

**BOARD OF SELECTMEN'S MEETING**  
**June 23, 2011 6:30PM**

**Quorum noted**

**6:30 PM:** Meeting called to order by Chairman Fernald.

**Roll Call:** Mr. Fernald, Mr. Moynahan, Mr. Murphy and Ms. Place.

Mr. Dunkelberger was absent tonight.

**Pledge of Allegiance recited**

**Moment of Silence observed**

**Election of Officers**

Ms. Place nominated Mr. Fernald as Chairman for the Board of Selectmen. There were no other nominations.

Mr. Fernald asked for a vote.

**VOTE**  
**3-0**

Mr. Fernald nominated Mr. Moynahan as Vice Chairman for the Board of Selectmen. There were no other nominations.

Mr. Fernald asked for a vote.

**VOTE**  
**3-0**

Mr. Fernald nominated Ms. Place as Secretary for the Board of Selectmen. There were no other nominations.

**VOTE**  
**3-0**

**Approval of Minutes of Previous Meeting(s)**

**6:32 PM** Motion by Mr. Moynahan seconded by Ms. Place, to approve the minutes of May 12, 2011, as written.

**VOTE**  
**3-0**  
**Chair concurs**

**Public Comment:**

**6:33 PM** There was no public comment tonight.

**Department Head/Committee Reports**

**6:34 PM** Mr. Moulton requested to move forward with the purchase of the backhoe now that the budget has been approved at Town Meeting.

Mr. Moynahan reiterated that this was spelled out before in that this is not a one-time cost but will be paid out over five years, dependent on Town Meeting budget votes.

Mr. Moulton agreed.

It was the consensus of the Board to move forward with the lease purchase of the John Deere 310-SJ Rubber Tire Backhoe Loader.

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Mr. Moulton discussed that he was asking permission to dispose of the 1982 material spreader used to place gravel along the shoulders of paved roads as it has deteriorated beyond repair. He added that they have taken off it what they could and want to bring it to a local metal recycling facility.

Mr. Moynahan suggested putting any money received from the scrap toward the purchase of the backhoe.

Mr. Moulton said that was up to the Board.

It was the consensus of the Board for Mr. Moulton to dispose of the material spreader to a local recycling facility.

Mr. Short said that their air conditioning system has finally died and he is looking for some direction. He added that ThermoDynamics has given the police department a price after having come in to see what was wrong and the compressor, itself, has finally stopped working. He added that it could not be repaired but would need to be replaced. He said that ThermoDynamics gave him a price of \$3,843 to replace the compressor. He discussed that the system has not been working up to standard for a while and replacing the compressor would not fix the bigger problem – it would just replace a component that is a symptom of the problem. Mr. Short said that ThermoDynamics gave him a quick off-the-top bid for a replacement system at \$16,000. He said that the warrant article was approved by the Townspeople to appropriate the money to enact some of the recommendations of the Energy Commission (EC), one of which was this problem he was discussing. He added that he could not see spending \$3,843 to fix the compressor if they were going to turn around and spend another \$16,000 to \$20,000 to fix the entire system – a system they've already put probably \$10,000 into just to keep it going. He added that, with the permission of the Board, he would like to seek bids for the replacement of the system using some of the information from the EC studies and recommendations.

Mr. Fernald said that, before the Board could make a decision, they would need some information.

Mr. Moynahan said that, in fairness to anyone who was parsing this work, something had to be designed – to make sure the proper system was designed for this building, then go out for bids. He agreed with Mr. Short that they shouldn't just throw money at this but it had to be done in a methodical, orderly way to ensure they were getting the right fix for this problem. He said that, if they did move to appropriate the funds to make sure this went away, how would they get from here to there.

Mr. Short said that he is in contact with the EC for some direction. He added that he did not want to put another system in there that would create the same problems.

Mr. Moynahan said that his concern was that Mr. Short could contact three different mechanical contractors, he would get three different prices and it may not be apples-for-apples.

Mr. Short agreed and said that the last study was pretty comprehensive and they (EC) made some pretty good recommendations. He thought that they might incorporate some of those recommendations in the RFP to make sure they were driving the car and not the other way around.

Mr. Moynahan said that he would be glad to get together with Chief Short at the beginning of the week to help as he starts to put it together, if Mr. Short liked.

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Mr. Short said that one of his concerns right now was that the average temperature in that building was currently between 80° and 85° so they couldn't take a long time to resolve this.

Mr. Moynahan said that he thought it could be done pretty quickly with the information they have.

It was agreed that Mr. Short would work with Mr. Moynahan, the EC and Mr. Blanchette to move this forward.

**6:40 PM**

Mr. Short said that the only other thing that he had, as a matter of housekeeping, is that they had to move forward with this direct-deposit payroll. He explained that one of the problems that has come up is that, in doing payroll on Thursday, there is a two-day lag for that being deposited in to their accounts, which means it ends up going in Monday, and if that is a holiday, then it would be Tuesday. He said that the solution to that problem would be simple enough in that, all the departments would have to do was submit their payroll on Wednesday, that he had spoken with the other departments and they would not have a problem doing that. He added that the Town Treasurer didn't have an issue with that, either. He said that he thought the only issue was whatever the Board had to do.

Mr. Fernald commented that he didn't believe anything could be that simple. He asked Mr. Blanchette to comment.

Mr. Blanchette said that there could be a little problem. He said that, if it was only the payroll and not the full warrant, then there would not be any money in the payroll account – when the Board signs the warrant, they issue a check for money to go into the payroll account on Friday – so money would have to go into the payroll account on Thursday in order for money to be taken out of the payroll account. He suggested that the Board needed to talk with the Treasurer a bit more to see what needed to be done.

Mr. Marchese said that he was on the automatic payroll and it always appears in his account on Friday and suggested it might be the bank being used by the particular employees.

Mr. Moynahan commented that the first week would be kind of an accounting nightmare for them at home but, after the second week, aren't they accustomed to, instead of a Friday paycheck, it's a Monday paycheck. He added that it seemed to him that once they were over that first hurdle...

Mr. Short said possibly, but added that people were anticipating that money for the weekend and that was what they were used to with their budgets.

Mr. Fernald said that it was a good thing that they were getting direct deposit but that they didn't need to upset the applecart just to do that, adding that he thought they needed to talk with the Treasurer a little further about this.

**Old Business (Action List):**

**6:45 PM** Mr. Moynahan suggested the Board put this at the end of their agenda.

The Board agreed.

**8:22 PM (end of meeting)**

A. Sewer Contract Committee – Mr. Moynahan, Mr. Murphy, Mr. Marchese and Mr. Blanchette, IMA update

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Mr. Murphy said he was working on reviewing that and that he has a marked-up, enlarged and corrected version from the Town attorney, who was very good at doing the legal part, but describing the money and where it would come from he did not do and the amounts are not quite consistent and he was trying to figure out what to do with that.

Mr. Fernald said that he knew that Kittery was waiting for the new Board to be seated before starting meeting again, is that correct.

Mr. Blanchette said that he wasn't sure. He added that they did say they were waiting for the new Board to be seated before doing something but he didn't quite get the gist of what they were intending to do.

**B. Comp Plan Action Items**

Mr. Fernald said that he thought they needed to ask the Comp Plan Committee to put a list of Board actions together for the Board and asked Mr. Blanchette to drop them a note asking them to do that.

Mr. Murphy said that they didn't want to spend more money with Ms. Hatch, although she got things nearly done in her first version of an excel spreadsheet. He added that Mr. Lemire has agreed to take that on but he has been away for two months so they have kind of a hiatus in progress.

Mr. Fernald said that the Board would keep this on the A.I. List.

Mr. Murphy said that, in the meantime, he could pull out a subset of actions that affect the Selectmen.

**C. Monthly Reports from Department Heads**

Mr. Fernald said that they were starting to get those.

Mr. Moynahan said that he had not seen anything from ECSD, that when she was here she had something that was not quite ready.

Mr. Fernald asked Mr. Blanchette to remind ECSD.

Mr. Moynahan complimented the Police Chief and Highway Director on their reports.

**D. TIFD Reports and Updates**

Mr. Fernald said that, with Town Meeting, it looks like they were moving forward and asked if anything else needed to be done on that.

Mr. Blanchette said that they should be getting a proposed contract on that from Underwood.

**E. Health Insurance Costs**

Mr. Fernald said that this was something that Mr. Blanchette was looking into.

Mr. Blanchette agreed and said that he had gotten some figures. He added that, when they get together as a negotiating committee, they could look at them.

**F. Review existing Sewer User rates and updates**

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Mr. Blanchette said that they had decided to put this off until the new contract was finished.

G. Regionalization of Town Services

This was ongoing.

**New Business (Correspondence List):**

**6:46 PM**

**#1**

TO : Board of Selectmen  
FROM : Attorney Sanford Roberts, PA  
REF : Amendment to Consent Agreement

Mr. Fernald clarified that Mr. Robert's submission was what he was proposing and that the reason he was proposing this was that, the Board, as part of the C.A., was going to allow two spaces in front of the building if it was owned by Dana Norton. He clarified that Mr. Roberts was saying that, although it may be, this was one way of resolving the problem.

Mr. Roberts agreed and said that the property is owned by Norton's and there is room to park cars there. He added that the CEO indicated to him that he did some investigation and concluded that parking within the road ROW, which extends on to Norton's property, is not appropriate, which he certainly didn't know about at the time. He added that he talked with the CEO and asked him if he had a problem if they moved those cars to the side of the yard near where the employee vehicles were parked, with the CEO saying that was all right with him but was something that had to be modified in the C. A. Mr. Roberts said that, rather than them negotiating back and forth and fighting over whether they could park in the ROW, that this would be a practical solution.

Mr. Fernald said that he had noticed that Mr. Norton had put up "No Parking" signs in front of the building. He asked the CEO to talk to this, adding that, in his letter, the CEO was not recommending this.

Mr. Marchese said that, certainly, the Nortons have done a better job of controlling the business on their property. He added, however, that it's supposed to be a Home Business and not a business and it was somewhat difficult to discern the difference between the two. He reminded the Board that, regarding the Consent Order between the Town of Eliot and the Norton's, in his opinion he felt they needed to focus on the last section of that C. A., particularly #9, which says "The Town and the Nortons hereby waive any and all rights to appeal this order." Mr. Marchese said that he did not believe any of the parties to this C.A. have the ability to make any adjustments to this without going back to court. He added that he felt that, if they find that any of the aspects of this could not be utilized, then the Board couldn't just simply move it to a different area. He clarified that what they would be doing is to amend the C.A. to allow two cars allowed by the court to be parked in the front of the building – that they now know was not properly owned by the Norton's – to be moved to a different location and he didn't believe they had the ability to allow that type of amendment to that C.A..

Mr. Roberts said that the agreement says that the cars can be parked on his property if it is his property and that Mr. Marchese is changing the agreement, saying that he was reading into that that one couldn't park if it was in the right-of-way (ROW) and that isn't what the agreement says. He said that the agreement between the Town and the Norton's says that, if it is on his property, then he can park it – it's on his property. Mr. Roberts said that he didn't take the time because he didn't want to bill the Nortons to confirm what Mr. Marchese said about the ROW issue. He said that, if the ROW is an issue, then it may be a State issue, not a Town issue so, rather than get in to that, it seemed to him that this made sense –

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it doesn't change the number of cars, it doesn't increase the number of cars, it just moves them to another location. He added that it is consistent with the intent of the C.A. to give him a certain number of cars and is not asking for more cars. He said that they could spend a lot of time and go back.....the agreement was an agreement between the Town and the Nortons. Mr. Roberts said that it was confirmed by the court because there was a legal proceeding...if the Nortons and the Town agree to modify a certain provision of that agreement, which doesn't change in any material way the affects of that agreement, it would seem to him to be perfectly reasonable and it was okay with him, on behalf of his clients, to do that by agreement with the Town that everyone says they would reconsider by agreement between the parties – adding that he didn't need it to go back to the court and did not believe it needed to go back to the court. Mr. Roberts commented that he tried to solve problems without spending a lot of money, if it's possible, and he thought this was a good way to do that. He added that he was a little disappointed because he thought that, when he and Mr. Marchese had talked about this, that Mr. Marchese felt that this was a reasonable way to go about resolving this. He added that, if Mr. Marchese had changed his mind or if he had misunderstood Mr. Marchese, then he was sorry but he thought that was a reasonable way to go about this. He said that he then prepared this (presented tonight) document, sent it to Town counsel, talked to the CEO and thought that this was the solution they had all come up with.

Mr. Fernald clarified that, in Mr. Robert's statement, he said that he referred to Town counsel...

Mr. Roberts explained that lawyers cannot deal with other lawyer's clients without the lawyer's permission so, when he prepared this, he emailed it to Ted Small – adding that, because it was a legal document, it was not inappropriate or unethical for a lawyer to deal directly with another client's lawyer.

Mr. Fernald asked Mr. Blanchette if they had gotten any response from their Town lawyer.

Mr. Blanchette said that he was the one who sent it to the Board.

Mr. Fernald clarified that this was something that Attorney Small felt the Town could do.

Mr. Blanchette agreed that that was what Attorney Small believed.

Mr. Moynahan said that the amendment to the C.A. was sent from Mr. Small so, if they were not changing the number of cars parked – and there may be a State ROW versus a Town ROW, anyway – understanding the CEO's concerns around ROW issues but this didn't seem to apply, in his mind, to the crux of this whole C.A. He said that he thinks it makes sense to move forward with that, with what has been proposed, as it does not change anything and it has been reviewed by the Town's attorney.

Mr. Fernald said that, while he read this (directing his question to Mr. Marchese), he agreed with Mr. Moynahan that the Board would not actually be increasing the number of vehicles, acknowledging Mr. Marchese's concern about it being a Home Business, but the actual C.A. indicated the number of vehicles to be parked on the Norton's property. He asked Mr. Marchese why he felt it would be more difficult if the vehicles were mover to another area.

Mr. Marchese said that, in his opinion, in allowing the movement of those two vehicles to a different area on the parcel is allowing the expansion of the Home Business. He added that it was making it more difficult to make sure Mr. Norton was following the C.A. He added that, in his letter to the Board on June 10<sup>th</sup>, he stated that this had to be a Home Business and a Home Business must be clearly

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secondary to the residential use. Mr. Marchese said that, when they were allowing cars to be parked all around, then it does not appear to be a secondary use – the primary use of that lot was the business.

Mr. Fernald agreed that that was what the original ordinance said, however, they went through a C.A. allowing a certain number of cars to be parked on the property. So with that, Mr. Fernald said that the question was whether it mattered where those cars were located, what made the difference.

Mr. Marchese said that he thought that, if the Board were to move with allowing these two cars to be moved, then they would want to keep them contained and allow eight cars to be parked in the fenced-in area, obscured from view.

Mr. Fernald said that those two cars were in view when they were in front, adding that he was just trying to clarify the issue.

Mr. Marchese said that it made it difficult, as a CEO, to discern what are privately owned vehicles, what are employee vehicles, and what are vehicles that are part of the Home Business.

Ms. Place said that she tended to think that, if the Town's attorney was in agreement with this, certainly wanting to avoid any more visits to Superior Court, then she thought it was a good solution to this problem.

Mr. Murphy said that he did not have a copy of the full C.A., however, having picked up a lot in hearing about it and have a sense about it and he thought that, if that C.A. would have allowed two cars to park at the front of the garage in the ROW (or the side of Main Street) and now it was shown that they could not be because it is not private property, but, there is private property that moving them there seemed to be reasonable. He added that, as far as looking at what cars were there, these were business cars and they would be changing from operation to operation, as well the employees might change their cars, but, as long as there were four slots in that depicted position, then it would seem to him that that would be less visible to the public. Mr. Murphy said that he thought this was a reasonable solution to the problem. He clarified that what bothered him was that this amendment seemed to be labeled as a Superior Court document and apparently it was not and asked if they could use this format (just pick up the heading of the court document) and attach this or would this go back to the court as a proposed amendment to be approved by the court.

Mr. Roberts said that the original agreement was based upon a court proceeding and when one prepares an agreement based upon a court proceeding, then it had the 'caption' of the case, which says "agreement relative to this proceeding". He added that both he and Mr. Small thought it was appropriate to have the court put its' imprimatur on this. He added that courts, almost as a rule, if parties to a dispute, agree on a resolution, then the court just puts its' stamp on it and, almost invariably, doesn't change it. Mr. Roberts said that, rather than take the time and expense – if they sent this back to the court, he guaranteed that the judge would stamp it and it would be just as if it was part of the original decree. He clarified that he just thought that it wasn't necessary, adding that it was for his own client's protection to do that. He added that he thought that, if they all agreed to this modification, then it was clear what it said and what it was supposed to do – he didn't think it needed to be back in court.

Mr. Fernald asked Mr. Norton how he was going to have people park in those two areas when they come to ask him to do work on their vehicles, instead of in the front.

Mr. Norton said that he thought this issue was the three cars in the garage, the six in the dooryard and the two cars parked in the front setback – those are customer

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cars. He clarified that, if the mailman stopped by or a person stopped by for a few minutes to ask a question about their car or make an appointment – this wasn't pertaining to that. He clarified that this pertained to cars he was working on, cars that people would leave for the day or a portion of the day. He added that, if they pull up front to drop their car off, saying their car was here, then he would park over there. He added that he had put up "No Parking" signs up front in certain areas of the garage where he didn't want people to park so that he could open his gate to let cars in and out. He said that it would be easier for him if the two cars parked in the front setback were parked over by the Legion fence with the two employee's cars, then he wouldn't have to keep going around to see who was parked where. He added that, if he looked out front and there were no cars there, then that's the way it should be.

Mr. Fernald commented that he just didn't want, all of a sudden, for there to be two additional vehicles.

Mr. Norton said that he had five or six of his own cars down there and two employee cars so, a lot of times, it looked as though there were a lot of cars there. He added that, if his wife stopped by or one of the kids stopped by to visit, that's his personal property and has nothing to do with his business, except for those two customer parking spots that they would like to move from the Main Street side to the cross street side.

Ms. Jacques commented that she thought the Board had spent an awful lot of time on this and a lot of the peoples' money to come to this conclusion. She added that people all over Town were parking their cars in ROW's all over the place and did not see the logic in having to spend any more time or money to make any changes.

Mr. Moynahan said that his concern was that the Board offered two parking spaces and because the Board didn't know the ROW issue either they take those two parking spaces away, which he's not sure they could do, or the Board allows them to be relocated on the property. He added that relocating them seemed a more logical approach for them as long as the Town has the ability to enforce the balance of the whole C.A.

Mr. Marchese clarified that the applicant was aware of the boundaries and the ROW as he had a survey done in 2003. He added that the Town was unaware of the boundaries of the parcel in the recent Consent Order compliance.

Mr. Moynahan commented, "Shame on us."

Ms. Shapleigh said that she thought they needed to be careful that they were not setting a precedent of enforcing all this ROW stuff. She asked how many people have their lawns out in the ROW's to the roads, how many people around Town are encroaching on ROW's everywhere. She said that, if the Board was going to hold these people to it, then the Board would have to everyone else's feet to the fire, spending a lot more money...and she thought it was ridiculous. Ms. Shapleigh said that the Board approved it and, if the State didn't like it, then let the State come back to them but, at this point, she thought the Board should approve it.

Mr. McKinney said that he was at that meeting and the CEO and the Town attorney informed him that there was a possibility that he wouldn't get those two parking spaces because they might not be on his property. He added that he might not be a lawyer but he could read plain English and it says "up to a total of two cars in front on the Main Street side of the garage subject to reasonable verification satisfactory to the Town CEO that the two spaces used in front on the Main Street side of the garage are on the Norton property." He said that he thought that pretty well tied down where the spaces were supposed to be – in front

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of the garage on Main Street. He added that this established a bad precedent if the Board was going to allow C.A.'s and someone said they didn't like a provision, let's change it.

Mr. Moynahan said that, at first Mr. Chairman, it seemed pretty logical to allow this but with the ROW language that was just stated and the concerns of the Town CEO, he wasn't quite sure of the direction they should move and he was hoping someone else might have some insight.

Mr. Murphy said that he would like to see the original C.A.

Ms. Place said that she was still of a mind that they should approve this as she just couldn't see going back to Superior Court over something like this.

Mr. Murphy said that it was his understanding that, if the Board agreed to this, then it would go back to the court for approval.

Mr. Roberts said that it was not his intent to take it back to court and, in his conversation with Ted Small (Town attorney), he agreed that he didn't think it was necessary to take it back to court. He said that the language just read to the Board said that they could park the cars if they were on their property. He added that there was enough property to park those cars and, if this agreement is not approved, he would tell his client that he could park the cars in front because it is on his property. He said that he thought this was a reasonable solution.

Mr. Moynahan asked, if the cars are already parked on his property, then why were they here.

Mr. Roberts said that it was because the CEO cited Mr. Norton for a violation.

Mr. Moynahan clarified that they were on a ROW.

Mr. Norton said no, that they were on his property.

Mr. Roberts clarified that he was distinguishing between the owner's property line and the road ROW. He said that Main Street was a narrow street so the State ROW extends onto people's properties all along Main Street.

Mr. Fernald said that it was basically on his property and the ROW.

Mr. Moynahan suggested leaving it as is until the State has an issue with ROW's and not hold the CEO obligated to enforce that ROW. He added that he didn't think they should take anything away from these people.

Mr. Fernald agreed, adding that it was just an issue of number of cars.

Mr. Moynahan said that that had been taken care of through their discussions and that it was just the location of those cars.

Mr. Fernald clarified that Mr. Moynahan was suggesting the Board leave the C.A. as is.

Mr. Moynahan said that he didn't think it harmed anyone, adding that Mr. Marchese had some concerns about ROW's but outside of that...

Mr. Fernald said that they would let the State take care of whether it was a ROW issue.

Mr. Moynahan added that, at that point, then the Board already had copies of something they could work with for the future that both attorneys have looked at.

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He said that it would be a pretty easy process to move forward with at that point or they could move forward with this now and the CEO wouldn't have any ROW issues.

Mr. Roberts said that he would prefer not coming back, if the State said something – rather than fight with that, this would solve that issue, too.

Mr. Murphy asked if the wording in Paragraph 2. (iii) was from the original agreement or was this new wording.

Mr. Roberts said that that was a direct quote from the original C.A.

Mr. Murphy said that the wording is very clear that cars in front are conditional on that side of Main Street being Norton's property and he understood that it was not Norton's property.

Mr. Roberts said that it was the Norton's property – there was room to park cars on the Norton's property in front of the garage.

Mr. Murphy clarified that the space in front of the garage and the street, part of it was a *ROW*? and part of it was Norton's property and the Norton portion was enough to park cars on.

Mr. Roberts said that that was correct.

At this time, the CEO brought out a surveyed plan of the Norton property and the Board had some discussion.

**7:16 PM** Mr. Moynahan moved, second by Ms. Place, to amend the Consent Agreement, as presented.

**VOTE**

**3-0**

**Chair concurs**

**7:17 PM**  
**#2**

TO : Board of Selectmen  
FROM : Code Enforcement Officer  
REF : Consent Order Compliance

Mr. Fernald said that this was a report from the CEO on issues at Norton's Garage. He asked the CEO if he would like to speak on this.

Mr. Marchese discussed the June 9 inspection report and several issues he believed were in violation of the C.A.: a car was parked in front of the garage that he believes is not part of Mr. Norton's property; a windshield replacement was being done in the side yard – not in the garage or fenced area; and the garage doors were open while he was operating noise-generating equipment. He added that there was also an issue with 3 unregistered vehicles on the property. Mr. Marchese asked for some direction regarding having the garage door open when operating noise-generating equipment, as on that particular day, it was hot and the equipment generates heat, so he sympathized with Mr. Norton, but the noise was very loud in the neighborhood with the doors open.

Mr. Roberts said that he has a letter for Mr. Marchese that he was going to mail today that answers a number of the issues and he also spoke to Mr. Marchese earlier today asking about the schedule this evening and that he could address all those things and work them out. He added that, if the Board wanted to take the

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time, he could respond tonight or maybe it would be more appropriate to sit down with Mr. Marchese and see if they could resolve this and, if not, they could come back before the Board.

Mr. Moynahan said that he thought that was the best approach and they could work out the logistics of this. He added that the Board doesn't want anyone to take advantage of the Town and they would work with Mr. Roberts within the confines of the C.A. but, if there are issues, then he believed they should be resolved prior to coming here.

Mr. Roberts acknowledged that part of this was his fault because he should have gotten to Mr. Marchese sooner, adding that he did not realize this was coming before the Board this evening.

Mr. Moynahan said that Mr. Marchese's report was nicely done on the ongoing activities.

Mr. Marchese reiterated his desire for input from the Board regarding the noise issue.

Mr. Moynahan advised him to go out with the sound meter and take readings.

Mr. Fernald commented that the C.A. says that Mr. Norton would have his garage doors closed during operation because of the noise factor.

Mr. Moynahan agreed and clarified that the noise would have to be in excess of 60 dbA and they really needed to measure what noise level that equipment was generating. He added that, if the equipment measured 60 dbA or more, then the garage doors would be required to be closed.

**7:23 PM** Mr. Murphy said that he thought Mr. Roberts' suggestion was proper and he would like to take some time to review the original C.A., as he was unaware that a noise requirement had been inserted and that was very important.

It was the consensus of the Board for Mr. Marchese and Mr. Roberts to get together to resolve the issues raised in Mr. Marchese's report.

Mr. Moynahan commented that the Board has the CEO's back on this – if the rules of the C.A. are followed through on, then the Board would support the CEO.

**#3** TO : Board of Selectmen  
FROM : Law Offices of Sanford Roberts, PA  
REF : Blueberry Lane/Greenwood Ave. sewer line

Mr. Fernald said that they are not ready, yet.

**#4** TO : Board of Selectmen  
FROM : Barbara Thain, Secretary  
REF : Committee Standings

Mr. Blanchette said that he had the appointment papers if the Board was going to make these appointments.

Mr. Moynahan moved, second by Ms. Place, to appoint all pending committee members and board members.

**VOTE**  
**3-0**  
**Chair concurs**

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At this time, Mr. Murphy said that, due to being elected to the Board of Selectmen, he was resigning from the Sewer Committee, Comprehensive Plan Review Committee, Energy Committee and Conservation Committee.

**#5** TO : Board of Selectmen  
FROM : Wendy Rawski, Town Clerk  
REF : 2011-2012 Annual Appointments

**7:30 PM** Mr. Moynahan moved, second by Ms. Place, to approve the annual appointments for the Municipal Staff, Emergency Management Staff and Police Department Staff, as indicated.

**VOTE**  
**3-0**  
**Chair concurs**

Mr. Moynahan said that Kevin Curran's name was not on the appointed staff list and asked if his year was done with the State.

Mr. Short said that he should be on the list.

Mr. Blanchette said that they should have a motion to appoint Kevin Curran and get the appointment papers signed probably next week.

Mr. Moynahan moved, second by Ms. Place, to appoint Detective Kevin Curran as an annual appointed staff of the Police Department.

**VOTE**  
**3-0**  
**Chair concurs**

**7:35 PM**  
**#6**

TO : Board of Selectmen  
FROM : Dan Blanchette  
REF : Tax Anticipation Notes

Mr. Blanchette said that the Town received two bids on Monday: one was TD Bank – they offered an interest rate of 1.59 on a lump sum basis only; Sanford Institute of Savings offered both lump sum at 1.48 and as-needed basis for 1.5. He added that Ms. Spinney recommended that the Town go with Sanford Institute at 1.5 on the as-needed basis. He commented that he thought it was 6 or 7 years ago that they got the low bid and it had worked out well with them. He added that Ms. Spinney also included in the package the motion that needed to be made if the Board were to accept the bid and reminding the Board that it was a five-part motion.

Mr. Murphy moved, second by Ms. Place, that under and pursuant to Title 30-A, § 5771 of the Maine Revised Statutes, as amended and supplemented, there be and hereby is authorized the issuance of up to \$4,500,000 principal amount of Tax Anticipation Note of the Town in anticipation of the receipt of taxes for the municipal fiscal year which commences July 1, 2011 and ends June 30, 2012.

**VOTE**  
**3-0**  
**Chair concurs**

Ms. Place moved, second by Mr. Murphy, that said Note shall be dated July 18, 2011 and shall mature on or before June 30, 2012, shall be signed by the Treasurer and countersigned by the Chairman of the Board of Selectmen, shall bear interest at the rate of 1.500% per annum calculated on the basis of actual days elapsed in an assumed 360-day year, shall be payable at Sanford Institute for Savings and otherwise be in such form and bear such details as the signers may determine.

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**VOTE**  
**3-0**  
**Chair concurs**

Mr. Moynahan moved, second by Ms. Place, that said Note is hereby sold and awarded to Sanford Institution for Savings in accordance with its proposal dated June 20, 2011.

**VOTE**  
**3-0**  
**Chair concurs**

Mr. Moynahan moved, second by Mr. Murphy, that said Note is hereby designated as a qualified tax-exempt obligation of the Town for the 2011 calendar year pursuant to the Internal Revenue Code of 1996.

**VOTE**  
**3-0**  
**Chair concurs**

Mr. Moynahan moved, second by Mr. Murphy, that all things heretofore done and all action heretofore taken by the Town, its municipal officers and agents in the authorization of said Note is hereby ratified, approved and confirmed and the Treasurer and Chairman are each hereby authorized to take any and all action necessary or convenient to carry out the provisions of this voting, including delivering said Note against payment therefore.

**VOTE**  
**3-0**  
**Chair concurs**

**7:38 PM**  
**#7**

TO : Board of Selectmen  
FROM : Dan Blanchette  
REF : First Reading, Comp Time Change

Mr. Moynahan clarified that this was a first reading, were they looking at the entire policy.

Mr. Blanchette said just the underlined changes under Comp Time #2.

Mr. Moynahan reiterated that they had reviewed this policy before and he had concerns about compensation for regular 40-hour weeks that consisted of certain facets in here, as indicated. He said that, if the Board was going to review the Comp Time, then they should also review how they compensate employees for hours actually worked. Regarding Timekeeping, he read that it says, "Time worked is all the time actually spent on the job performing assigned duties." but #2 on overtime for non-union hourly employees reads contrary to that by saying compensation for the regular 40 hours includes vacation hours, sick leave, etc. and he strongly urged that, if the Board was going to review Comp Time hours, then they review the impact of some of these other compensatory things. Mr. Moynahan said that he had a couple of time cards that he could make copies of that would show just how the Town would be impacted by this. He added that it could be quite a bit of overtime that they could pay weekly, monthly and yearly so, if they were going to give something to employees as Comp Time, then they should really review how they were also compensating employees for time not actually worked. He said that he thought they should review the entire page and come up with something that works for the Town, as well as the employees.

It was the consensus of the Board to continue review and revision of this, with the First Reading to be at the next scheduled meeting.

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**#8** TO : Board of Selectmen  
FROM : MMA Risk Management Services  
REF : Safety Enhancement Grant

Mr. Blanchette said that this was the announcement that the Town did get the \$1100 Safety Enhancement Grant that the Town applied for and the Town needs the Board's authorization to accept it, as expended.

Mr. Moynahan moved, second by Mr. Murphy, to accept the grant, as presented.

**VOTE**  
**3-0**  
**Chair concurs**

**7:43 PM**  
**#9**

TO : Board of Selectmen  
FROM : MMA Risk Management Services  
REF : 2011-2012 Accident Insurance for Volunteers Program

Mr. Murphy said that he did not recall seeing this before and asked if it was a new program.

Mr. Blanchette said that this was its second or third year of being offered. He added that this was the MMA's yearly memo as to whether or not the Board wished to do this and, in the past, the Board has decided not to do this.

Mr. Murphy asked if there was any record of accidents or happenings to volunteers that have not been supported.

Mr. Blanchette said that he was not aware of any.

It was the consensus of the Board not to participate this year.

**7:45 PM**  
**#10**

TO : Board of Selectmen  
FROM : Great Works Regional Land Trust  
REF : Removal of dam

This was informational.

**#11**

TO : Board of Selectmen  
FROM : Lee Downer  
REF : Southern Maine Hunting and Fishing Firing Range, Slate Hill Road

Mr. Fernald said that the letter talks about the gate being left open, pictures of hundreds of spent shells in the area and one shell that had not been fired. He added that Mr. Downer was asking the Board to consider the hours open be reviewed.

Mr. Moynahan said that in one of Mr. Downer's last paragraphs that the club was designed for safe hunting in the State of Maine, etc., and he read, "I believe the club has a stated goal of improving the safety of hunting in the State. Allowing illegal weapons on the range does not foster responsible hunting and sets a bad precedent." He said this was an important piece – if there are automatic weapons, the Town may not even allow some of these weapons in the Town, and how does the Board handle that. He added that he believed that, from a discussion and

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responsibility standpoint when it comes to weapons, it should come from the Town Police Department rather than from the Board.

Mr. Fernald said that he agreed with that and added that there were some other areas in the letter such as "...like to request the Board consider some summer months time limits on firing activities. It is most annoying to have friends over for a cookout on a nice evening and be unable to carry on a conversation due to the firing. My suggestion would be a moratorium on firing after 6 PM Friday – Sunday during summer months (June-August). I have no issue with the other days or the week or months of the year..." Mr. Fernald said that that sounded reasonable to him.

Mr. Moynahan asked if they could place controls on a private club.

Mr. Short said that this was on private property and a private club and he thought they start to get into some of the issues that were being talked about during the discussion about their current Firearms Ordinance, in general, such as where someone could hunt, discharge a firearm, designating areas where firearms can and cannot be, whether hours needed to be regulated. He said that, in his opinion, if the Town tried to regulate this, then it would have to fall under the Firearms Ordinance.

Mr. Fernald suggested this letter be forwarded to Kittery (Southern Maine Hunting and Fishing (SMH&F) for their review.

Mr. Moynahan discussed his concern for live rounds on the ground.

Mr. Short said that, to him, those are all their (SMH&F) responsibility, including hours of operation.

Mr. Moynahan asked how they, as a Town, encourage or enforce their (Kittery) housekeeping, adding it was a safety issue.

Mr. Murphy discussed that, about twenty years ago a woman was watching an airplane at the Littlebrook Airpark and was struck in the neck by a bullet coming from the firing range down over the hill, so, it was a safety issue but asked how one controlled that.

Mr. Short said that South Berwick had the same issue last year when a stray round struck a vehicle in Woodland Hills. He added that the range made some adjustments in their berms and, hopefully, that accommodated that not occurring again.

Mr. Murphy asked if Mr. Short had a copy of their rules and procedures and so forth.

Mr. Short said that he should be able to get a copy. He said that he did think it went back to the Kittery Road & Gun Club – if that was their range and they oversee it – if Eliot was not enacting an ordinance that dealt with specifically saying that...he would envision it to say that, if there were ranges within the Town limits, then their hours of operation could only be this and Eliot does not have that.

Mr. Fernald suggested the Board send this back to the Kittery Fish and Game with a cover letter, written by Mr. Blanchette, indicating that these are some of the Board's concerns from Eliot residents.

Mr. Moynahan suggested having them in to have an open discussion and find out some of their practices.

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Mr. Fernald agreed and said that the Board should indicate in the cover letter that the Board would like them to come in to discuss these concerns.

Ms. Place asked if anyone knew the size of this property.

Mr. Moynahan said that it was a small area.

Ms. Place asked if it was privately owned.

Mr. Fernald said yes.

It was the consensus of the Board to forward this letter to the Kittery Fish & Game along with a cover letter discussing Eliot concerns and inviting them to come speak with the Board about those concerns.

Mr. Murphy asked that a letter be sent to Mr. Downer letting him know about this action.

The Board agreed that was a good idea and directed Mr. Blanchette to write both letters.

Mr. Blanchette said that he would.

**7:55 PM**  
**#12**

TO : Board of Selectmen  
FROM : Dean Bouffard, PC, Attorney-at-Law  
REF : Sawgrass Lane

Mr. Fernald said that this letter indicated that the electricity was not being paid and the concern was that, if it was not paid, then what would happen to the (sewer) pump.

Mr. Murphy asked if the Piscataqua Homes, LLC was the Nusson's Corporation.

Mr. Blanchette said that he believed that Piscataqua Homes, LLC was owned by the Nussons.

Mr. Moynahan commented that this is the sort of problem the Town would face when they got into the business of allowing private pumping stations when they have a municipal sewer system. He added that he and the CEO had discussed this a bit ago – what happens if the electricity was not paid and then sewage from all those homes was not conveyed and then it starts backing up – how does the Town handle that type of thing. He added that it needs to happen more at the planning stage before this stage – people have lived there for years and the Board is just now addressing this and the potential concerns that were out there.

Mr. Fernald agreed these were questions that needed to be asked.

Mr. Murphy said that he wondered if the Planning Board (PB), at the time they approved the Sawgrass Lane Subdivision, made it a condition of approval that an association be formed. He added that he thought that may be where it should start – that associations be formed when creating subdivisions.

Mr. Moynahan said that there were covenants in there – it was indicated in this letter but who oversaw that. He added that there is not a covenant as far as the size of the home or color of paint on the house but there is a covenant relating to the disposal of sewage. He added that they could write anything they wanted to to sell homes but, at the end of the day, who protected the residents from any malfunctions. He said that, even if they do have an association, if that pump was

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failing, who would know. He asked Mr. Moulton what would happen if that pump failed tomorrow.

Mr. Moulton said that the sewer would probably back up.

Mr. Moynahan clarified that Mr. Moulton would have no knowledge until a resident called.

Mr. Moulton agreed.

Mr. Moynahan asked what position to put these guys in to succeed now – it puts them in a position to fail and the Town was setting precedents left and right allowing these things, using Blueberry Lane as an example. He asked who allows this without any plan.

Mr. Marchese said that he believed that, when the power goes off, then the wet well would fill, go on the cross drain under Sawgrass and right to the brook.

Mr. Moynahan said that there was no protection for anyone – the residents, the environment, for anything because of the way this is all set up. He added that the Town has no control over it and they were relying on twelve residents to manage sewage, that this isn't like a septic system that, if it fails, gives a little more buffer.

Mr. Fernald agreed but said that there was a procedure that the residents could go by to have it corrected, for instance.

Mr. Moynahan said that, when a Town pump stops working, then Mr. Moulton was alerted immediately and when that private pump stops working no one would know until sewage was already going into the brook – it could potentially be days before anyone knew.

Mr. Marchese said that he believes the pump station has a light on it so, if someone realizes the red light was on, then that meant there was a problem.

Ms. Place said that since nothing was done in the planning stage of this development and they were now here. She added that she would hope that this letter would grab the attention of the residents of Sawgrass lane so that they would realize that this was something they need to take care of. She said that they were at the point now that it was not the Town's responsibility to enforce the residents of Sawgrass Lane to form an association and take care of their responsibilities. She added that she thought this warning should be enough.

Mr. Fernald said that he thought the first thing that needed to be done was to ask the Nussons to come in before the Board so that they could all discuss this.

Mr. Moynahan agreed, asking them what they had in place for an association and encourage them with certain maintenance things that may be similar to what the Town does.

Mr. Fernald agreed and added that he thought they should do the same thing with Blueberry Lane.

Ms. Place asked if they currently require associations to register with the Town.

Mr. Fernald said no.

Ms. Place said that that would be one way of knowing who was in charge of what.

Mr. Fernald suggested that that might be something they should consider. He added that he believed they could learn a lot from talking to both these people.

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Mr. Moynahan said that he thought Blueberry Lane was going to be different, as they have seven houses that the developer built and the Town offered seven other connections – the Town became half-owner of that line without any authorization from this Board, allowing sewage allotments and hook-ups and he still didn't know who did that.

Mr. Murphy said that it had to be the then existing CEO but he wasn't sure. He added that Mr. Cullen, who developed there, became a member of the Sewer Committee in February 2002, two weeks before he came before the Selectmen to inquire about connecting to the public sewer and the Selectmen at the time gave what he thought was an odd answer. He said that they voted unanimously to approve the concept of connecting to the public sewer system and they left it there, that there was no allotment and, for a whole year, no Selectmen's meeting ever approved any more to do with Blueberry Lane Subdivision.

It was the consensus of the Board to have them come in to discuss this issue.

**8:04 PM**  
**#13**

TO : Board of Selectmen  
FROM : Dan Blanchette  
REF : Disciplinary Actions, Attorney's Comments

Mr. Fernald said that this was sent to Town counsel and they have indicated some changes to be made.

Mr. Murphy said that he found the requested changes were excellent and clarify it better. He added that he was in favor of adopting all the changes.

The Board agreed.

Mr. Fernald asked if this was the First Reading or Second Reading.

Mr. Blanchette said that he would think this would be the First Reading where it is incorporating a change.

Mr. Fernald said that they would have this on the agenda for the next meeting.

Mr. Murphy said that some of the subparagraph letters on the second page did not come clearly out and there should be five: A, B, C, D and E.

**8:08 PM**  
**#14**

TO : Board of Selectmen  
FROM : Dan Blanchette  
REF : Possible Police Article overdraft – no correspondence

Mr. Blanchette said that he and Ms. Spinney went over the potential final outcome of the Police Article. He said that they have one more week on it and, as of today, the Article would be about \$6,000 in overdraft. He added that they had one more payroll and payroll was running around \$13,000 so that would put the Article about \$19,000 over.

Mr. Moynahan stated his concerns from the last meeting – that three weeks to the end of the fiscal year, they found out there was a potential \$47,000 overage and that, this late in the year, they would have to scramble to make sure that budgets that were approved were met. He added that he spoke with both the Chief and Mr. Blanchette about this. He said that he still had concerns about overspending certain articles – Mr. Blanchette indicated the Board could certainly do that with Unreserved Funds but a budget is a budget and \$20,000 is \$20,000 – it sets a precedent. He commented that all the time they all spent preparing the budgets

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was for nothing. He said that he spent a lot of nights up there trying to work out compromises and, by over-expending any article, that sets the tone of why even bother to do it. Mr. Moynahan said that those were his comments and clarified that he was not saying to stop the operations of the Town for a \$20,000 overage but that these issues needed to be brought up much sooner. He added that he didn't know how they could create better communication before three weeks left in the fiscal year.

Mr. Short said that his surprise was that he wasn't sure they going to be discussing it, as that was a couple-day notice. He added that, that being said and as he has said several times, when he submits his budget for the Police Department he is asked to project where he sees concerns. He said that in that proposal was a projected overage based on the amount of money they had to spend in the first quarter. Mr. Short said that he would not be surprised if they were in this same boat with overtime this time around because the appropriated \$25,000 is not an amount they have been able to live within yet. He added that this was the first full year they would have a full complement so it will be interesting to see where they are – he did not believe they would be spending the money they have been spending in the past – he hoped they would get to the \$25,000 mark – but they would get a truer picture this time around. He said that it was something they needed to keep adjusting. He said that the concern always when the budgets are cut is that they would begin to see where those cuts start to impact – one can't think cuts could be made without a potential impact and this year they have seen that it does. Mr. Short said that he agreed with Mr. Moynahan that there needed to be more open discussion. He added that, when he submitted his budget, it started in a timeframe from January, the numbers were there, people looked at them, but he didn't believe there was enough follow-up, personally, for him. He said that the Board would hear more from him on a regular basis about where they are and the monthly report was certainly a good place to do that. He said they do that already about the number of hours they were putting out there and it would be simple enough to add another category about appropriate money for overtime and the amount of money spent so that, on a monthly basis, the Board could see it in the monthly report.

Mr. Murphy asked where the overtime for the Police Department showed in the Warrant.

It was clarified how it was listed in the book.

Mr. Fernald said that the Board needed to take some action on this.

**8:13 PM** Mr. Murphy moved, second by Ms. Place, to take funds from the Contingency Fund in an amount sufficient to satisfy this deficit.

**VOTE**

**3-0**

**Chair concurs**

**#15** TO : Board of Selectmen  
FROM : Dan Blanchette  
REF : Results of Town Meeting – no correspondence

Mr. Blanchette discussed the vote on the cable franchise. He said that the Board should have received a proposed cable agreement and that needs to be put on the agenda for the next meeting to be discussed and there needs to be a Public Hearing on it, as advised by the Town attorney.

Mr. Moynahan asked if they should have comment at the next meeting, as well, on how to react to the Budget Committee's recommendations for a lower budget.

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Mr. Blanchette said that they could. He added that his thought on that was that they had one large increase and that was in legal fees - \$15,000. He said that, obviously, the BC wanted to keep the budgets the same as last year and that \$15,000 should come out of the legal fees.

Mr. Moynahan said that they just had \$8,500 this year for Bergthold and asked if they expected any big ones like that coming up, before they just take from one account...

Mr. Blanchette said that he would hate to say yes or no on that.

Mr. Moynahan said that it might be wise to look at all aspects so that they don't short-fund one over another. He added that pre-planning was important.

Mr. Fernald said that the Board needed to review the Cable T.V. Franchise Agreement and review those that the Town did not approve, that there are still areas in here that they should go forward with.

Mr. Marchese asked if the Board would take, out of sequence, Public Comment. He said that there was a gentleman who arrived a little late who wished to speak.

The Board agreed.

Mr. Peter Flint said that he owns the Empty Redemption Center on Route 236 and there has been an issue for the last six weeks with the other redemption center at the same location on Route 236. He said that they have been putting signs on Route 236 and on the property and the CEO has met with the owner of the building, who owns the redemption center, and has told him several times to take down his signs and he refuses to do so. Mr. Flint said that he believed they were at a point now that the Town should start possibly fining him for not following the directions of the CEO. He added that man's answer to the CEO yesterday to take down his temporary sign was to put back his permanent sign on Route 236 today.

Mr. Marchese said that, on May 26<sup>th</sup>, he developed a memo on the sign and he believed he CC'ed the Board. He added that, at that time, he asked the man to take down the sign until he had approval from the Planning Board (PB), as when a business is located in the Commercial District, one has to go before the PB for approval. He said that the sign was still there, it has been a month and, with the Board's permission, he would like to issue another letter saying that he would be penalized.

Mr. Flint said that the owner attached the sign that was on Route 236 to a trailer of an employee that works for him, so he was going to tell Mr. Marchese that it was not his trailer, but his sign was attached to it permanently. He commented that the man thinks he's above the Town's rules.

Mr. Moynahan said that the Town does have rules and he thought it was time to give some backbone to the CEO.

The Board agreed by consensus for Mr. Marchese to issue the letter.

**Selectmen's Report:**

There were no Selectmen's reports tonight.

**Other Business as Needed**

There was no other business tonight.

**Adjourn**

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There was a motion and second to adjourn the meeting at 8:25 PM.

**VOTE**

**3-0**

**Chair concurs**

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**DATE**

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**Roberta Place, Secretary**