

BOARD OF SELECTMEN'S MEETING
September 26, 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

Approval of Minutes of Previous Meeting(s)

5:31 PM Motion by Mr. Dunkelberger, seconded by Mr. Beckert, to approve the minutes of September 5, 2013, as amended.

VOTE

4-0

Chair concurs

Motion by Mr. Dunkelberger, seconded by Mr. Beckert, to approve the minutes of September 12, 2013, as written.

VOTE

4-0

Chair concurs

Public Comment:

5:32 PM There was no public comment.

Department Head/Committee Reports

G1. Police Department – Transfer Station traffic flow safety assessment

This was a letter from the Police Chief providing a brief overview of traffic flow safety concerns saying that he felt the concerns were minimal; that the Board would work with the department head to ensure bottlenecks were prevented based on the Police Chief's assessment.

G2. Department of Public Works

Mosquito Treatment

Mr. Moynahan said that Ms. Lisette Gould Nash had contacted him after Town Hall hours and he followed up with department heads at DPW and ECSD; that Mr. Moulton followed up with a memo as to what other towns were doing and the costs. He added that the concern was for what the Town was doing regarding

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EEE/West Nile emergency spraying. He said that the concern has grown recently and that the Town should consider doing this. He added that the information provided from Municipal Pest Management indicated that the Town shouldn't be doing a lot this late in the season but might be something the Board should discuss in more depth coming into budget season. Mr. Moynahan said that her second concern was for the Road Commissioner responsibility for pond clean up and culverts.

Mr. Moulton said that he had checked the culvert; that it was clear. He added that it was in failure and would probably be on the State's list to take care of next year. He added that it wasn't in imminent danger of road failure; that he could not go in and drain the pond as it was on private property.

5:37 PM G3. Community Service Department

Computer purchase – I.T. Committee recommendation

Mr. (Dave) Emery said that the estimates were essentially the same. He discussed his concern for putting out to bid work on a network for a single department and the technical issues that could arise. He added that it was his strong recommendation that they go with 2-Way Communications.

Mr. Dunkelberger asked if it would be easy for the new equipment to transition to Eliot Elementary School (EES).

Mr. Emery recommended that the ECSD Director have 2-Way Communications talk with EES to make sure they could configure the server that ECSD would be using, discussing the technical challenges this might present. He added that the discussion should happen before ECSD purchased new equipment.

5:42 PM Mr. Beckert asked if Mr. Emery could work with the ECSD Director, EES, and 2-Way to look into what exactly it would take to make this work.

Mr. Emery said that he could.

It was the consensus of the Board for Mr. Emery to work with all parties to ensure internet service to ECSD at EES.

Mr. Beckert moved, second by Mr. Hirst, that the Board of Selectmen accept 2-Way Communications' proposal #17950 for the configuration of the Eliot Community Service Department internet.

VOTE

4-0

Chair concurs

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TRIO software transition

Ms. Muzeroll-Roy said that she was working with the Treasurer and developing expense and revenue accounts for Kids Play and the ECSD. She added that she was not sure if there was a timeline for this transition.

Mr. Moynahan said that, originally, September was the target date to have it done prior to Ms. Spinney leaving. He added that he recognized they got a late start and that the sooner the better would be good.

Ms. Muzeroll-Roy said that she would follow up with Ms. Spinney on that. She added that her only other concern would be meeting with the auditor regarding checks and balances at the end of the year, as she needed to have a start-up fund.

The Board agreed she should meet with the auditor and include Ms. (Judy) Hatch, as well.

5:50 PM Kids Play employee

Mr. Moynahan said that this request had been on the last meeting agenda; that he had indicated that the Board needed to go into executive session but that is not necessary. He added that this was a Kids Play person much like the summertime part-time staffing that they did at the Transfer Station. He explained that timing issues occurred; that he told her to go ahead and put this person on the roll to assist with Kids Play staffing; that he would bring this up before the Board for proper approval. He reiterated that it was done right; that he did it incorrectly when she was before the Board with the information and it was back before the Board.

Mr. Hirst moved, second by Mr. Beckert, that the Board of Selectmen allow Ms. Muzeroll-Roy to hire Rebecca Levy for Kids Play at the rate of \$9 and hour with the effective date of September 20, 2013.

VOTE

4-0

Chair concurs

5:53 PM G4. Administration

Maine Revised Statutes – Traffic Laws

Mr. Blanchette said that the Board had the statute regarding traffic laws that said the municipal officers had exclusive authority to enact all traffic ordinances in the municipality.

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Mr. Moynahan said that the parking ordinance the Board has been working on could move forward through the Board.

Mr. Blanchette agreed.

Fireworks Permit proposed form

Mr. Blanchette said that this proposal was for the Board's review, adding that the key thing the Board needed to look at was setting the times. He suggested the Town Hall receive the fees and that either the Clerk's Office or Fire Chief issue the permits.

Mr. Dunkelberger suggested adding the limit on fire conditions.

The Board agreed by consensus to have those changes made to the draft permit and that collection of fees and issuing of permits would be done by the Clerk's Office.

Insurance quote – Cemetery repairs

Mr. Blanchette said that this was a new quote from AAA regarding the cemetery damage on River Road. He added that the key thing in the new proposal was that AAA would replace the four granite fence posts that were damaged rather than just repair them.

Mr. Hirst asked if the Board could enquire of the Historical Society if they felt that the scope of work outlined in this proposal was adequate.

Mr. (Denny) Lentz said that he thought this was the best attempt they would get at putting it back to the way it was and he thought the Historical Society would be satisfied. He added that he appreciated the Town's efforts in this.

5:58 PM

Mr. Beckert moved, second by Mr. Hirst, that the Board of Selectmen accept the proposal through AAA from Gravestone Services of New England, LLC, Quote # 4012-R3, for the repair of the cemetery on River Road at the amount of \$7,375.00.

VOTE

4-0

Chair concurs

Warrant – Sign warrant for November Election

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Mr. Moynahan said that regarding the financial statements on the sewer piece of the warrant it showed the Town's indebtedness, etc. but it didn't show any current revenue or anticipated revenue for the 20-year life expectancy.

Mr. Blanchette said that he would not suggest changing this in any form because this was written by the bond attorney.

Mr. Dunkelberger said that he would at least like the Town to know going into the vote that 'this' is the money currently in the TIF for this and 'this' is the projected revenue.

After some Board discussion, a motion was made.

6:02 PM Mr. Hirst moved, second by Mr. Beckert, that the Board of Selectmen sign the Special Town Meeting Warrant meeting November 5, 2013, as presented.

VOTE

4-0

Chair concurs

At this time, the Board signed the warrant.

6:03 PM **G5. Town Manager Search Committee**

Job Description and Advertisement recommendations

Mr. Moynahan said that Mr. Rankie has provided a full packet to the Board for the Board's review and invited Mr. Rankie to speak.

Mr. Rankie read the cover letter, then discussed the timeline for receipt and review of applications, interviews, finalist interviews by the BOS, selection, acceptance, and contract; and commencement of new Town Manager duties. He added that it was a tight timeline but thought it was very doable. Under 'Required Knowledge, Skills, and Abilities', he discussed the committee's reasoning behind "*experience with Municipal Fund Accounting or the equivalent experience...*" – if they had someone at a Captain's level who was running something like the shipyard, then they would certainly know some really good accounting. He added that the committee would look closely at that and consider what abilities the applicant has.

Mr. Murphy said that he looked into the Treasurer business located on page four (second bullet from bottom) that starts "*As Treasurer...*" assumes the hire would live in Maine; that there was a statutory requirement that a town official must be a resident of the State of Maine and be 18. He added that, if the Town wanted to hire someone who lived in another state, then they would have to set up another person to be the official Treasurer, someone who lived in Maine. He said that the

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Town Manager would be an assistant Treasurer, just like the Town's actual Treasurer that was just hired because she still lived in New Hampshire.

Mr. Rankie said that the committee recognized the Town had an assistant Treasurer - that the Town didn't have a Treasurer because of the residency issue. He said that the committee talked about that and potentially coming to the Board to ask them to change their instruction to the committee that the Town Manager be a resident of Eliot but, after discussing that, the committee realized they would be narrowing the net by doing that and they wanted to get the best possible candidate.

Mr. Moynahan said that the Board was aware of those hurdles.

Mr. Murphy brought the Board back to page 5 to the fourth bullet up from the bottom that said, "*Is responsible for the administration of general assistance.*" He said that he thought the intention was good but that, by law, he thought that the Selectmen were responsible and must assign that each year to the Administrative Assistant. On the last page, referring to electronic advertising, he said that he was told that Vermont didn't have VMA but, instead, Vermont League of Cities and Towns (VLCT), which did the same thing.

Mr. Hirst said that he thought this package was done extremely well; that it was a beautiful document and thanked the committee members for their efforts.

Mr. Dunkelberger discussed grammatical changes on page 2 of the job duties. He said that the last sentence in the paragraph said, "*The Town Manager shall not exercise supervision over the Fire Chief or all other Fire Department members per Town ordinance.*", which was correct. He added that the paragraph above that said, "*The Town Manager exercises indirect supervision over all appointed staff within the Town of Eliot.*", and suggested adding 'except the Fire Department'.

Mr. Rankie said that they thought of that but didn't want to sound redundant.

6:15 PM There was discussion regarding what supervision the Town Manager would or would not have over the Fire Department.

The Board agreed that Attorney McGill would be reviewing this document.

6:20 PM Mr. Moynahan said that he thought it was a very complete package; that the committee had done everything the Board had asked them to do, thus far; that the committee did a great job.

The Board agreed to advertise this according to the committee's timeline.

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Mr. Rankie said that it was the committee's understanding and intent that all the applications would come in sealed, secured, and not opened until November 2nd, when the committee would meet to open them all at once.

The Board agreed.

Mr. (Bob) Pomerleau discussed his concern regarding experience in municipal fund accounting and supervisory oversight with the financial accounting process. He suggested that someone should have some direct knowledge of municipal fund accounting.

Mr. Moynahan suggested that the Board could talk with the Town's current auditors to get their thoughts and maybe get some guidance on specific questions to ask of the applicants.

6:24 PM

Mr. Beckert moved, second by Mr. Hirst, that the Board of Selectmen, in conjunction with the Town Manager position advertisement going out, forward this job description to Attorney McGill for preliminary comments in preparation of getting a finalized job description.

VOTE

4-0

Chair concurs

G6. Sewer Committee/Business Development Committee

Letter from Robert Pomerleau

Mr. Moynahan said that this letter talked about the SC and EBDC plotting and planning, or what have you, as far as the referendum vote. He asked if Mr. Pomerleau wanted to speak to the letter.

Mr. Pomerleau spoke to his frustration with this vote coming up again; that the minority never seemed to want to accept that they lost a vote. He added that he realized this was a petition but he thought that was nothing more than a request for another vote and the standing orders to the Town from the voters today was that there would be no sewer. He added that he found it absolutely sickening that the Board would allow citizen tax dollars to be used in some effort to act in defiance of the majority vote, to set aside and reverse that vote. He said that, in his opinion, the Town should figure out how to move forward based on that vote, which would mean putting together the TIF alternative committee to explore other options for the use of that TIF, and should be done based on a brand new survey to the Town to see what direction and vision the Town had today. He reiterated that the use of taxpayer money to be used to undermine the Town's vote should not be allowed to happen.

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Mr. Moynahan said that any mass mailings would have to be reviewed by the Board from either of those committees and that, with the petition the Board received, they had to put it in front of the voters whether Mr. Pomerleau agreed with that or not. He added that the Town still had a tax-sheltered program approved in 2009 for economic development specific to sewer; that that was the specific guidance given in 2009 and nothing has changed. Mr. Moynahan said that Mr. Pomerleau mentioned in his letter that there were conflicts of financial interest and said that if Mr. Pomerleau had specific concerns about individuals he asked Mr. Pomerleau to provide that so that the Board could make sure that that was not occurring. He added that to put random statements out there about members of boards and committees of Eliot that were volunteering their time...let's not generalize. He reiterated that, if Mr. Pomerleau had specific concerns, then he would follow up with that like anything else that has been brought to him to make sure things were being done properly; that instead of accusations please provide concerns.

Mr. Dunkelberger said that he was disappointed that this Board was providing any credibility to this letter, at all, because he found it both personally and professionally insulting; that he thought it was hypocritical on the writer's part on many different levels. He added that he thought the Board should ignore it because there was nothing here. He said that he would be curious as to what his own financial benefit would be on this as that is what the letter was implying.

6:31 PM Mr. Murphy said that he was astonished that Mr. Pomerleau was not out there defending the right of citizens to petition, even if there was a repetition in the action.

Mr. Pomerleau disagreed with Mr. Dunkelberger's reading of his letter and for him to ignore it would be consistent with the Board's actions to every vote the Town has had in the last year and a half, so that was nothing new...

Mr. Moynahan interrupted the discussion, saying he would not allow the speaker to be derogatory towards the Board. After a heated exchange, Mr. Moynahan ended discussion on this item and moved on to the next agenda item.

6:33 PM **Budget Committee**

Ms. (Rebecca) Davis passed out a handout, explaining that the BC was attempting to outline a budget review for the year and they would like this to go out to department heads. She read the letter, which requested the 2014/2015 budget be kept below the tax limitation cap.

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Mr. Moynahan said that the Board just sent out a budget letter to all department heads and provided a copy to the BC. He discussed his concern with keeping LD1 calculations current during the budget process.

Mr. Blanchette said that it depended on whether the Board wanted them updated, or not, and explained that the state revenue sharing calculations changed throughout the process and that changed the Town's bottom line.

Mr. Murphy said that he thought that Mr. Blanchette should keep the Board completely up-to-date as changes came through; that that was something they needed to know last year.

Mr. Moynahan agreed that it would be helpful to have that as they went through the budget process. He said that the budget letter indicated to come up with a minimum level of funding to provide services to the community, which was similar to last year and the Board was requiring all departments to use the same spreadsheet this year; that last year that was supposed to happen and did not. He added that the Board was holding a budget workshop; that it was tentatively planned for two weeks from now and he would let the BC know the date.

6:36 PM

Mr. Dunkelberger agreed they included language in the budget letter as far as trying to maintain services versus trying to maintain a level funding budget. He reminded the BC and department heads that it was nice to desire level funded budgets but the BC could not require department heads to submit level funded budgets.

Mr. Moynahan said that one thing from the last Town Meeting was that they needed better language to include 'appropriate, raise, and transfer' rather than 'appropriate and raise' in a couple of line items.

A member of the audience asked if someone could inquire to an appropriate State official on how to handle a motion for an LD1 cap to prevent what happened last year. He also discussed his concern on how to effectuate a vote on individual budget items if the LD1 cap was the first thing voted on.

6:40 PM

Mr. Beckert asked Mr. Blanchette if it was the State's recommendation that LD1 be the last article on the warrant.

Mr. Blanchette said yes, that it has always been the State's recommendation that the LD1 be last on the warrant.

Mr. Beckert said that the moderator ruled properly, per the State's recommendation. He added that the unfortunate thing in that whole process was

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that even the BC recommendations did not reach the LD1 level cutback and that was why it came back to the Board, per the statute, to decide the cuts.

Mr. Murphy suggested they could have a running total during the meeting so that everyone knew where the proposed totals were.

Mr. Pomerleau said that, if it was legal to have the LD1 vote first, then the solution would be to go to the meeting with an alternate budget.

Mr. Murphy said that the LD1 cap that was published and they knew at the time of Town Meeting was, in fact, maybe not the one the Town ultimately had to learn to live with; that they didn't know if that estimate would remain solid throughout the year but was a best guess at that time. He added that they needed to vote to approve exceeding the cap because they didn't know if the sums would last; that the estimated cap may not be the real cap and the Town may go over it and they needed to vote to go over the cap in order to make it legal.

6:45 PM Ms. (Nancy) Shapleigh said that, at Town Meeting, people could vote to reconsider at the end of the meeting. She added that she has seen that a few times over the years and that was the reason people needed to stay until the meeting was adjourned.

Mr. Moynahan said, getting back to the BC letter, that the Board sent out the budget directives to the Town departments so, once they got those budgets, then that could be the goal for the BC; that there wouldn't be a second letter going to the department heads; that any specific information that might be missing would need requests through the Board for that information from each department. He reiterated that there would be a budget workshop soon, which the BC would be included in.

Ms. Davis clarified that the Board was saying that this letter that was voted on legally by the BC was going to be blocked and not sent to department heads.

Mr. Moynahan said that the BC did not require what budgets would be presented.

Ms. Davis said that that may be true but the BC would be looking at the budgets and this (letter) was the way they would be looking at them. She added that, if the department heads didn't understand what the BC was looking for, then they would come in unprepared and would set the process back. She said that she did not like the idea that the Board would censor information that the BC would like forwarded to department heads.

There was discussion on information that was in the letter department heads already had and sending the letter.

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Mr. Dunkelberger said that he would support sending the letter if changes were made, as he felt it was misleading.

Mr. Murphy objected to the BC holding separate meetings with department heads apart from joint meetings with the Board; that the Board was responsible for generating a budget and that budgets could be commented on all the way through in the joint meetings.

Mr. Moynahan said that the budget workshop would be a good time to have a conversation so that the department heads could understand what might have been lacking from the BC's perspective in their budgets and could be prepared when they submitted budgets in November.

Mr. Beckert suggested that, in the future, the Board and BC come up with a joint letter in language agreed upon and send it out jointly; that that worked in the past. He added that he thought that last year they agreed that they were all going to meet with the department heads first jointly and, then if anyone needed to go off in separate directions to meet separately with department heads that was what they would do, so, he wasn't sure why that direction had changed.

Mr. Moynahan said that he did not believe it had. He added that all the joint meetings were scheduled and those dates were in the Board's letter.

Mr. Pomerleau was confused as to where the Board's statutory authority was to in any way control the BC, as they were elected and not an appointed committee. He added that there was a set of rules and by-laws for the BC that specifically gave the BC the authority to independently meet with any department head when they chose and without the Board. He asked if the by-laws were a Town ordinance.

Mr. Beckert clarified that those were operating by-laws of the committee and not an ordinance.

Mr. Moynahan reiterated that the joint meetings have been established and, if there were conflicts now and then, they could alter some but the earlier the better to get these out.

Ms. Davis stressed that it was not the BC's intention to circumvent the system; that there were members of the committee who expressed a desire to address some initial questions after they received preliminary budgets after November 1st. She added that the Board was welcome to attend; that last year's budgets were very late and the BC didn't have time to deliberate on final budget so that was the reason for this approach.

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Mr. Moynahan said that he thought that they would all find that the budget workshop with the department heads will be the most effective way to get the process started this year.

6:58 PM The Board agreed to forward the BC's letter to department heads.

Building Committee – ECSD design estimate for EES

Mr. Beckert gave the Board an update regarding the ECSD space retrofit at the EES. He added that they asked Ms. (Michelle) Shields to work up an estimate of the cost for her to do the design, sketch, list of materials required so that they would have what they needed to submit to the Fire Marshall's office. He said that she had come back with a detailed proposal and an estimated fee between \$600 and \$900.

7:02 PM Mr. Murphy moved, second by Mr. Hirst, that the Board of Selectmen accept this plan from Michelle Shields Design, Inc. and approve it on the dollar amount shown in the proposal.

VOTE

4-0

Chair concurs

New Business (Correspondence List):

#1 TO : Board of Selectmen
FROM : John P. Dougherty
REF : Political activity at Eliot Recycling Facility

Mr. Moynahan said that this was a letter from Mr. Dougherty recommending no political activity be allowed at the Eliot Recycling Facility as he considered it a safety issue. He added that he would follow up with Mr. Dougherty to let him know that the Board had had conversations about this and were reviewing current policy and procedure.

#2 TO : Board of Selectmen
FROM : Stephen D. Page, US Environmental Protection Agency
REF : Clean Air Act

Mr. Moynahan said that this was an acknowledgement that the EPA had received the Town's petition.

Ms. (Kimberly) Richards let the Board know that she attended a kick-off campaign in Portsmouth and they were all abuzz in thanking Eliot for Eliot's efforts as it has inspired them to take the issue up again.

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#3 TO : Board of Selectmen
FROM : Chellie Pingree, US Congress
REF : Clean Air Act

Mr. Moynahan said that this was a letter from Chellie Pingree to the EPA in support of the petition. He added that one thing she said was that, "*The town is seeking a finding that emissions from a coal-fired plant in neighboring Portsmouth, New Hampshire (Schiller Station) are causing the nonattainment...*" – causing, or not, he thought they were trying to get an answer one way or the other and not assuming it was happening. He said that it was nice for her to send a letter of support for the Town.

7:05 PM

#4 TO : Board of Selectmen
FROM : Mark Spezia
REF : Citizenship Merit Badge

Mr. Moynahan said that this was a request from Mr. (Mark) Spezia, who is a leader of a local Boy Scout Troop and they were working on their Citizenship Merit Badge and requesting help from the Board.

The Board agreed to schedule them for the next meeting.

#5 TO : Board of Selectmen
FROM : Comcast
REF : High-speed Internet Service

Mr. Moynahan said that this was a letter informing that Comcast had offered free internet services to schools and libraries in the region, including Eliot, and that the broadband contribution to Eliot was \$3,715.80.

#6 TO : Board of Selectmen
FROM : Roland L. Felch, dba The Road House Tavern
REF : Liquor License Renewal request

Mr. Moynahan said that this was a renewal and that the Police Department had no issues with the establishment.

7:07 PM Mr. Beckert moved, second by Mr. Dunkelberger, that the Board of Selectmen renew the liquor license for the Road House Tavern located at 987 Harold Dow Highway.

VOTE

4-0

Chair concurs

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At this time, the Board signed the renewal.

7:09 PM
#7

TO : Board of Selectmen
FROM : Dutch Dunkelberger
REF : Ordinance Governing Municipal Boards, Commissions, and Committees

Mr. Beckert discussed the new video teleconferencing (VT) section and his concern for making the teleconferencing person part of the quorum to hold the meeting. He clarified that the VT person had to have all the same documents and materials available to the physically present members, as well as other procedural requirements, and he felt that the quorum to hold a meeting needed to be present in the meeting place. He added that the policy was limited to one VT person and, if more than one member was away, which member would be chosen to VT. He added that, with the quorum, the attorney has already interpreted what the word 'present' meant in the law (physically present); that it didn't meet the intent of someone signing up to be on a committee.

There was discussion on the use of teleconferencing as it related to meeting a quorum, how widespread the use of this technology was, and any constraints/standards that needed to be applied.

7:18 PM

Mr. Hirst suggested getting a sense of what was standard practice in corporate and government through MMA and/or counsel.

It was discussed that this policy followed State information provided; that all committees and boards needed to follow the same standard; that one area that was problematic was the number of persons who could VT because some committees had alternates and some did not and those that did not could end up with more members VT than were physically present. Language discussed was 'something less than 50% of the committee would be allowed to VT.

7:24 PM

Ms. Shapleigh suggested that committees not having alternates, should, as that was a perfect training ground for new members to come up as others left.

The Board agreed that the committee of two would revise the language and bring it back to the Board.

7:26 PM
#8

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

Mr. Moynahan said that they would take this up at another time based on advice from the Town attorney that he received this evening.

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7:27 PM
#9

TO : Board of Selectmen
FROM : Edith Breen, Sweet Peas, LLC
REF : Board of Appeals Decision

Mr. Moynahan said that Sweet Peas had been to the Board of Appeals, worked with the CEO, and they were tonight to meet with the Board.

Ms. (Kit) Breen said that, as the Board directed, they went before the Board of Appeals (BOA) and were turned down. She added that they were directed by Mr. Marchese to go to the BOA with a variance request; that she had asked him directly which he recommended that Sweet Peas do and he said very clearly they should go with a variance; that he did not explain clearly to her, at all, that it would be very difficult to meet the four criteria of the variance. She said that, from what the Board had said, her assumption was that the CEO was going to help Sweet Peas get this through and do an appeal that would be helpful. Ms. Breen recognized that the CEO was very busy, that he was overworked; nonetheless, they went for this appeal and could not meet the criteria; that only one of the BOA members would have voted to give Sweet Peas a variance. She added that that brought her back to the Board for assistance on, perhaps, granting Sweet Peas a Consent Agreement (C.A.).

Mr. Beckert said, with reluctance and in all likelihood, that they should not have been advised to go for a variance because the BOA had no authority to grant variances on the Streets standards; that a waiver would be the correct wording and waivers to the Streets ordinance were the Planning Board's jurisdiction only. He added that there were several things he questioned and had spoken to the Planning Assistant to have her pick some things out of the ordinance for him in trying to figure out how this was going to come to the Board tonight. Mr. Beckert said that this was no fault of the BOA, as he wasn't sure they knew what was coming to them. He added that this was not considered a back lot; that there were several things in here grouped together out of separate sections of the ordinance and one couldn't pick and choose what sections of the ordinance one used on an application. He said that one had to look at the application and then go to the section of the ordinance that applied. He added that one didn't start over 'here' because this was a division of one lot, which is allowed under State of Maine statutes – that a lot could be divided off a property, one every five years. He said that a subdivision, by State definition and by Eliot ordinance definition were three lots or more; that this single lot did not come under the road standard reviews that a subdivision came under so, therefore, this lot was not considered a back lot because it was not a subdivision; that it was a single lot division of land off a particular piece of property, which was allowed by statute and Eliot ordinance once every five years.

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Mr. Moynahan asked what the definition of a back lot was.

Mr. Beckert said that one had to look at the application; that if it was a subdivision, then that kicked in subdivision review; and subdivision review kicked in the Streets ordinance; and that Streets ordinance was where one got to the back lot and the 1,000-foot distance. He added that, if one looked at the application as a single lot division, which was what it was, all the rest of that didn't come into play.

Mr. Moynahan said that he thought that the language for back lots also had the street requirements of 1,000 feet.

Mr. Beckert said no, that it wasn't considered a back lot; that it was considered a division of one lot off a piece of property, which was allowed by State statute and Eliot ordinances every five years. He said that, if one looked at the application for a building permit for a single lot division off a piece of land, then one couldn't get to the subdivision ordinance from there; that one had to use the ordinance the way it was intended to be used.

Mr. Murphy asked Mr. Beckert if this should have gone before the PB.

Mr. Beckert said no; that it should have been an administrative appeal against the CEO's decision not to grant the building permit then the rest of that wouldn't have come into play because the division of one lot off a piece of land was all they were asking to do and obtain a building permit for that one lot – not a subdivision – and that was the Chair of the PB's opinion. He said that he discussed it with the Planning Assistant and briefly looked through the ordinances today to prepare for tonight.

Mr. Dunkelberger asked if they could readdress this with the BOA as an administrative appeal and would that be faster than pursuing a C.A.

Mr. Beckert said that he thought that the BOA did the right thing based on what they were given based on the guidance they were given by the CEO.

Mr. Moynahan said that he attended a portion of the BOA meeting; that he thought that in Sweet Peas package to the BOA they had a baseline of some criteria but they had indicated they had no idea of the four criteria.

Ms. Breen clarified that they had no idea how difficult it was going to be; that they thought that the answers they put down and came up with would satisfy the four criteria and it turned out that Sweet Peas was totally wrong. She reiterated that they were not given any help or guidance by the CEO in filling that part out, although they were given help filling out a large part of the package by the CEO.

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Mr. Moynahan said that they had been dancing around this issue for months, now, and something needed to be resolved; that there were examples of house lots that had been broken off in that neighborhood, separate ownership.

7:37 PM Mr. Beckert said that he thought that the Board needed to strongly consider entering into a C.A. with these folks, saying that he would go back to the 2009 original appeal that came to the Town Hall that was never forwarded to the BOA for action, so, the BOA did not err. He added that he thought that Sweet Peas had been aggrieved since 2009 and he thought that the Town needed to enter into a C.A.; that he knew what the Selectmen's policy was on C.A. but went back to a previous memo from Attorney Chris Vaniotis that said a C.A. was essentially a settlement of anticipated litigation. Mr. Beckert said that the Board could anticipate that the applicant could certainly take the Town to Superior Court because, if they felt they were aggrieved again by the most recent decision handed down because it was followed through on correctly, then he thought that this Board could enter into a C.A. with Sweet Peas to divide one lot off from that property and make this whole situation go away.

7:39 PM Mr. Beckert moved, second by Mr. Hirst, that the Board of Selectmen of the Town of Eliot enter into a Consent Agreement with Sweet Peas, LLC to divide off the lot as presented to the Town and settle this at this point. No other single lot can be divided off within any less than five years from this point, unless Sweet Peas, LLC applies for a subdivision.

DISCUSSION

Mr. Murphy said that he felt this did not fall into the category he felt had to; that is, a C.A. was what one did when something had been built wrong or was a violation of rights or disposition or something like that and, yet, it couldn't be corrected because it was too big or too expensive; that it would be easier to accept it and do the C.A. and the person would pay a fine, but the Town would legalize it and go on. He added that this was rather different from that, adding that he thought that Mr. Beckert had explained Mr. Vaniotis' statement and would expand his (Mr. Murphy) understanding of the C.A. to accept this. He said that this was very strange and the Town should do something about it.

Mr. Dunkelberger said that he agreed; that he read the same thing and read it the same way. He added that the other part of this was that he thought Sweet Peas had already sold...have they sold the property or promised it to build on something.

Ms. Breen said no.

Mr. Dunkelberger said that he thought that there was a law suit.

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Ms. Breen said that there was a law suit pending against Sweet Peas from the builders that were promised the lot.

Mr. Dunkelberger said that that further strengthened the argument of pending legal action, potentially, against the Town. He added that he thought that a C.A. was more than appropriate.

7:40 PM

Mr. (Ed) Cielezsko (BOA Chair) said that he was at that BOA meeting and didn't know where to start here. He said that he believed Mr. Beckert was wrong on his interpretation of the ordinance on most of the things he said. He added that this was a back lot according to the Town ordinance and said not to take his word for that; that before they entered into a C.A. they should get some help from an attorney because that whole thing was wrong. He said that that was against everything they (BOA) had done on the BOA through multiple chairmen, through multiple boards; that was a total change of everything they had ever looked at in the ordinance – what Mr. Beckert just described; that it wasn't even the same Town. Mr. Cielezsko said that, in Ms. Breen's presentation that he listened to, he heard that three code enforcement officers were negligent to her, two lawyers were negligent to her, two contractors were negligent to her, that the Board was against her; that the Board promised her a lot and then rescinded a guaranteed lot. He added that their problems, as he described to Ms. Breen, were their own; that if the Board started making C.A.'s for people's own problems – their own financial problems – then he wanted to split his lot off in the Village, he wanted to cut his .7 acre down to .3 and make a new house lot because he lost at gambling in Vegas; that that was the same thing the Board was dealing with right here. He said not to throw their last CEO under the bus saying he wasn't doing his job, he did his job.

Mr. Murphy said that he respected Mr. Cielezsko and suggested the Board pass this before the Town attorney.

A member of the audience asked, just for the record, if the Board could enquire of the applicant whether or not she might consider litigation.

Mr. Moynahan said that another person at that property, on Thursday before the meeting, threatened litigation to him, so he had no concerns that litigation would be forthcoming.

Mr. Pomerleau said that he didn't know if this was applicable in this situation but there was one legal principle called equitable estoppel, which meant as a government entity they could not punish someone for having followed instructions of a government official in good faith that was authorized to give them; that they couldn't then sit there and deny them, or punish them, if they acted in good faith on what they were told. He said that if they went back to the

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history of this from the first appeal he thought that a court would just slam-dunk this in their (Sweet Peas) favor; that this city has not done what they were supposed to do to protect her rights.

7:45 PM

Mr. Hirst said that he attended the meeting (BOA) the other night and he thought that Mr. Cielezsko was correct; that he and his board did exactly what they should have done with the evidence provided. He added that the problem was that it was the wrong evidence; that it was approached to them incorrectly and he believed that was the fault of someone besides the BOA. He said that it was his feeling that, with both the PB and the BOA, the Selectmen should in all cases possible support both of them. He added that, in this particular case, the fault was not theirs, it was the Town's; that these people have been aggravated, aggrieved, over many years and he thought that some relief was required here.

Mr. Moynahan asked for next steps; that there was a motion and a second on the floor and asked if there was any further discussion.

Mr. Murphy said that he thought they ought to get legal advice.

Mr. Hirst thought that that would be part of the granting of the permit, would it not. He added that he thought it went without saying that it would have to go through counsel.

Mr. Moynahan clarified that legal advice would have to come before a C.A., which was what the motion was on the floor right now.

Mr. Murphy said that he would rather see the motion withdrawn and, instead, get legal advice fast.

Mr. Beckert said that he would withdraw the motion if the Board got legal advice. He added that, for the record, he was not faulting the BOA and he didn't want them to get that impression. He said that he went over this ordinance this afternoon with the Planning Assistant and it wasn't, the way it was presented to the BOA, was not consistent with what the applicant was trying to achieve.

Mr. Dunkelberger asked what the Board was asking the lawyers to do; that that was highly important here.

Mr. Moynahan said that a review of the application was not what was going to the attorney; that the history of the issue was what the attorney would be looking at – Does this count as a back lot, yes or no; Is this part of a subdivision, yes or no – he thought that was where the conversations were coming from; that attorneys would look at the land use to see what the definition of that specific parcel was what had been suggested.

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Mr. Cielezsko said that the attorney would clarify where that lot fit Eliot ordinance. He added that he thought they had reached the proper conclusion at the BOA meeting; that it was a back lot and it didn't fit the criteria to grant an extension of the 1,000-foot rule for a dead end road, which the BOA had the right to do; that an attorney could verify that for the Board, also. He added that that has been backed up, already, by court for the BOA. He said that the next step would be, before just granting a C.A., when this went to court they would say you were given an administrative appeal in 2009 against Mr. (Paul) White – where is it? He said that Mr. White threw it away and crumpled it in a corner, according to the hearsay testimony – well, show the owner's copy of it, was there one.

Ms. Breen said that she had a copy of that with her.

Mr. Cielezsko said that the one he saw was not even close.

Ms. Breen said that that was not the complete package.

Mr. Cielezsko said that there were a million things wrong here. He said that they had to see that it wasn't the Town; that the Town was being blamed; that this Town was not in cahoots to get these people – no one was. He added that they (Sweet Peas) had made the bad decisions; that they have made the financial bad decisions that put them in this place; that the premise was saying that, if the Board granted them this with no malice...estoppel did not work in this case because one had to actually prove that the CEO told her that when every conversation he has ever had with multiple CEOs was "It's your option which way you want to go." He said that it didn't make any sense that a CEO with anybody would say to do it 'this' way and would be a slam-dunk. He asked if that even sounded like anyone who worked for this Town. He said that he had horrible issues with this and he didn't want to apologize for something they weren't doing; that they weren't punishing her – that it was not a punishment. He said that there were ways to work around that property, whatever they were he didn't know, but a C.A. was not one of them, not without a different reason, maybe, but not for some guilty feeling the Town had. He reiterated that no one has done anything wrong in this Town regarding that project. He added that they were their own worst enemies.

Mr. Moynahan said that there was still a motion and a second on the floor and asked if there was further discussion.

7:50 PM Mr. Beckert moved to withdraw his motion. Mr. Hirst seconded to withdraw his second. The motion was removed from consideration.

Mr. Beckert asked who was going to craft the questions asked of the attorney because the right questions needed to be asked.

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Mr. Hirst suggested Mr. Beckert craft the questions because he had the most knowledge of the ordinances.

Mr. Dunkelberger suggested the Planning Assistant, the Chair of the PB and the Chair of the BOA get together to put together some good questions to cover all the bases.

Mr. Hirst moved, second by Mr. Dunkelberger, to have the Planning Assistant, the Chair of the Planning Board and the Chair of the Board of Appeals draft questions to send to an attorney.

VOTE

4-0

Chair concurs

Mr. Moynahan said for the three to get together sooner than later and have some answers forthcoming.

7:52 PM
#10

TO : Board of Selectmen
FROM : No Correspondence
REF : Consider Ordinance 1,000-foot requirement

Mr. Moynahan said that, after sitting through another BOA meeting, he realized the struggle that people were having from the 1,000-foot requirements in a lot of the areas in Town – Fernald Lane, Odiorne Lane, Littlebrook Lane, Guys Way, Old Farm Road. He added that it seemed the most reoccurring issue that the CEO dealt with and then, in turn, the BOA having to uphold the Town setbacks from backlots, or what have you. He said that he and Mr. Blanchette have talked about where this came from and the reasoning. He asked if there were any thoughts to changing this or eliminate it.

Mr. Murphy said that he thought the 1,000-foot limit had to do with public safety back in the time when SMRPC sort of rewrote all the ordinances in 1982; that he thought that was when the limit first appeared; that it was for public access vehicles safety. He added that they wanted to protect people from being too far from civilization, so to speak.

Mr. Moynahan said that that was taking the choice away from someone who might want to be that far from civilization.

Ms. Shapleigh said that she thought they would find it was a group of people that wanted to slow down development even more. She added that she could tell them that it has hurt her in the ability to do anything with her land; that their intent when they bought that land and invested, like other people invested in their IRA's

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and retirement funds, self-employed people sometimes bought land. She said that by putting that limit on the length of the road it automatically cut down considerably on a long narrow lot, such as hers was, and it certainly has restricted her use of her property.

Mr. Hirst said that he talked with the Fire Chief today and he seemed to tentatively agree that it may have something to do with developments in fire protection; that in the old days they had 2 ½-inch hose and now they had 4- and 5-inch hose and that permitted significantly more water to flow for a long distance. He added that the Town has large tankers that they didn't have in the past; that the Fire Chief was researching that and Mr. Hirst had a feeling that this had something to do with fire protection. He said that he wasn't suggesting they change the ordinance but look into the history and see if the reasons for it still existed or whether they should change the distance.

Mr. Moynahan said that, viewing what he has viewed, he thought they should strongly consider changing it; that he didn't think that it worked with the community that has developed here in Town; that they have created some problems allowing a lot of this to happen. He reiterated that, in his opinion, they should review changing it.

7:55 PM Mr. Beckert suggested the Board request that the PB review it.

Mr. Murphy suggested the Board request the PB check with SMRPC because he was pretty sure that they were the source in the modernization of ordinances that took place all along the east coast at that time.

After further discussion, the Board agreed that Mr. Blanchette would send a request to the PB to review this at their earliest date.

Mr. Moynahan said, regarding the 1,000-foot limit, there was a comment made at the BOA meeting about ownership questions of that road and that there might have been a lien.

Mr. Hirst said that the Treasurer said that, to her knowledge in her 35 years she has been here, the Town has never liened Littlebrook Lane and never taken it for taxes.

Mr. Moynahan said that that conversation was then forwarded on to the Assessor who was the only one who could do that.

Mr. Hirst said that the Assessor said that she would be the only one that could ever give an abatement in the event of a mistake and he didn't know that they had

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a mistake here. He added that, according to the Eliot Chair of the PB, the length of the street was not at issue in this particular case.

Mr. Beckert said that that was the PB Chair's understanding of the ordinance when reviewed with the Planning Assistant.

Mr. Moynahan said that the three people were going to get together to draft the questions and get this resolved for those folks.

Old Business (Action List):

This was not discussed tonight.

1. Tax Increment Finance Program – Potential projects, next steps, schedule workshop
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. Policy creation/review – Ordinance Governing Boards and Committees, Park Ban Ordinance
7. Employees – cross-training, charting earned times, job descriptions - BOS
8. Liaisons to boards, committees, and commissions – review existing members, try to fill open spots; Committee/Board – Mission Statement Review - BOS
9. Budget Preparation – Fiscal year 2015, goals, formats, etc. Department Head Workshop - BOS
10. Pay-per-Bag Recycling – 6-month trial, public information sessions
11. Regionalization – explore areas of potential collaboration, cost reductions & enhancements to services – Mr. Moynahan, Mr. Hirst
12. Legal issues – BOS

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13. Sewer - User Rates, reserved allotments, odor, maintenance– Sewer Committee, Underwood Engineers, Mr. Moulton
14. Department Heads – monthly reports, employee reviews, financial oversight, policy reviews, and department reviews – BOS
15. Research grant opportunities – AED's for Town buildings
16. Comp Plan follow-up
17. Public Works Union Negotiations – Mr. Moynahan, Mr. Dunkelberger, Mr. Moulton and Mr. Dave Barrett

Town Hall/Recreation Union Negotiations - Mr. Moynahan, Mr. Dunkelberger, Mr. Moulton and Mr. Dave Barrett
18. Public Hearings Scheduled – November Referendum for Municipal Charter, Sewer Improvements and Sewer Ordinance

Selectmen's Report:

There were no Selectmen's reports tonight.

Other Business as Needed

There was no other business tonight.

8:03 PM

Executive Session

Mr. Beckert moved, second by Mr. Murphy, that the Board of Selectmen enter into executive session as allowed by 1 M.R.S.A § 405.6.C "Discussion or consideration of the condition, acquisition or the use of real or personal property..." such as tax acquired property.

VOTE

4-0

Chair concurs

At this time, Ms. Nash asked about the agenda item concerning her – G2.

The Board explained that they had discussed that earlier in the meeting.

Ms. Nash said that she was told to be here at 6 PM.

The Board said that the meeting started at 5:30 PM; that the Director of Public Works was here and he would update her on what was discussed.

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8:15 PM Out of executive session.

Mr. Beckert moved, second by Mr. Murphy, that the Board of Selectmen abate the remainder of the 2011 taxes on property located at Map 78, Lot 71 in the amount of \$581.39.

VOTE

4-0

Chair concurs

Adjourn

There was a motion and second to adjourn the meeting at 8:16 PM.

VOTE

4-0

Chair concurs

DATE

Mr. John J. Murphy, Secretary