

BOARD OF SELECTMEN'S MEETING
August 8, 2013 5:30PM

Quorum noted

5:30 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

5:31 PM

Executive Session

Mr. Beckert moved, second by Mr. Hirst, that the Board of Selectmen enter into executive session as allowed by 1 M.R.S.A § 405.6.A "Discussion or consideration of the employment, appointment..." such as interviews.

VOTE

4-0

Chair concurs

7:07 PM Out of executive session. There was no action taken.

Approval of Minutes of Previous Meeting(s)

7:08 PM Motion by Mr. Dunkelberger, seconded by Mr. Hirst, to approve the minutes of July 11, 2013, as amended.

VOTE

4-0

Chair concurs

Motion by Mr. Beckert, seconded by Mr. Dunkelberger, to approve the minutes of July 18, 2013, as amended.

VOTE

4-0

Chair concurs

Public Comment:

7:16 PM There was no public comment.

Department Head/Committee Reports

G1. Public Works

Several RFP requests:

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Mr. Moulton discussed the backhoe tire request, saying that he would use his Highway Vehicle Tire Budget Line for this purchase.

Mr. Beckert moved, second by Mr. Dunkelberger, that the Board of Selectmen authorize the Public Works Director to purchase the backhoe tires from Stratham Tire of Portsmouth, NH for the lump sum cost, which includes mounting, of \$1,898.00.

VOTE

4-0

Chair concurs

7:18 PM

Mr. Moulton discussed the guardrail repair request, saying that he only received one request as the other companies felt they would not be price competitive and would not provide quotes. He added that he would utilize his guardrail maintenance budget line for this repair.

Mr. Moynahan confirmed that Mr. Moulton had RFP's sent to all these companies in his file.

Mr. Moulton said that he did. After some Board discussion, Mr. Moulton said that he would get written documentation from the companies who did not bid as to why they did not bid.

Mr. Beckert moved, second by Mr. Dunkelberger, that the Board of Selectmen authorize the Public Works Director to go through 125 Fence of Barrington, NH for the guardrail repairs for a lump sum cost of \$30,726.00.

VOTE

4-0

Chair concurs

7:22 PM

Mr. Moulton discussed the pavement striping RFP, saying that this was for yellow double-striping in Town and he would utilize his service fees budget line for this project.

Mr. Beckert moved, second by Mr. Hirst, that the Board of Selectmen authorize the Public Works Director to enter into agreement with Poirier Guide Lines of Athol, MA to do the striping at a lump sum cost of \$6,013.92.

VOTE

4-0

Chair concurs

7:25 PM

Mr. Moulton discussed the Fuel Tank/Pump RFP, saying that he would like to utilize the Highway Building Reserve Account for this purchase.

There was some discussion on different payment options for this request.

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Mr. Beckert moved, second by Mr. Hirst, that the Board of Selectmen authorize the Public Works Director to enter into agreement with Greenwood Construction Corp. of Portsmouth, NH for the purchase of a 1,500-gallon fuel tank and pump for a lump sum of \$3,198.25; funds to be taken from the Highway Reserve Account.

VOTE

4-0

Chair concurs

7:29 PM

Mr. Moulton discussed the fuel price bid requests, saying that the intent of this was to do it on an annual basis for the best pricing for the Town and would be taken from his fuel budget line.

Mr. Beckert moved, second by Mr. Hirst, that the Board of Selectmen authorize the Public Works Director to enter into agreement with Hanscom's Truck Stop of Portsmouth, NH to supply diesel fuel for the Public Works Department at a fixed price of \$3.2150 per gallon.

VOTE

4-0

Chair concurs

7:30 PM

This was regarding Transfer Station disposal of items that were not paid for. Mr. Moulton discussed the letters he had drawn up and was looking for Board approval before sending them out.

By consensus, the Board allowed the Public Works Director to send the two letters provided to the Board this evening to the individuals in question.

After some discussion, the Board agreed that these should come before the Board each time they occur.

7:32 PM

This was regarding an update on an insurance issue on 6 Heather Lane. Mr. Moulton said that it was currently in the hands of the Town's insurance company and the homeowner's insurance company; that the companies were in negotiations.

7:33 PM

This was regarding a Transfer Station injury to a resident. Mr. Moulton said that they had a piece of equipment malfunction and a resident was injured (burned); that it has been forwarded on to the insurance company; that the resident sought medical attention. He added that the equipment was immediately shut down and repaired.

Mr. Dunkelberger asked if any written documentation had been gathered detailing what happened and any corrective action taken.

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Mr. Moulton said that he was waiting for information from the resident and the equipment was not put back into service until it was completely repaired.

Mr. Dunkelberger said that Mr. Moulton should have documentation from whoever was on-site as far as what was observed regarding the incident and any corrective action taken.

Mr. Moulton said that he would have that for the Board.

G2. Administration

This was regarding the upcoming referendum public hearing. It was the consensus of the Board to hold this public hearing for the referendum on Thursday, August 15th at 5:30 PM.

7:36 PM

This was regarding non-union Town staff insurance deductions and was an inquiry of the Board's intent to require the remaining non-union Town staff (8 of 28 employees) to continue to pay the increase in insurance costs (10%) this fiscal year. It was the intent of the letter to discuss what may be fair and equitable to all employees.

Mr. Moynahan said that the goal, as a Board, the last several years was to get a 15% co-pay from all Town employees but, currently, there is only a certain faction of the Town paying a percentage of their insurance.

Mr. Blanchette said that they started the 10% co-pay effective July 1st; that the directive from the Board was 5% last year, 10% this year, and 15% next July.

Mr. Murphy said that he thought that if they had a regular plan of action for all the employees that the Board could continue exercising that regular plan of action, even through the union negotiations.

Mr. Blanchette said that that was a negotiable item and, therefore, it was up for negotiation; that it was his understanding from the Town's negotiator that the Board could not start such increases in co-pays.

Mr. Moynahan said that the Board budgeted for a contribution from the Town staff for this fiscal year for employee insurance; that they budgeted for a certain dollar figure but only 8 of 28 were contributing and this was much like last year as not all the employees contributed the 5%, as was the Town's plan. He added that the budget was reduced, again, at Town Meeting for insurances outside of the issue of people not paying; that he wasn't sure there was much the Board could do for the 8 employees that were not being treated equally with this insurance thing. He said that the goal was for all employees to be treated equally and empathized with them.

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Mr. Beckert asked whether the 8 employees who were paying had legal grounds to file an unfair labor practice.

Mr. Blanchette said that he did not believe so; that the question hadn't been asked; that he would double check with the attorney and get something in writing for the Board.

Mr. Pomerleau discussed his view that he didn't see any difference between a scheduled cost share and a scheduled step increase; that it was a scheduled increase in the cost of insurance and not a change. He added that the non-union employees had a perfectly legitimate issue; however, in the world of unions everybody was not treated equal, unfortunate as it was; that the Board was standing on sound logical ground where the Board implemented policy they decided on two years ago.

Mr. Dunkelberger asked, if the Board were to equalize things, did they have the budget to support that.

Ms. (Donna) Murphy asked, in dollars, what was the average cost of paying 10% of the insurance.

Mr. Blanchette said that 10% was roughly \$90/month.

7:43 PM
G3.

Police Department

Reserve Officer Hiring – Pursuant to a past agreement with Selectmen, Chief Short was informing the Board that Warren Day was hired as a Reserve Police Officer with no defined hours and, if utilized, would be compensated at \$16/hour.

Officer Joshua Morneau pay – Officer Morneau's pay at his hire date should have been set at \$22.06/hour, as agreed to in discussions from his pay as a temporary hire of \$21.50. Chief Short was asking the Board to approve this adjustment.

It was the consensus of the Board that the pay adjustment be made for Officer Morneau from \$21.50 to \$22.06, as agreed to in the hiring process.

Letter of Commendation – This was to Detective Moya, from Chief Short, for his quick intervention in the recent "Grandparent Scam"; that his quick action and outstanding investigative ability led to the recovery of \$40,000.00. There was also a letter of thanks from the Howell's for Detective Moya's actions and resultant recovery of money. Mr. Moynahan extended his thanks from the Board to Detective Moya for his work in this case.

7:46 PM
G4.

Business Development

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Land Inquiry in Eliot from John Chagnon – Mr. Moynahan said that the Board asked the EBDC to inform them of any interested businesses locating in Eliot. He added that another company was looking for a site suitable for a 100,000-square-foot office building in Southern Maine. He said that he thought this was the second inquiry in the last 30 days forwarded by the EBDC.

Mr. McMullen said that there were two documentable and others that were confidential as they were still under review, adding that this most recent company specifically wanted Eliot because of its location to the highway and residential needs for their employees. He asked if the Board had a moratorium on commercial sewer usage.

Mr. Moynahan said that there was a sewer moratorium in place, currently, on all sewer.

Mr. McMullen said that even if a site on existing sewer were found they (realtors, EBDC) would have to turn a company away.

Mr. Moynahan said that until they had additional gallorage available in Kittery, the sewer moratorium was in place; that Public Works was still working on Inflow & Infiltration (I&I) but until such a time that a business or a need came he didn't think, without recommendations from the SC, they were actively looking to increase gallorage per day. He added that once the SC or engineers came and said that the Board needed to pursue additional gallorage, then they would take action that way.

Mr. McMullen said that he was currently working with companies for the local area and asked what he was supposed to tell them about this in terms of a timeframe.

Mr. Beckert said that the SC was currently working on a recommendation to the Selectmen to pull back an allotment for a project that has not moved forward and believe it has gone beyond its period of time, both its original and extended times, to hold onto that allotment. He added that the gallorage was approximately 30,000 gallons and would end the moratorium, but it hasn't happened yet.

Mr. McMullen said, in other words, professionally he couldn't really tell a company that there was any known time that the sewerage usage on the commercial strip of this Town would be open and available.

Mr. Moynahan said that until someone came in with a true need for sewer...that the Town was not just going to go out and buy 200,000 gallons worth of sewerage but treat it as a need; that if someone came in saying they wanted a business then the Board needed that information; that they would review that information and make arrangements to work with businesses.

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Mr. McMullen said that that was what he needed to know in what to tell businesses as factually as possible.

7:50 PM

Mr. Moulton said that he just received the I&I report for work done this year and would be reviewed this week with recommendations to the Board from the report for solutions to fix; that a lot of it was on the municipal side so there was a lot the Town could do on its own to get the gallonage down where it should be.

Mr. Moynahan said that the Rate Study showed that the amount of I&I has been reduced significantly and would continue with that to manage the sewer better.

Mr. Dunkelberger asked Mr. Beckert when they expected to have some answers on the project allotment.

Mr. Beckert said that Ms. Pelletier was researching this today to verify the project was beyond the allowable timeframe and, once that was verified, the SC would recommend the BOS send a certified letter pulling back that 30,000 gallons; that he thought that was going to happen within the next two weeks.

New Business (Correspondence List):

7:52 PM

#1

TO : Board of Selectmen
FROM : Interested individuals to be on Search Committee for Town Manager
REF : Town Manager

Mr. Moynahan said that Vickie Mills was contacted, as requested by the Board, which was done; that Ruth Bowen, Robert Pomerleau, Richard Donhauser, Charles Rankie, and Sally Lewin all submitted letters of interest; that Jonathan Carter, Wells Town Manager, has also been asked and agreed to serve on this committee. He added that several could not be here tonight because of prior commitments but they expressed their interest in serving on this committee.

Ms. (Ruth) Bowen was present and invited to speak.

Ms. Bowen said that she has lived in Eliot for 38 years; that things were slowing down at home and she wanted to get more involved in the Town; that she thought starting with the Search Committee was a good place to start.

Mr. Moynahan said that the Board's job was to define then committee's membership; that they had seven people not including Board members who have already expressed an interest or desire to be on the committee and asked if that was a comfortable number; that they had talked about having one or two Selectmen also.

Mr. Beckert said that he didn't want to misspeak but he thought that at a previous meeting he had made a motion that the committee be no more than seven members and

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no more than two members of the BOS; that he did indicate that Vickie Mills and Jonathan Carter as members of the committee. He added that, for discussion purposes he could make a motion with a list of people for this committee.

Mr. Beckert moved, second by Mr. Hirst, that the Town Manager Search Committee consist of the following individuals: Jonathan Carter, Vickie Mills, Richard Donhauser, Ruth Bowen, Charles Rankie, Sally Lewin, and Jack Murphy, with Dan Blanchette acting as an ex officio member with no voting authority.

DISCUSSION

Mr. Dunkelberger asked Mr. Beckert how he decided that list.

Mr. Beckert said that recognizing everyone but Ms. Bowen at the time he came to the conclusion that he felt that those individuals that he listed would be good on the committee, could work together on the committee; that he thought the Search Committee could function with only one Selectman and the full Board had final authority over the hiring. He added that he wanted Jonathan Carter for his experience as a town manager and Vickie Mills for her HR experience.

Ms. Davis asked if there was a listing of the qualifications for the various people that applied for this that might prove helpful.

Mr. Moynahan said that the correspondences were in the package for anyone who had expressed interest with their letters; that some had more detail than others but all had supplied something in writing.

Ms. (Donna) Murphy said that she read the letters and believed that not all of them listed their qualifications.

Mr. Moynahan reiterated that some listed more details than others; that the Board wasn't interviewing employees but wanting to see if anyone was interested in being on the Search Committee. He added that the Board did not ask anyone to provide qualifications; that when they reached out to members of the public they would get a diverse group of knowledge and experience.

Mr. Beckert did say that Ms. Lewin served on the Personnel Board when it was in existence; that he felt her past experience and knowledge of the State laws was valuable.

DISCUSSION closed.

VOTE

4-0

Chair did not concur

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Mr. Moynahan said that the hiring committee has been set; that they should be given more input from this Board as far as providing an updated job description for review, maybe have them define a salary and benefits package for the Board's review and approval, create the advertisements and figure out the locations where this would go, again, reporting back to the Board, and create a calendar and a time certain when they were looking to have this person hired.

Mr. Dunkelberger asked why the Chair did not concur.

Mr. Moynahan said that the only reason he ran again was to be involved with the Town Manager Search Committee so he was not pleased with not being involved and that was all.

8:03 PM

#2

TO : Board of Selectmen
FROM : Richard and Cindy Saklad
REF : Transfer Station Schedule

Mr. Moynahan said this was regarding the proposed Transfer Station schedule and forwarded this to Mr. Moulton; that this was input from residents on alternative scheduling to benefit all Town residents. He asked Mr. Moulton to take this under advisement and inform the Board.

8:04 PM

#3

TO : Board of Selectmen
FROM : Bonita Pothier – Regional Representative for Senator King
REF : York River

Mr. Murphy said that he attended the Conservation Commission (CC) Meeting last night and informed them of this letter and another expression of support from the Town. He added that the Board has already supported this operation for the York River but they had a new senator (Senator King) and was probably getting involved and looking for justification for expending funds on this effort and needed to be updated with information. He added that the CC added a note requesting the BOS affirm, once again, Eliot's support of the York River Wild and Scenic Project. He suggested the Board direct Mr. Blanchette write a letter back to Bonita Pothier affirming the Town's support.

Mr. Moynahan asked if they knew what impact this would have to the Town citizens, both negative and positive; were the landowners in that area going to be impacted by more zoning or fewer land rights, more traffic if it was designated wild and scenic. He added that if this came with a price tag for some people the Board might want to review that information before giving their support.

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Mr. Murphy agreed, saying that this was to determine if the river could meet the required standards and, before the designation would actually be applied, the towns would have to approve receiving that designation; that it was his understanding that this did not commit the Town to accepting it.

Mr. Moynahan asked the Board what they wanted to do with this.

Mr. Hirst said that before he would go along with this he would like to know what the National Park Service (NPS) intended to do if this was designated wild and scenic, what costs might be involved, and the impact on property. He added that the NPS was known for instituting rules and regulations on their properties and, sometimes, it was not good for the people.

Mr. Moynahan asked Mr. Murphy if the Town had anything on file regarding this.

Mr. Murphy said that he believed they did and thought the CC had even more; that he would get more information from the CC to try to answer these questions and bring it back to the Board.

#4 TO : Board of Selectmen
FROM :
REF :
This was removed as it was addressed.

8:07 PM
#5 TO : Board of Selectmen
FROM : CMP
REF : Pole Permit

Mr. Moynahan said that this was for a Town pole on Pleasant Street and did require approval from the Board.

It was the consensus of the Board to approve this pole permit for Pleasant Street.

At this time the Board signed the permit.

8:08 PM
#6 TO : Board of Selectmen
FROM : CMP
REF : State Pole Permit, Informational

This was regarding a bigger project to replace multiple poles on Goodwin Road from just north of Depot Road to Route 236 and was to inform the Town.

8:10 PM

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#7 TO : Board of Selectmen
FROM : Mark Thompson, P.E.
REF : Eliot sewer capacity

This was informational regarding Kittery moving ahead with their sewer project and that Eliot would be responsible for their proportionate share for the proposed wastewater treatment improvements per the IMA.

8:11 PM

#8 TO : Board of Selectmen
FROM : MMA Legal Services
REF : Answers regarding LD1 voting

This was regarding the LD1 vote and was a written legal opinion of being able to bring LD1 up again

8:12 PM

#9 TO : Board of Selectmen
FROM : Richard Davis, Town of Farmington Town Manager
REF : Request for help

This was regarding a train derailment in Farmington's sister city of Lac-Megantic, Quebec that left unimaginable damage and death. Farmington has set up an account to help Lac-Megantic recover and is asking for help state-wide to support this effort from Towns and citizens.

Mr. Moynahan said that they would put this on the Town website, adding that he didn't think the Town was in a position to offer financial assistance.

#10 TO : Board of Selectmen
FROM : York County Budget Committee
REF : Request for help

Mr. Moynahan said that the YCBC has an estimated legal bill of \$15,000 from their struggles with the York County Commissioners (YCC) and they were reaching out to all the towns in the County to see if they would be willing to contribute towards their efforts to continue to have some say in the County budgets.

Mr. Beckert said that the Board did not have the means with Eliot's form of government and this Board to take funds and send them to the YCBC to fight legal battles; that Eliot's legal account is for Eliot's legal defense and not to disburse to other communities or entities.

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8:17 PM Mr. Murphy said that he looked into this for justification of this conflict and, in reviewing the State law that set up the YCBC in 1993 it was very clear that the YCBC was in charge of finalizing the budget; that by State law, the Commissioners submitted an estimated expenditure and revenue and turned it over to the YCBC to finish it and get additional information; that the Commissioners were not in charge; that the budget could be amended but required a majority vote of both the YCBC and YCC and the result of that was final.

8:19 PM
#11

TO : Board of Selectmen
FROM : Video-streaming
REF : Report, January - July

This was informational and made available to the department head to help in making any decisions with reductions proposed.

8:20 PM
#12

TO : Board of Selectmen
FROM : EPA
REF : Clean Air Act Petition – final version

Mr. Moynahan said that this was the language proposed by legal for the petition and included a cover letter.

Mr. Murphy said that he had reviewed this and pointed out there were three pages where the Board must make entries and one where they may make an entry that could include any detailed history of any problems in Eliot. He discussed errors he found: page 7 subsection F. – change maintained to maintenance; page 9 – insert ‘r’ in the word intestate; page 11 – Tables 1 and 2 shown are not specifically referenced in the text.

Mr. Blanchette said that he received this and all supporting documents electronically and could make changes.

Mr. Dunkelberger suggested the Board send copies to their senators and Congressional representative.

Ms. Richards said that she contacted Ms. Beavers and Ms. Hill this morning to get letters of support for this petition.

Mr. Murphy updated on the court case between Pennsylvania (power plant) and New Jersey (citizens), saying that the court decided in New Jersey's favor; that it was appealed and the Appeals Court also decided in New Jersey's favor; that this information was part of the documentation attached to Eliot's petition.

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Ms. Richards said that she was contacted by Portsmouth Community Radio to go on a talk show about this at the end of the month and invited folks to listen.

The Board agreed to have Mr. Blanchette make Mr. Murphy's suggested changes and move this process forward. They will forward a copy of the petition to South Berwick.

8:30 PM
#13

TO : Board of Selectmen
FROM : Underwood Engineers
REF : Sewer Rate Study

Mr. Moynahan said that this was Underwood's final proposed document for the Board's review; that it indicated what the Town should be charging its citizens for the use of the Town sewer and to make sure they had money in the proper accounts to maintain the operations and maintenance required.

Mr. Beckert said that the SC has received this study; that the SC Rate Subcommittee would start reviewing it; seek information on Kittery billing to verify any IMA changes were reflected in the billing; that the subcommittee would then come back to the SC, and BOS, with their recommendations for rate changes.

Mr. Murphy said that he would like to get some clarification from Underwood on some recommendations they made in the study.

Mr. Hirst said that the agreement with Underwood included a meeting with the Rate Study Subcommittee and that meeting would include Mr. Pratt and Mr. Moulton

8:35 PM
#14

TO : Board of Selectmen
FROM : Jean Hardy
REF : Follow-up regarding building permit (no correspondence)

Mr. Moynahan said that there was a letter requesting an executive session but, upon review, the information in there would not have warranted an executive session. He added that they would have this in open meeting until the Board members became uncomfortable with the discussion and, at that point in time, they could enter into executive session. He said that Sweet Peas was before this Board on April 17th looking to get a building permit broken off on their property; that the minutes were detailed on Sweet Peas' frustrations over the years and the financial burden that they ran into. He said that, from that meeting, it was proposed that Ms. Hardy work with the CEO and have the CEO, if he would, work with her surveyor to sit down and figure out where a potential lot could go and what would have to happen in order to break off a house lot. He asked for an update from Sweet Peas.

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Ms. (Kit) Breen, Sweet Peas Manager, said that they had gone, as instructed; that they had a lot drawn out with complete information on it; that they spent about \$10,000 between the surveys, finding the location for the sewer, etc.; that they had a survey that was ready to go and should be acceptable. She added that, in the course of doing what they (Sweet Peas) were requested, they were not aware of discussions that took place between the Board and the CEO at two subsequent meetings; that no one notified Sweet Peas that there had been a discussion on May 23rd and April 29th, in which the CEO presented the Board with his opinion about whether or not Sweet Peas could break off a lot and that troubled them greatly.

Mr. Moynahan asked if the CEO followed-up on that information with Sweet Peas.

Ms. Breen said no; that they heard about none of this until two days ago when Sweet Peas received a packet of letters in a personal mail box sent to her (Ms. Breen) by the CEO. She quoted one of the letters the CEO included: *"I sincerely apologize in the delay in getting you this information. While attempting to obtain in-office feedback on the content of the April 29th letter it was inadvertently misplaced."* She said that this was mailed out on June 21st; that it went a circuitous route to her old apartment in Maryland and came back, somehow, to Eliot and was again mailed on the 30th of July; that it arrived in her mailbox two days ago. She said that this was the first inkling they had of what the CEO had written and it made clear that he was totally opposed to any break-off of a lot unless it completely met all standards in the new zoning.

8:40 PM

Ms. Hardy added that his (CEO) assessment to the Board on April 29th was that 45-50 applied under the zoning and that, because the Board of Appeals (BOA) had failed to hear it, under the zoning in Section K failure to hear it constituted a denial; that what the CEO failed to tell the Board was that, in Section C, it says that the BOA shall – that a meeting had to be held and was not discretionary once the appeal was filed. She said that Sweet Peas filed the appeal in a timely manner and someone in the Eliot Town government or Town Hall decided to deny Sweet Peas its civil rights to have a public hearing; that it just got worse and worse and worse; Sweet Peas kept waiting and waiting; sent a letter of complaint to the Selectmen and that was never acted on. She said that she would not rehash what had already been discussed.

Ms. Breen said that documents kept disappearing and she was absolutely appalled at the lack of control of the documents. She added that she wished Mr. Murphy was in control of documents because he did a wonderful job of keeping track of everything and the Town really needed that help.

Ms. Hardy said that she and Ms. Breen went in to the CEO in April for the file on the airport property and he said that the file was purged; that there were laws on records retention and the same laws that the CEO was tested on to become a CEO; that there were penalties for not keeping records. She said that in the package that was given to Sweet Peas there were some minutes from 1983 and asked where they came from.

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Ms. Breen said that both she and Ms. Hardy heard the CEO say that he didn't have any of the history at all for the airport or Sweet Peas; that he wasn't responsible and that people went in and out and took documents and he couldn't tell them what has happened here.

Mr. Moynahan agreed there had been a problem with people in and out of the office; that the Board had made corrections to that so to be accusatory to somebody where the perception was that he was hiding things or couldn't find things...he provided what information he could find.

Ms. Hardy said that they were just telling the Board what their frustration was. She said that, as far as the CEO issuing the Board an opinion, the CEO manual he was tested on says, *"CEO authority during an appeal. The CEO is there as an advisor but does not make decisions for the Board of Appeals. In some communities, the CEO acts as staff to the Board of Appeals and actively conducts research for them, prepares summaries of appeals, prepares draft board minutes, prepares draft findings and conclusions for the boards to adopt when deciding an appeal. While this role for the CEO may cause legal problems when the appeal follows a planning board decision it does present some constitutional due process concerns if the appeal is from the decision of a CEO and should be avoided in these cases."*

Mr. Moynahan said that in order for an appeals board to act a decision had to be made by the CEO so, at some point, he would have to make a decision that was appealable.

Ms. Hardy agreed but said that the CEO could not be in the process; that he could not act for the board.

Mr. Moynahan asked for clarification.

Ms. Hardy said that the CEO issued an opinion to the BOS.

Mr. Moynahan said that that was not a decision. He added that he had a letter from Phillip Saucier (Town attorney) regarding what to do with the letter and the timeline that they had: *"that it wasn't completely clear with the materials that were attached what the relief was that was being requested. However, in a general manner, an applicant must exhaust their administrative remedies and follow the process under the zoning ordinance. You, as a CEO would first need to make a determination, either through an interpretation of the ordinance, a notice of violation, or an approval or denial for a permit, then it could go to the board of appeals if the applicant did not agree with the decision."*

Ms. Hardy said that that was what Sweet Peas did.

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8:55 PM

Mr. Moynahan said that he was not disagreeing with that; that back when that was not heard he believed they (BOS) all agreed that there was something that did not happen properly.

Ms. Hardy said that Sweet Peas kept trying to follow the process and the process has not worked.

Mr. Moynahan said that the process last time was to work with and exhaust their process, and that was why Sweet Peas was here tonight.

Ms. Hardy said that they had.

Mr. Moynahan agreed and asked where they all were; that Sweet Peas said they had a survey but there was nothing in the minutes that said that all the Board needed them to do was a survey; that he was confused.

Ms. Breen said that the Board directed them to do a survey and they did it.

Mr. Murphy asked if Sweet Peas had shown the plan to the CEO.

Ms. Hardy said no; that that was one of the things they were going to do this week until they got those two letters on Tuesday; that the letter said they were denied; that she didn't have any more things she could do and didn't know what they would do from that point.

Mr. Murphy said that it was his understanding that the CEO was waiting for information from Sweet Peas.

Ms. Breen disagreed; that that was not what the CEO said. She said that it was very clear that he (CEO) had a vendetta against Sweet Peas and did not want them to have this.

Mr. Moynahan said that the Board would not listen to people say there was a vendetta; that that was opinion-based because of the issues Sweet Peas has had.

Ms. Hardy said that, if the Board looked at the facts, the Town has not given Sweet Peas due process; that the Town has violated Sweet Peas civil rights.

Mr. Moynahan said that, when the Town did not hear the appeals, he thought everyone here agreed that the Town did not give the proper process; that from where they all were last time to where they all were now...to come in heated and accusatory to the CEO...it was suggested they work, do what they were supposed to do, and come back with the findings.

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Ms. Breen said that the CEO already made his opinion that Sweet Peas couldn't do it because he was invoking that...

Mr. Dunkelberger said that if, in fact, the CEO has made an opinion, made a decision, the next step would be to appeal the decision.

Ms. Hardy said that Sweet Peas already did, and that was the point – the appeal was made two years ago and the appeal was never heard; that what was happening was that every time Sweet Peas tried to do something another thing came up – “bring me the rock” – they couldn't get it for this and couldn't get it for that.

Mr. Dunkelberger said that he thought that the Board admitted that something happened a couple years ago; that they didn't know what but were trying to work to rectify this so that it was heard. He added that he didn't expect that that would happen again because the spotlight was shining on this decision.

Ms. Hardy said that the spotlight was shining on it now; that she was an employee and if she lost paperwork again and right now, she would be shaking in her boots that there would be a lawsuit; that she was sorry but when one got a letter, and this letter was written in June...

Ms. Breen said no, on April 19th, and she quoted: *“The failure of the Board of Appeals to act constitutes a refusal of the request and the Town is not obligated to proceed in the direction as described during the meeting.”*

Ms. Hardy said to Mr. Dunkelberger that it was the June 21st letter that was troubling to her, in which he said he misplaced again; that their fear has been that Sweet Peas would apply for an appeal and, then, that would get lost; that every time Sweet Peas did something paperwork got lost, misplaced, reiterating that he said in his letter that it got misplaced.

Mr. Dunkelberger said that he understood and that that was something he thought the Board needed to deal with internally with the administration. He added that he would encourage Sweet Peas to file the appeal; that there was a time limit that went along with that, as far as his most recent decision.

Ms. Hardy said his most recent decision of April 19th has gone by; that the courts would look at the date; that the mailing meant nothing; that the appeal time has been passed; that Sweet Peas could not appeal it.

Mr. Murphy said that the CEO talked with him just a couple of days ago on this matter and the CEO was wondering how long he had to wait for Sweet Peas to come back with the information about how they wanted to break that lot off, so, he has been waiting for that very information.

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Ms. Hardy said that the CEO has already made his decision. She said that Sweet Peas hired a surveyor; Sweet Peas was going to see the CEO; Sweet Peas just got the letter a few days ago.

Mr. Dunkelberger asked to see the letter of April 19th.

Ms. Breen showed Mr. Dunkelberger the letter and said this was the one the CEO wrote immediately following the meeting with all of them on the 17th and he said in this letter that there was no way Sweet Peas was ever going to get a lot approved. She added that, incidentally, the last time the CEO talked with the Board, on the 23rd of May, this letter was supposed to have been included in the package the Board was given and it was noted that this letter was not in the packet; that once again he lost documentation.

Mr. Dunkelberger said that he thought the Board had discussed this and encouraged the CEO to review this as a new plan; to make a decision and let the process go forward.

Mr. Moynahan agreed that was the question; that there was never a decision made and, in order for the ability of someone to appeal, he had to actually make a decision; that he came back and said he couldn't make a decision on this; that someone had to come in and apply for a building permit, etc., etc.; that was where this was at on that date.

Ms. Breen asked how they applied for a building permit when they didn't know what kind of house was going to be built on it; that they were trying to get approval of the break-off of a lot that would not meet current zoning.

Ms. Hardy said that it would meet current zoning. She said that they were trying to get approval for a building permit; that they did not apply for a building permit because, as Ms. Breen said, they didn't know the design. She added that they kept on coming in and kept saying "what about this, what about that – no, you need a survey"; a survey has been done and money has been expended. She said that the Board needed to understand where Sweet Peas sat; that after the last meeting they had with the Board they thought that this would get approved and it was no big deal to get a survey; that they would work with the CEO but, then, two days ago all of this correspondence and it was like Sweet Peas was back at square one. She asked the Board if they knew how much time had gone by and, now, if they filed an appeal, another amount of time would go by.

Ms. Breen said that they had run out of time; that Fly Away Homes was suing Sweet Peas for over \$200,000.

Mr. Murphy said that he thought that this late mailing, this letter, was a red herring because it was his understanding that the CEO has been waiting for this very information – that they had an identified lot that could be approved.

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Ms. Hardy apologized to Mr. Murphy but would respectfully disagree.
Mr. Murphy confirmed that Ms. Hardy just got the survey.
Ms. Hardy said yes.

Mr. Murphy said that the CEO hasn't seen it, then, and he didn't know that a lot was ready; let him know.

Ms. Breen asked how Mr. Murphy would explain the CEO's statement that the Town was not obligated to proceed in the direction as described.

Mr. Beckert said that he disagreed with the interpretation of what the CEO wrote in the letter dated April 19th. He added that this procedure was applicable under ordinance – under 3K. it states that “if the board does not reach a decision within 60 days of filing...”; that the board couldn't reach a decision because it never saw the paperwork; that the Town erred. He said that this part of the ordinance in his interpretation was that, in order to make a decision or not make a decision, it had to have gone before the BOA and it didn't.

Ms. Hardy agreed and said that the problem with that was that Sweet Peas couldn't even go to Superior Court as they would say Sweet Peas missed their timeline and then the court would say, if Sweet Peas went again to try an appeal, that they did an appeal before and nothing happened with that appeal. She said that there were legal consequences here that Sweet Peas had not thought through on everything with; that the problem was that Sweet Peas kept trying to work with people and kept trying to move forward and nothing happens; that receiving this (letters) two days ago sent her through the roof; that her daughter, who actually owned the property was wild and said that “this was a woman-owned business and her civil rights as a woman-owned business have been violated.”; that those were her daughter's exact words and they were powerful words.

Mr. Moynahan said that the issue at hand was still that the appeal was not heard two years ago; that they struggled with this the last time Sweet Peas was here; that they were going to start the process over again. He added that the process was still in process because it was time-consuming; that people were not happy; that they would not be happy no matter what the answer was. He said that they were seeking something from this Board; that it was not in the Board's purview before; that it was in the Board's purview tonight and they have come back again seeking something from the Town. He said that he went back to the same thing – nothing else mattered to him outside of two years ago - the letters indicate the appeal was requested and that nothing was heard and there was no correspondence found; that all the documents that Sweet Peas had were factual, with receipts and dates and timestamps; that no matter what happened with CEOs or anything, the big thing was the appeal was not heard so Sweet Peas lost their rights at that point in time; that anything else didn't matter. He asked the Board how did they rectify that; if they broke off a house lot, did that supercede any zoning or did that create a subdivision; that that created more questions than answers.

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Ms. Hardy said to Mr. Moynahan that she and he knew that this did not create a subdivision; that no house lot has been broken off from that property in the last nine years; that the Town just got deeper and deeper into this.

Mr. Dunkelberger said that he saw two options. He said that one was to press the CEO for a decision based upon the submission of the plot plan (survey). He added that, if the CEO said that they couldn't do it based upon the ordinances in front of him, then it would go to the BOA. He said that if the Board couldn't do that it was his feeling that the Board should start looking at a Consent Agreement (C.A.) He added that that was his opinion but thought the Town had wronged Sweet Peas.

Mr. Beckert agreed that Sweet Peas had been wronged by the Town; that it still bothered him that the Town had no proof that that appeal came in yet Sweet Peas has receipts that the appeal was received at Town Hall; that there was no proof it was ever put on an agenda, therefore, the BOA couldn't act on it or make a decision yeah or nay; that in his opinion that null and voids that section of the ordinance.

Mr. Dunkelberger agreed.

Mr. Hirst agreed that Sweet Peas has been wronged by the Town and the Board needed to find a way to make it right.

Mr. Murphy encouraged Sweet Peas to take the survey to the CEO; that they now had a lot that had been surveyed and could demonstrate that the lot existed; that they take that to the CEO and say that they wanted to build on it and please give them a building permit.

Ms. Breen said that this lot had to go to Fly Away Homes to satisfy their suit for \$200,000; that Sweet Peas didn't know what the company was going to build on it.

Ms. Hardy said that the latest issue Sweet Pea had was that Sweet Pea walked away from the April 17th meeting believing they were going to be able to get a building permit and they spent money after that; that they have expended an awful lot of money; that the latest bill was \$4,000 for what was in her hand (survey). She added that Sweet Peas would not have spent \$4,000 if they had read those letters back in April.

9:02 PM

Mr. Beckert suggested they were using the wrong terminology of going for a building permit and that the terminology should be going for a growth permit. He added that, once one knew what was going to be built on the lot, the growth permit was converted to a building permit. He added that Sweet Peas needed to go to the CEO, with that plan, and ask him for a growth permit for that lot; that if he denied that then he had to state the reason why. He reiterated that it was the growth permit Sweet Peas needed; that they didn't need to know, at this point, what was going to be built on the lot, as long as the

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CEO approved the lot and issued a growth permit, that growth permit could be converted to a building permit that either Sweet Peas or Fly Away Homes decided to build. He added the caveat that he was quoting the ordinance from memory.

Ms. Hardy agreed Mr. Beckert was right and apologized for not knowing that. She added that, as far as going to the BOA, Sweet Peas couldn't; that they already did that.

Mr. Beckert said that what they could do and he wasn't making light of this was, if Sweet Peas went to the CEO and he didn't issue a growth permit, then that was the decision they could appeal to the BOA, currently.

Ms. Hardy asked him to understand that that would be at least another 45 days to two months.

Ms. Lemire said that the BOA met the third week of the month, explaining that if Ms. Hardy filed the first of September, then she would be heard in September.

Ms. Hardy again said that was another delay for Sweet Peas and there were financial considerations, adding that the Board knew her and that she tried to work with people but, at this point, Sweet Peas has run out of time, they have spent money...

Mr. Dunkelberger said that the problem was that, if the Board decided on a C.A., then they would probably be at least that long, anyway.

Ms. Hardy said that, at least then, they could tell the people waiting for this lot that, yes, there was a C.A., it was a buildable lot, and they could move forward.

Mr. Murphy asked who applied for the growth permit; did it have to be the person building.

Mr. Beckert said that it was the applicant and didn't believe it was the person building, necessarily; that he thought the growth permit went with the lot and, once that was in hand, it was considered a buildable lot and, then at the time one wanted to build, one could convert that growth permit into a building permit.

Ms. Hardy said that the problem was that Sweet Peas was asking for a C.A. with the Selectmen; that Sweet Peas has run out of time, saying she was sorry, but her financial future and Sweet Peas' financial future...that she had to tell the Board she would be working for the rest of her life.

Mr. Moynahan said that they should, at least, go for a growth permit application with the new survey to the CEO tomorrow and, if that was denied, the Board was meeting next Thursday and the Board would bring this up again next Thursday and have a discussion of what more the Board could do for relief.

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Mr. Blanchette said that he would only caution that the Board would probably have to talk with a Town attorney about a C.A. He added that, generally speaking, C.A.'s were only when the Town had someone in court because the court had to put its stamp of approval on a C.A. He added that he wasn't saying that that was the way it had to be but that that was the way he was familiar with C.A.'s; that the Town attorney would know better. He said that, if Sweet Peas was denied and if the Board wanted him to, he would immediately contact the attorney.

Mr. Moynahan said that Phillip Saucier was already contacted and had a correspondence line going.

Mr. Beckert asked if the lot had been recorded in Alfred at this point.
Ms. Hardy said no, that it had not been recorded.

Mr. Blanchette said that he thought that, as long as she had a survey, it didn't necessarily have to be recorded because it was a recordable lot now that Ms. Hardy had a survey that specified a specific location on the face of the earth.

Ms. Breen said okay, that Sweet Peas would do that.
Ms. Hardy said that, if it turned out that the CEO wouldn't issue the growth permit...

Mr. Moynahan said to contact Mr. Blanchette, adding that Ms. Hardy might want to call Mr. Blanchette ahead of time on her way down to meet collectively with the CEO in case the CEO had questions about this meeting. He also suggested she call first thing in the morning to make sure the CEO would be in and available tomorrow.

Ms. Hardy said okay and thanked the Board.

Ms. Breen thanked the Board for their time.

9:07 PM
#15

TO : Board of Selectmen
FROM : Bateman Enterprises
REF : Letter of support

Mr. Moynahan said that this was a letter of support he had Ms. Thain print out to the Maine State Housing Authority (MSHA) regarding the Eliot senior housing project at the Eliot Commons previously discussed; that the application needed to be submitted tomorrow and read the letter for the benefit of the attending public.

It was the consensus of the Board to have the Chairman sign this letter in support of the Eliot Commons Senior Housing Project at the Eliot Commons on behalf of the Eliot Board of Selectmen.

Old Business (Action List):

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9:10 PM

It was the consensus of the Board not to take this up this evening

1. Tax Increment Finance Program – Potential projects, next steps, subcommittee
2. Good Neighbor Petition
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 - Job description, sample contracts, hiring committee
6. Municipal Charter November Referendum
7. Policy creation/review – Ordinance Governing Boards and Committees, Park Ban Ordinance
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 – Fiscal year 2015, goals, formats, etc. - BOS
11. Auditor – RFR – BOS
12. Pay-per-Bag Recycling – 6-month trial, public information sessions
13. Regionalization – explore areas of potential collaboration, cost reductions & enhancements to services – Mr. Moynahan, Mr. Hirst
14. Legal issues – BOS
15. Sewer - User Rates, reserved allotments, odor, maintenance– Sewer Committee, Underwood Engineers, Mr. Moulton
16. Department Heads – monthly reports, employee reviews, financial oversight, policy reviews, and department reviews - BOS
17. Research grant opportunities – AED's for Town buildings
18. Comp Plan follow-up
19. Pending - new unions

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20. Treasurer Hiring Committee

Selectmen's Report:

There were no Selectmen's reports tonight.

Other Business as Needed

9:11 PM Mr. Dunkelberger said that, since he was one of the people voting in the affirmative, he would like to take up item H#1 for reconsideration on tonight's agenda for the Town Manager Search Committee as a motion.

Mr. Moynahan said that there was a motion to reconsider #H1 on the agenda for this evening and asked if there was a second.

Mr. Hirst said that he would second the motion by Mr. Dunkelberger.

DISCUSSION

Mr. Murphy said that he would like Mr. Blanchette to summarize the precise meaning of reconsidering; as that was altering the timeline and certain things before that point still held.

Mr. Blanchette said that this was bringing back up the motion that was made, adding that the Board could make amendments to the motion.

Mr. Hirst said that this was simply a vote to reconsider the Board's vote on the Board's vote on H1 tonight.

Mr. Blanchette agreed.

Mr. Dunkelberger clarified that he could amend the (original?) motion.

Mr. Blanchette said that it was his understanding, that a Board member could amend the motion, and it brought the Board back to the motion without the vote on the motion.

Mr. Dunkelberger suggested they try it that way. Mr. Dunkelberger amended the Board of Selectmen's Town Manager Search Committee, replacing Jack Murphy with Michael Moynahan, second by Mr. Hirst.

DISCUSSION

Mr. Hirst asked if that put the Board in any peril with having the Chair on this committee.

Mr. Dunkelberger said that he didn't see how it made any difference from any other Selectman on the committee.

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Mr. Murphy said that he greed it was an important committee to be on and he would dearly love to be on it; that he wasn't sure who was more qualified to be on the committee and that they may be equally qualified; that if Mr. Moynahan's heart was set on this then that was a very big hope-for and he (Mr. Murphy) didn't have that big a hope-for.

Mr. Moynahan said that the Board had made a decision and he lived by every decision this Board made; that he had no regrets moving forward; that he went home, had a beer, and woke up tomorrow and started a new day. He added that his panties were not in a bunch over this.

Mr. Dunkelberger agreed with Mr. Murphy that Mr. Moynahan's passion for helping form this position and select the proper individual for it he thought brought an important measure to the committee.

Mr. Moynahan said that he thought that any one of the Board members would do a fabulous job on that committee, as with any other committees Board members were on.

Mr. Pomerleau suggested that both members be on the committee and not get stuck on numbers.

Mr. Moynahan said that he was comfortable with the make-up of the committee as it was.

There was discussion to clarify procedural issues regarding motions; that the motion to reconsider came first and the Board voted on the motion to reconsider.

VOTE

2-2

Chair voted in the opposition and the motion failed

Executive Session

There were no more executive sessions.

Adjourn

There was a motion and second to adjourn the meeting at 9:17 PM.

VOTE

4-0

Chair concurs

DATE

Mr. John J. Murphy, Secretary