calling on anyone to do that. She explained that that Board dealt with issues brought by people who questioned the results of an election. She added that, apparently, there was a vacancy but this Memo was not clear.

The Board agreed to table this to get clarification until the next meeting.

CORRESPONDENCE:

Selectmen's Report

Executive Session:

8:25PM Motion by Mr. Moynahan, seconded by Ms. Place, to enter into Executive Session as allowed by 1 MRSA Section 405.6.A. "Discussion or consideration of the...compensation..."

VOTE
2-0
Chair Concurs

8:47PM Out of Executive Session

Other Business as Needed:

Mike Moynahan stated that, as of September 30, the Board has the "Town of Eliot Article versus Expense" documentation and urged the Board to look at those, as they are overspent in several areas, and questioning Departments on why they are overspending to get some clarification about what is happening in the Departments.

Adjourn: Motion by Ms. Place, seconded by Mr. Moynahan, to adjourn the meeting at 8:50PM.

VOTE
2-0
Chair Concurs

DATE

Roberta Place, Secretary