

BOARD OF SELECTMEN'S MEETING
April 17, 2013 5:30PM

Quorum noted

6:00 PM: Meeting called to order by Chairman Moynahan.

Roll Call: Mr. Moynahan, Mr. Dunkelberger, Mr. Murphy, Mr. Beckert and Mr. Hirst.

Pledge of Allegiance recited

Moment of Silence observed

Approval of Minutes of Previous Meeting(s)

6:01 PM Motion by Mr. Dunkelberger, seconded by Mr. Hirst, to approve the minutes of March 21, 2013, as amended.

VOTE
4-0
Chair concurs

Motion by Mr. Dunkelberger, seconded by Mr. Beckert, to approve the minutes of March 28, 2013, as amended.

VOTE
4-0
Chair concurs

Motion by Mr. Beckert, seconded by Mr. Hirst, to approve the minutes of April 3, 2013, as written.

VOTE
4-0
Chair concurs

Public Comment:

6:13 PM Mr. (Joel) Glassman asked who in local government could deliver depreciation figures for the compression station; that the BC had requested this several times and not received them.

Mr. Moynahan said that the Assessor was in charge of that; Mr. Blanchette provided the information to the BC that the Assessor had. He explained that depreciation was occurring at a different rate than was projected.

Mr. Dunkelberger said that the Assessor dealt with the assessment and the depreciation was handled by Maritime or whoever was running the station, adding that the assessment was not based on the depreciation.

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6:15 PM Mr. (Bob) Fisher gave the Board a draft amendment to the ordinance regarding allowing Skyping to meet committee quorums.

Mr. Moynahan said that this was on tonight's agenda and they would address it then.

Ms. Adams asked about the status of the Carter Cemetery and the insurance to repair the damages.

Mr. Blanchette said that they received a check for approximately \$1,000 from the insurance company; that they had not cashed it because the Board wanted assurances from the insurance company that they would replace if the repair did not hold; he had received oral verification of that but had not received written verification to this point. He agreed to follow up again.

Mr. Hirst suggested that, if Mr. Blanchette did not get a prompt response from the insurance company, he call the State insurance department.

Department Head/Committee Reports

6:19 PM Mr. Moulton discussed the striping at the four intersections (Route 236) the Town was responsible for and that the Town was responsible for the striping at the signal lights at those intersections. He said that he could use money in his budget and put other things off, as this needed to be done promptly; that the cost would be around \$7,500.

The Board discussed how to fund this work; whether to over-expend a line item or find another source.

Mr. Beckert moved, second by Mr. Hirst, that the Board of Selectmen utilize the Street Light & Traffic Light Reserve Account, if it had the appropriate figures in it, to pay for the cost of striping at the four Route 236 intersections.

VOTE

4-0

Chair concurs

New Business (Correspondence List):

6:24 PM

#1

TO : Board of Selectmen
FROM : Kimberly Richards
REF : Good Neighbor Petition

Ms. Richards was present with several others in support of the petition and gave an email from another who supported the petition but could not attend. At this time, she read a prepared statement regarding potential legal costs to the Town.

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Mr. Moynahan said that Article Four – Good Neighbor Petition - was on the warrant so it was not accurate to say the Board did not support it. He added that they went back and forth over the dollar figure because of the unknowns.

6:27 PM Mr. Dunkelberger said that their own attorney didn't necessarily agree with the Attorney General that this would be cost-free; that the dollar figure was a good caution. He added that he thought it would be fiscally irresponsible if they did not go to the Town with the idea that this could cost some money; that PSNH has threatened litigation.

Mr. Moynahan discussed that current PSNH modeling didn't show harm so the Town may have to do additional modeling to show any potential harm.

6:30 PM Mr. (Glenn) Brand, Director of Sierra Club Maine, said submitting modeling was not required; that the Sierra Club had done modeling that could be submitted, if the Town chose to.

Ms. (Karen) Norton said that the first Town attorney's letter said that there was no foreseen cost; that to put a price on the ballot seemed undemocratic in that, if they put a value on it, then they would have to do the same for anything to be voted on.

Mr. Moynahan said that no one has been able to give the Board a clear path for any potential costs, adding that another Town attorney said that it could cost money; that they only had one comparison to look at and that was New Jersey, which was over \$100,000 in litigation.

6:33 PM Ms. (Diane) Brandon said that the State of New Jersey chose to join the EPA in challenging the power station; that that was where that cost came from. She added that the initial petition stood on its own and didn't have costs associated with it; that, then, if the Town later chose to take more action it would be a choice, another vote, and maybe legal costs.

Mr. Moynahan asked that, in a year's time, there would be no chance of further Town involvement and, so, no chance to incur any costs, once that petition was signed.

Ms. Brandon said that the petition went, then, later the EPA could ask the Town if they wished to join the EPA in an action that then could have legal costs with it, but that would be a new decision, which was the case in New Jersey.

Ms. (Jean) Hardy cautioned the Board to make certain the Town had good legal standing; that Eliot needed to make sure it was a political subdivision within the State of Maine; that from her experiences working with the FAA that legal standing was very important; that they needed to research State statutes to

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determine legal standing. She suggested they talk with someone from the EPA, if they had not, to find out the process on following this petition.

Ms. Richards said that individuals couldn't really ask the EPA questions; that the EPA didn't hear individuals and that was why they had to do this petition.

Mr. (Raymond) Faulkner said he was bothered that the Town attorney that reviewed this didn't have a background in environmental law; that the Town couldn't spend enough on attorneys when the gentlemen's club was trying to get in; that they were living under the plume of a power plant impacting their health. He added that he thought that PSNH, in their veiled threats and intimidation, has tried to make Eliot back down from filing this petition. He clarified that it was Northeast Utilities, not PSNH, a company out of Connecticut picking off a small town and suggested private citizens in the Town send these veiled threats to the Attorney General and, perhaps, Senator King.

6:37 PM Mr. Moynahan said to the Board that there were concerns from citizens regarding Article Four showing a dollar figure and asked the Board if they wanted to change that to a zero dollar figure.

Mr. Murphy said that he was tempted to because, if the citizens wanted the Board to follow up later on, then they could have approval at another Town Meeting; that he believed they could file a petition with no danger.

Mr. Brand clarified that New Jersey did not have to spend \$100,000 on litigation, they chose to do that; that the company there sued EPA and the State of New Jersey decided to join that law suit; that they were not compelled to and the suggestion in that letter (PSNH) was not correct in that this cost New Jersey as if they were dragged into that; that he thought it was very important for people to understand the facts.

6:40 PM Mr. (Dick) Despina, Schiller Station, said that it was unfortunate that the reference continued that this was a threat for litigation; that they were just making the Town aware that they had an obligation to their customers, employees, and shareholders to protect those interests against claims not warranted; that they operated within their permits and all state laws. He added that it has never been a question that Eliot should find out what their air quality was; that the EPA was scheduled to issue their guidance documents to the states this summer and, then, the states were obliged to determine what the air quality was against the new standard in each of their states. He added that that process was a 360-degree analysis that included this side of the river in Maine and he thought that has been lost in the discussion. He also added that Eliot might find out quicker than the petition route if they had air quality issues, reiterating that, if a problem was found, then PSNH would participate in the solution.

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Mr. Hirst said that PSNH's Title V permit renewal was taking place and Mr. Despina had indicated his willingness for Board participation.

Mr. Despina said that NHDES expects a draft permit out in early May, which would trigger a 30-day public comment period, and the Town of Eliot, or any person, could participate in and provide written comments. He added that, if a public hearing was requested, they would schedule one and people could give verbal comments directly to the agency. He said that the NHDES Permit Supervisor, Todd Moore, provided Mr. Despina his direct contact information and has invited an Eliot Selectman to contact him directly, gladly explaining the entire Title Five renewal process.

Mr. Moynahan said that that was good information; however, the Board did choose to move forward with the Clean Air Petition as a warrant article. He reiterated the question before the Board was still the dollar figure with that article. He asked the Board if that was something they wanted to change, or not.

Mr. Hirst said that he did not wish to change it. He added that he would like to volunteer to attend these hearings on behalf of the Board.

The Board agreed to have Mr. Hirst represent them at those hearings.

Mr. Murphy suggested they remove the dollar figure and let that come later in a separate action.

6:47 PM Mr. Hirst said that the Attorney General Mills' letter said, specifically, that she did not anticipate a non-frivolous lawsuit, with the inference being that they wouldn't need money to defend such a thing, but she didn't say anything about a frivolous lawsuit and, if that happened, they would have to defend that.

Mr. Dunkelberger agreed with Mr. Hirst to keep the dollar figure.

Mr. Beckert discussed the need to make voters aware of the potential for litigation but was leaning toward taking the dollar amount off the warrant and not muddy the water. He added that, if a need arose for funding, then they would go back to the voters. He added that he could see Mr. Dunkelberger's point but the voters were asking to keep the warrant article language clean.

There was discussion about using the legal reserve fund for any up-front legal action, then going to a Special Town Meeting for resolution as to whether they should proceed, or not.

6:50 PM Mr. Blanchette confirmed that the legal reserve was not earmarked for any specific issue and could be used for this.

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Mr. Moynahan said that, with no dollar figure, there should be some mention that they could incur legal expenses.

Mr. Beckert said that, if they filed this petition in good faith and asked the EPA to look at it, then the Town has not committed to anything more at that point.

Mr. Moynahan said that this was a substantive change to the warrant article and asked for a motion from the Board.

Mr. Beckert moved, second by Mr. Murphy, that the Board of Selectmen, in Article the Fourth, Section 2 be removed in its entirety, which read, "*In support, thereof, raise and appropriate the sum of \$40,000 to be deposited in a dedicated account to be used for the Town's legal expenses that may accrue due to the filing of the petition and all legal actions related...*"

VOTE

2-2

**Chair votes in the affirmative and
the language will be removed.**

6:53 PM
#2

TO : Board of Selectmen
FROM : Public Service of New Hampshire
REF : Good Neighbor Petition filing

Mr. Despina said that they became aware of a letter from the EPA to Governor LePage, dated February 7, 2013, that discussed air quality in Maine and had found no violations of the 2010 1-hour SO₂ standard; reiterating that determining air quality against the new standards was actively ongoing with the EPA so there was no need for any formal action by the Town; that the Town would find out what their air quality was.

Mr. Moynahan said that that was a good point in that they may have the information before the June Town Meeting and may not have to move forward with the petition.

6:55 PM

Ms. Brandon suggested a monitoring station in Eliot, as there was no data she would believe until Eliot, specifically, had a monitoring station; that the down-river monitoring station was irrelevant to what came into Eliot.

Mr. Brand commented that the company was pretending that when EPA said they didn't have enough information it was really giving Schiller a clean bill of health, so he thought it was important to read that letter very critically.

Mr. Despina said, for the record, that the statement he read was a direct quote from the EPA letter and to claim it was inaccurate was incorrect. He discussed

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that the Sierra Club modeling predicted violations of the standard at Pierce Island but, since 2010 and the new 1-hour standard, that has not happened.

6:57 PM Mr. Faulkner commented that they still suffered from stack downwash in South Eliot. He agreed that there should be a monitoring station in Eliot

6:58 PM
#3

TO : Board of Selectmen
FROM : Robert Pomerleau
REF : Skype statute

Mr. Moynahan said that they had a draft legislative version for Skyping from Mr. Pomerleau and that Mr. Fisher provided something on this, as well.

Mr. Pomerleau said that, if the Town considered this, then this document had helpful language for guidance.

Mr. Moynahan agreed this would be helpful, if they chose to incorporate that; that the Board would get this back on the agenda.

7 PM
#4

TO : Board of Selectmen
FROM : Jean Hardy
REF : No Correspondence

Ms. Hardy introduced Kit Breen, Sweet Peas Manager, and gave the Board some documentation; saying that because of her knowledge she had been asked by her daughter (airport property owner) and Ms. Breen to speak with the Board. She discussed the history – Jim Barrett defaulted on his mortgage with her and she spent \$85,000 in legal fees and lost over \$300,000 in assets on the property; that he defaulted in March of 2005 and it went to foreclosure in August 2006. She said that she made an agreement with local developers and consulted the then CEO, Don LaGrange, who said she could break off a house lot; that she made financial decisions based on that, which was after the road ordinance had gone in. She added that, then, CEO's changed; that she met with Paul White in September 2009 and, at first, he said that Sweet Peas could break off two house lots; that at that meeting he brought up to her daughter that she wasn't giving an abutter a utility easement and she said that was correct and that there were reasons for that – no problem, and they left. Ms. Hardy said that after that meeting Mr. White sent them a letter saying that Sweet Peas couldn't break off a house lot and Sweet Peas appealed that decision to the Appeals Board and showed proof of delivery confirmation; that the appeal never got heard and never a word from the Town. She said that around June of 2010 her daughter and Ms. Breen wrote a letter of complaint to the BOS, which went to Ms. O'Donoghue, and no response from the

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Town. She had a phone conversation with Ms. O'Donoghue; that Ms. O'Donoghue said she was aware of it and would schedule a meeting with the BOS, then Ms. O'Donoghue passed away. Ms. Hardy reiterated that she made a financial decision based on the CEO's evaluation that a house lot could be broken off and it wasn't just her the CEO talked with; that he talked with two attorneys – hers and the developer's – and he assured both attorneys that a house lot could be broken off. She added that they have tried everything; that so far Sweet Peas has spent about \$9,000 trying to get a survey and trying to work with the CEO; that money was put out and money was put out and every time Sweet Peas went to the CEO there was another issue that would come up; that one was that there had to be two entrances and two exits, as if this was a brand new subdivision; that she called that "bring me the rock". Ms. Hardy said that Sweet Peas was looking to come to some sort of Consent Agreement (C.A.) with the BOS to break off one house lot; that there was 90 acres of land and they didn't think that one house lot would be a burden. She added that Littlebrook Lane was actually part of two subdivisions; that it was Town-approved but not Town-accepted; that Littlebrook Lane met the definition for Arterial Road. She discussed a couple of proposals they had for house lot locations – one off Everett Lane and the other next to the Cashin's house. She reiterated that she had no reason not to believe the CEO in 2006; that the Cashin's were allowed to get a building permit (near the ARC facility) and build a house. Ms. Hardy said that there was a can of worms when Jim Barrett defaulted; that he left these people without a good access to bring Everett Lane up to their house and they had no utilities going up to their house. She added that she gave them a ROW to their property, at no cost, as they were already struggling to put all the pieces together; that even their house lot was illegal and she gave them enough land to have a legal house lot; that they had already started building. At the time, she reasoned that the Town had allowed these people to build a house and she had no reason to doubt a house lot could be broken off. Ms. Hardy said that she was before them respectfully requesting that the Board consider, perhaps, entering into a C. A. of some sort with Sweet Peas so they could break off one house lot; that if they would work that out, then that would be great. She added that, if that didn't happen, then there was the potential liability for a lawsuit against the Town; that she hated that idea but financial decisions were made based on the CEO's decisions.

7:12 PM Mr. Beckert said that he could feel Ms. Hardy's frustration if one CEO has told her it was allowable; that at this point he had no reason to doubt that it wasn't because he thought that, under Family Subdivision, they were allowed to break off one lot every five years. He asked the CEO why they were not allowing Sweet Peas to break off one house lot.

Mr. Marchese said that it was under the Back Lot Ordinance; that there was a provision that said it had to be no greater than 1,000 feet to a thruway and, also, under the standard road provision, one couldn't have it any longer than 1,000 feet.

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He said that those two sections in the ordinances pretty much negated any further development, in his opinion, in that vicinity.

Mr. Dunkelberger asked the CEO what he considered Littlebrook Lane as.

Mr. Marchese said he considered it a private dead-end street that was about 2,000 feet long.

Mr. Dunkelberger said that his other concern was why there was no reply from either the Appeals Board or the BOS; that he found that troubling.

The Board agreed.

Mr. Beckert asked Ms. Hardy when Littlebrook Lane was put in.

Ms. Hardy said that it was in 1971. She added that she put in the subdivision packet where it showed Littlebrook Lane going all the way up to her house; that her house was subdivided and broken off so, technically, Littlebrook Lane went all the way up to her house; that that was part of a subdivision and, technically, Littlebrook Lane was an approved road but it was not accepted by the Town through a Town vote. She added that she greatly respected the CEO's thoughts but she did not think he was aware that Littlebrook Lane had gone through several subdivisions through the Town.

7:15 PM Mr. Beckert said that, although he couldn't remember exact wording, there was a provision under the road section of the ordinance that dealt with roads that were in existence prior to 1978; that it treated those roads differently than roads after 1978. He discussed the ARC situation and said that he thought the ordinance needed to be looked at and how it currently applied to this specific situation

Ms. Hardy said that they were getting taxed, privately, on the road and Mr. Hardy looked at the tax bill and said he wouldn't pay it because he didn't know why he was being taxed for that road; that the Town of Eliot placed a lien on that road. She added that it was a good question as to who owned that road at this point.

7:17 PM Mr. Beckert added that Littlebrook Lane was also part of an abandoned County road, as was Fernald Lane; that that road went way back to being an approved public way even though it was private today.

Mr. Dunkelberger asked the CEO if the information presented tonight give him any pause with regard to his current decision.

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Mr. Marchese said that he would have to look further into the ordinance to verify Mr. Beckert's claim that there was a difference; a different way of looking at situations where roads were constructed prior to 1978.

Mr. Dunkelberger suggested that the Board allow the CEO to do just that; that he thought that this required a little more investigation. He asked if this case would now be eligible to go back before the Board of Appeals based upon the current CEO decision.

Mr. Marchese said that he thought a clean approach would be for the applicant to provide him with an application and he would either approve or deny the application with specific reasons for denial, then she could take it to the BOA for an administrative appeal.

Ms. Hardy said that right now she was under the threat of a lawsuit; that she had to report back to the developers and she may, by the later part of this month, be facing a lawsuit and, at that point, she would have no legal recourse. She added that this was a big mess; that she wished it didn't exist but Sweet Peas was going to be sued. She reiterated that Sweet Peas has spent a great sum of money; that they kept going back to the CEO, with no disrespect to the current CEO, and a financial decision was made based on Donald LaGrange's decision and that was after the road ordinance was put into effect. She added that she thought it would be another 2-3 months before there was a decision from the CEO; that Sweet Peas engaged a local surveyor, who got to a certain point and said he would not do anything more because the CEO told him that she could not get a building permit. She said that it was getting more and more difficult and, frankly, Sweet Peas didn't have much time left.

Ms. Breen said that Sweet Peas was already being sued and they had no choice.

Mr. Moynahan said that he lived on the road, saying he had no vested interest with these folks but, if there was a concern with his comments...

The Board had no concerns.

7:20 PM

Mr. Moynahan said that the BOA should have heard this back when this mailing was done; that that was not done was still baffling to him. He added that they were looking at two building permits that were issued in 2006 but, with the same rationale they were using today, why were those even issued. He added that there seemed some confusion in the language or something but, if they allowed two building permits in 2006, then why were they not allowing them now; that the road has not changed and nothing has been done differently in that period of time.

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Mr. Beckert said that, with seminars he has attended on PB issues, when and if ordinance language was considered ambiguous, then the decision went in favor of the applicant; that that was even explained in BOA training so, if they had an ambiguity that has obviously gone on for some period of time, he thought they were compelled to err on the side of the applicant or make a decision that was favorable to the applicant; that he thought that that was even the way the courts looked at it and would direct the Town.

7:22 PM Mr. Dunkelberger said that he absolutely agreed with Mr. Beckert. He added that, having said that, before he would advocate for any type of C. A., he would look for a package very similar to what would be required to be presented to the CEO and the BOA saying what they wanted to do and the background on it. He said that he thought they should let the process run and, if it came back to this Board, then the Board would take care of it. He added that he would prefer to let the CEO do his job and, if Sweet Peas didn't like his decision, then the BOA was there, then this Board.

Mr. Beckert said that he agreed with Mr. Dunkelberger, acknowledging that this put the burden back on Sweet Peas to put a package ready. He added that it was unfortunate that it didn't happen and questions remained as to why it didn't happen back then. He added that, for this Board to consider a C.A., which may be the ultimate result, they needed to go through the process right now. He acknowledged that time was of the essence but that put everything in the proper process and then the BOS, if it came to that, would then be able to make a decision and enter into a C.A.; that then they would have done everything up to that point by ordinance.

Ms. Breen reiterated that they have run out of time; that they were being sued.

Mr. Hirst asked if the original submission, the one that is being suggested she provide, exist in the file now from 2006 – could she use that.

Ms. Hardy said that Sweet Peas didn't have a lot of money and, before they did a full survey, they wanted assurances that a building permit would, indeed, be issued; that that was why they had the meeting in September of 2009 with Paul White. She added that, when Mr. White said yes, a surveyor was engaged and then, as the surveyor started talking Mr. White, Mr. White did a 180-degree turn and said no; that at that point money had been expended trying to get a survey for a house lot. She said that the current CEO recommended getting a survey, bring it in, and find out what could be done. She added that the surveyor started surveying the property and doing test pits, etc.; that when the surveyor started talking with the CEO, the CEO said that they could not have a building permit; that the surveyor withdrew because they were not going to be able to get a house lot. She said that that was two surveyors that Sweet Peas has gone through to this point,

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reiterating that they have spent about \$9,000 trying to get a building permit with no results; that a simple survey should not cost more than \$5,000 - \$6,000 and, yet, Sweet Peas has already expended \$9,000.

Ms. Breen added that they had to find yet another surveyor.

7:25 PM

Mr. Fisher discussed his familiarity with Littlebrook Lane, his strictness with building permits, etc., but listening to Ms. Hardy, he thought that the Board could ok this permit for her with stipulations that it didn't set a precedent for future things that might happen on that road; that this would give her relief right now and would be a wise motion to make.

Ms. Mills said that she believed the ordinance was very clear about the timeframe for appeals and she believed it was 30 days, not three years later.

Ms. Hardy said that this appeal was done within the timeframe and the Town never heard it.

Ms. Mills asked, at the point the Town didn't hear it, wasn't it her responsibility to come back and find out why.

Ms. Hardy said that Sweet Peas did try to follow up and no one could tell Sweet Peas what the status was on that appeal; that this dragged on, with many phone calls to Mr. White, and no response. She reiterated that the appeal was filed in a timely manner.

Mr. Moynahan asked Mr. Blanchette how appeals were received.

Mr. Blanchette said that, ultimately, they went to the CEO, who worked with the BOA; depending on the delivery, they might come through the front office, but they were directed to the CEO.

It was noted that this particular appeal was sent using certified mail.

Mr. Moynahan said that the most troubling thing to him was that someone was denied and took proper steps to have someone else hear that and it didn't happen.

Mr. Beckert said that he thought that the cleanest way to do this now was to resubmit to the CEO a request for a building permit for whatever lot she wanted to break off, then go from there; that, then, they would have gone through the proper steps according to the ordinances.

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7:28 PM Mr. Dunkelberger said that an advantage in this was that, once the CEO did his research, he may find a positive response for her, and that would short-circuit everything.

Mr. Beckert said that he understood Dr. Breen's concern that they had run out of time and having a suit filed against them but he would think that any decent judge would grant a stay until they could get things ironed out, if the judge knew it was in process.

Ms. Lemire asked the Board if they would be willing to put a timeline on the research, once that package came to the CEO, for him to get it done.

The Board agreed this has proven to be somewhat time-sensitive for all involved and said that, if this was something the CEO could look at a bit quicker, then that would probably help all parties involved.

Ms. (Roseanne) Adams, referencing Section 618 Failure of Town to meet deadline, asked if there was a deadline because, if so, then the ordinance said, "If the act required of a town official under this ordinance is not completed in the ascribed time, includes approval of conditions necessary for approval by the Town of an application. The permit shall be deemed granted and allowed..."

Ms. Hardy said, with all due respect, this was filed and it was like going into a blank wall; that December was the first time she had brought it up to the Board's attention but understand that this was filed in a timely manner and, the reason why in 2013, was quite honestly because they could not get a straight answer; that it's been 'bring me the rock', 'bring me the rock'.

There was discussion around not being able to go back in time to know what the CEO at the time did with the paperwork or if the BOA Chair saw it; that the Selectman who had contact with the applicant has since deceased; that it was like trying to reconstruct everything without all the players; that they wanted a clean way to do this.

7:32 PM Mr. Beckert added that they could make a decision tonight that the Town erred and did not meet their obligation and approve the lot tonight.

Discussion showed that a fee, in the form of a check, was included in the appeals package but was never cashed.

7:35 PM Ms. Hardy proposed that she work with the CEO and have the CEO, if he would, work with their surveyor to do some more work; that the CEO, the Sweet Peas surveyor, and Sweet Peas sit down to figure out where the proposed house lot would go and what would have to happen to break off a house lot. She added that

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the CEO was an integral part of this; that the Board was struggling, the CEO was struggling, Sweet Peas was struggling and she thought that if they just worked together, then they could come to a successful resolution to this.

Mr. Murphy said that he thought this deserved some calm going over with the CEO to verify each of these steps, to write them up and work with Ms. Hardy in the way she has just suggested; that if it could be shown that what the Board suspected happened, has happened...that there should be some record somewhere that showed what happened. He added that, if the Town was wrong, then he thought the Town ought to admit it and let the lot be allowed, although the lot would have to be determined.

Ms. Hardy said that was why she suggested working with the CEO. She added that Sweet Peas would like to put the proposed house lot right next to the Bryant's house on Everett Lane. She added that Sweet Peas wanted to improve Everett Lane and that would be advantageous to the Bryant's because the road went in front of their house.

7:40 PM Mr. Moynahan said that they were, in essence, revisiting this and encouraged Ms. Hardy to really review the pertinent ordinances with the CEO; that if the Town did err, in working with the CEO and Administrator, then he thought the Town would have no other option but to grant the building permit.

Mr. Dunkelberger said that he thought Ms. Hardy came up with a great solution and he applauded her for the collaborative effort versus loggerheads, so, he would say full speed ahead.

The CEO will receive a copy of Ms. Hardy's information for reference.

Ms. Hardy said that she sincerely appreciated Mr. Hirst's efforts in making this happen.

7:43 PM
#5

TO : Board of Selectmen
FROM : Bernstein Shur
REF : Use of TIF Funds from Route 236 TIF District

This was a response from Attorney Fortin regarding using TIF Funds for existing sewer improvements.

Mr. Pomerleau discussed the attorney's response, saying that he didn't feel it addressed this specific situation; that the upgrade process had already started with the old sewer; that she didn't address what the reality would be with simultaneous old and new sewer construction; that it was all going to take place at one time, if this was approved. He added that he thought this needed to go to the Office of

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Economic and Community Development; that his question and her answer needed to go to them for a definitive answer, which she said she couldn't provide.

7:45 PM

Mr. Moynahan said that he found this consistent with what they had been told right along and thought that they looked at it in different ways, potentially. He asked the Board if this was something they wanted to put in front of DECD.

Mr. Murphy said that the Board has asked their lawyers, who were good lawyers, over and over again and they kept getting the answer back that it was okay to consider those costs as part of the TIF.

Mr. Dunkelberger said that he was happy with the lawyer's response; that it has been consistent all along and it wasn't just her response; that every time they had talked to a lawyer they basically got the same answer.

The Board agreed they would not send this on to the DECD.

Mr. Pomerleau said that he would submit this, as a citizen, to the DECD, although he thought it would be much better if the Board did it.

Mr. Moynahan said that that would be great and might clarify some questions he still had.

Mr. Murphy asked if Mr. Pomerleau would copy the letter he sent to the DECD.

Mr. Pomerleau said yes.

7:48 PM
#6

TO : Board of Selectmen
FROM : Mike Moynahan
REF : Police Chief – Cost-sharing considerations between Eliot and Kittery

Mr. Moynahan said that he was asked to provide a Memorandum of Understanding (MOU) and potential contract, adding that the potential contract was not completed and this correspondence was based on the most recent discussion with Kittery, with the result being a 55/45 split and an overall reduction of \$60,000 in the Police budget, if this were to happen.

The Board discussed the split and that some members were not happy with it based on the differences between Kittery and Eliot. It was suggested they propose a 55/45 split if the dispatch costs would remain the same for the life of this contract; that this discussion would be just between the Kittery Town Council and the Eliot Board of Selectmen, removing the Chief from the equation. It was

BOARD OF SELECTMEN'S MEETING
April 17, 2013 5:30PM (continued)

clarified that it would be either a 60/40 split without dispatch or 55/45 with dispatch remaining at its current rate for three years.

Mr. Hirst asked about the rationale for selecting these numbers in the first place.

7:53 PM

Mr. Moynahan explained that he used 60/40, originally, that was based on population; that in discussions with Kittery on the make-up of their police department, with supervisory roles, etc., that brought him to 50/50, to start that discussion, because of what they offered as less of a strain on the Chief there; that, after the last BOS discussion, he brought back to Kittery that 50/50 was not something Eliot would entertain and they got to the current point.

There was more Board discussion on the differences of make-up of the two towns, other possibilities for equitable splitting of the responsibilities, as well as concern for equitable balance between the two towns and regionalization.

Mr. Fisher said that he thought the 60/40 split was reasonable; that when they paid the bill, they should pay Eliot...He said that Kittery should be the leader, that Eliot sent their money to Kittery and they pay Mr. Short – Eliot paid Kittery and they pay the policeman.

Mr. Moynahan said that, at that point, Chief Short became an employee of Kittery.

Mr. Fisher agreed.

Mr. Moynahan said that he was an employee of Eliot, currently, so were they willing to just get rid of the Police Chief that they have been pleased with.

7:55 PM

Mr. Fisher said that he would still serve both towns. He added that Mr. Short was a very good administrator; that he was a cop 100% of the time for 100% of the people that he would represent, and that would be Kittery and Eliot. He said that the 50/50 would be on fringe benefits, not on the taxes because taxes would be based on 40/60, but the part that the Town had to pay on the taxes would be a 50/50 split.

Mr. Pomerleau commented that he couldn't come up with a rationale for a 55/45 split based on crime alone. He said that he agreed with Mr. Fisher that, if Kittery had the lion's share of the contract he should be their employee, legally, because entering into that contract would make his current contract void. He added that it didn't make sense to him that Eliot should be the primary when Eliot had the smaller portion; that 60/40 seemed abundantly fair, as far as Kittery was concerned.

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Mr. Moynahan said that he didn't have a contract, he's a Town employee.

Mr. (Stephen) Brandon agreed with Mr. Pomerleau that the policing in Kittery was a much bigger burden than what they experienced in Eliot. He added that, yes, they would lose some control but he felt the advantages outweighed any control they might lose.

Mr. Moynahan said that some of those things were raised in conversations with Kittery and the Chief – crime rates, population, etc., but the make-up of the Kittery Police Department was different in that they had other supervisors that assumed some responsibilities and Eliot did not.

Ms. (Donna) Murphy asked if Eliot was raising Chief Short's salary and Kittery would reimburse.

8:03 PM Mr. Moynahan said that they would raise the combined costs – insurances, salary, retirement – of \$141,495 and Kittery would then, at a 55% share, reimburse the Town \$77,823 so, in essence, the savings to the Town would be \$55,923 versus \$123,586.

Mr. Blanchette said that the article was written so that Eliot was not raising the \$110,000; that they were raising the difference; that they were appropriating the \$110,000 but they weren't raising the \$110,000 because the income from Kittery was applied to it.

It was the consensus of the Board for Mr. Moynahan to go back to Kittery with the two options as discussed.

8:05 PM
#7

TO : Board of Selectmen
FROM : Jack Murphy
REF : Town Article for Town Report (No Correspondence)

It was the consensus of the Board that the report was good and they should submit it.

8:06 PM
#8

TO : Board of Selectmen
FROM : Mike Moynahan
REF : Informational Fact Sheet – Route 236 Sewer Improvement Project

Mr. Moynahan said that he leaned toward saying this was the final draft; that the next step was to decide what to do with this fact sheet.

The Board discussed mailing it to residents and putting it on the website.

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It was suggested that the meeting schedule be attached, including the Town Meeting.

The Board agreed by consensus to include the calendar and put this on the website, as well as mail it.

Mr. Dunkelberger said that they referenced a spreadsheet with regard to costs and asked if the Board wanted to include a copy of that.

Mr. Moynahan asked Mr. Blanchette if they had gotten anything back from Eaton Peabody regarding the spreadsheet he forwarded to them.

Mr. Blanchette he had not received anything yet.

Mr. Moynahan said that he would follow up with Mr. Melrose tomorrow and, if there was no sheet, they could just delete that reference.

8:12 PM
#9

TO : Board of Selectmen
FROM : Wendy Rawski
REF : Hours for Town Meeting – start time? (No Correspondence)

There was discussion about how large the warrant was and the desire to have people be able to participate without the Town Meeting going late into the night; suggesting a 5 PM start time this year to see how it worked.

Ms. Brandon suggested they might make it clear it was okay to bring a bag lunch, then that might help. She asked if there might be some group that might want to do a fundraiser by having pizza available on the side.

Mr. Blanchette said that he didn't know if the school would allow food on the gym floor.

Mr. Beckert said that they have allowed it before.

8:16 PM Mr. Beckert moved, second by Mr. Dunkelberger, that the Board of Selectmen start Town Meeting at 5 PM.

VOTE
4-0
Chair concurs

8:17 PM
#10

TO : Board of Selectmen
FROM : MMA & MDOL
REF : MMA Inspection & MDOL Inspection (No Correspondence)

BOARD OF SELECTMEN'S MEETING
April 17, 2013 5:30PM (continued)

Mr. Hirst said that, when they had the MMA inspection, roughly 30 days ago, the inspector asked that the Town answer his action list within 30 days; that department heads were responsible to respond directly to the inspector. He asked if they didn't need someone to ride herd on that to make sure that got done.

Mr. Moulton said that he never got the MMA inspection; that he got the MDOL inspection (Safety Works).

After some discussion, it was agreed that Mr. Hirst would send a copy of the MMA inspection to the appropriate departments and Mr. Blanchette would follow up with reminders to department heads about the MDOL inspection.

8:22 PM
#11

TO : Board of Selectmen
FROM : Underwood Engineers
REF : No Correspondence

This was regarding the Underwood ERS-7 authorization.

It was the consensus of the Board to move forward with this.

8:23 PM
#12

TO : Board of Selectmen
FROM : Dan Blanchette
REF : Warrant Review

This was to finalize and sign the Warrant for Town Meeting.

Change start time of meeting, remove second portion of Article Fourth, Article Ninth and Article Tenth need to be changed to remove BC stipulations, as that was not allowed with referendums.

Discussed was that the BC had not completed their recommendations; that everything needed to be in before next Friday, when it went to the printer.

8:25 PM

Mr. Blanchette reviewed the articles with the Board for any changes

On Articles Forty-Fourth, Forty-Sixth, and Forty-Eighth the words "The Board of Selectmen Recommends" should be added.

8:40 PM

The review was completed.

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Old Business (Action List):

This was not discussed tonight.

1. Route 236 Sewer Expansion Project reports, updates, and schedules – Questions from Route 236 Ad-Hoc Committee - Mr. Blanchette
2. Sewer Contract/IMA – Schedule IMA/Kittery Meeting for presentation - Mr. Moynahan, Mr. Murphy, Mr. Marchese, Mr. Moulton and Mr. Blanchette
3. Police Union Contract – Mr. Moynahan, Mr. Dunkelberger, Mr. Blanchette, & Chief Short
4. Community Service Space: Relocation to Elementary School – explore school space – fit up costs, service impacts, insurance, MSAD #35 contract, CSD Director – Mr. Dunkelberger, Mr. Hirst, & Mr. Blanchette
5. Town Manager – schedule workshop; include Comp Plan Implementation Committee
6. Dispatch Service/Ambulance Contract – Contract with Kittery, request from same, costs – BOS, Mr. Muzeroll, Mr. Short
7. Policy creation/review – debit card, video-streaming, website management
8. Employees – cross-training, charting earned times, job descriptions - BOS
9. Liaisons to boards, committees, and commissions – review existing members, try to fill open spots; Committee/Board – Mission Statement Review - BOS
10. Budget Preparation - BOS
11. Auditor – financial statement, management letter, finance director, personal property tax, fixed asset management - BOS
12. Regionalization – explore areas of potential collaboration, cost reductions & enhancements to services – Mr. Moynahan, Mr. Hirst
13. Legal issues – pending and Consent Agreements – Eliot Shores, PSNH/Sierra Club, Mr. Bogannam - BOS
14. Sewer User Rates, reserved allotments, odor, maintenance– Sewer Committee, Underwood Engineers, Mr. Moulton
15. Department Heads – monthly reports, employee reviews, financial oversight, policy reviews, and department reviews - BOS
16. Research grant opportunities – AED's for Town buildings

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17. Comp Plan follow-up
18. Pending new unions
19. Special Town Meeting: February – IMA, TIF Funds (ERS #7)
20. York County Transitional Budget – Funding source
21. June Town Meeting preparation – Municipal Fee Schedule

Selectmen's Report:

8:41 PM Mr. Murphy said that the IMA was ready for this Board and the IMA Committee to review and approve before sending it to Kittery for their approval. He added that the Board should have a meeting in executive session because some of the details were still not public.

Mr. Moynahan said that they would have that on next Thursday's agenda as an executive session, to include the IMA Committee.

Mr. Fisher said that, in the Fifteenth Article, it has increased by \$17,000 since April and the BC couldn't find it. He asked where it came from.

It was clarified that the newer version had more information and showed a decrease.

Other Business as Needed

There was no other business tonight.

Executive Session

There were no executive sessions tonight.

Adjourn

There was a motion and second to adjourn the meeting at 8:43 PM.

VOTE

4-0

Chair concurs

DATE

Mr. John J. Murphy, Secretary

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