

BOARD OF SELECTMEN'S MEETING
October 27, 2011 6:30PM

Quorum noted

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

Roll Call: Mr. Fernald, Mr. Moynahan, Mr. Dunkelberger, and Ms. Place.

Mr. Murphy was absent for medical reasons.

Pledge of Allegiance recited

Moment of Silence observed

Approval of Minutes of Previous Meeting(s)

6:31 PM Motion by Mr. Moynahan, seconded by Ms. Place, to approve the minutes of September 22, 2011, as written.

VOTE

3-0

Chair concurs

Public Comment:

6:32 PM Mr. McMullen said that he would like to clarify something that actually is on the agenda and asked permission from the Selectmen and Mr. Moynahan to piggy back his situation because he had a similar situation.

Mr. Fernald asked if it had to do with that particular issue, with the letter.

Mr. McMullen clarified that it had to do with a similar issue and not this specific piece of land that the letter was addressing. He said that it had to do with a similar problem that was created in the same fashion for the Congregational Church of Eliot.

Mr. McMullen was granted permission to speak.

Mr. McMullen said that they were going to come in to talk with the CEO, that back in (he thought) 2009 when the Town changed the zoning from 75-foot setbacks from wetlands to a Resource Protection area he came in to see the then CEO, explaining to him that the church was very seriously considering building a duplex on some of their six acres of land off State Road. He said that he sat down with Paul White and asked him all kinds of questions as to what he should be doing and what he would want in order to go ahead with formal permits. He added that he then spent about \$3,000 to \$3500 of the church's money doing topos, surveys and soils work. Mr. McMullen said that he then went back with a proposal for a building permit after the church voted to proceed and half way through that conversation he was advised of the zoning change and that the setback was now 250 feet, which totally wiped out all of the land the church wanted to build on. He was advised to call DEP and they sent a biologist and a soil scientist down to walk the property with him, checking the soils, the wetland setback, looking at the area the church wanted to build on, which has a 10-12-foot elevation from "the swampland". He said that the soils tests were some of the best he has ever seen in Eliot. Mr. McMullen said that he asked them, as the church is not wealthy, would they approve this if he supplied them with all the remaining paperwork that was necessary, which involved another \$3,000 to \$4,000 of paperwork – mostly technical writing. He added that they talked it over and said yes because they felt they had created a hardship for the church, that it was a beautiful piece of property and, provided the balance of the paperwork was provided, they would have no problem. He said that what happened – because of that time frame versus now – was that legislation was appropriated to change the zoning, which changed the law to state that they were going to go back to the 75-

Draft BOARD OF SELECTMEN'S MEETING
October 27, 2011 6:30PM (continued)

foot area. He said that someone miswrote it to say that they wanted to compensate landowners, which the legislature turned down. He added that they decided that, once that was lost at the State level, they would come in to talk with the CEO to see what their position would be because he couldn't authorize their church to spend another \$4,000, even knowing they had DEP approval and would issue a variance permit on that property, then to find out the Town would say no. Mr. McMullen said that he wanted to come in to speak about this after hearing that the Moynahans were going through a similar problem, adding that he didn't know how the Board wanted to handle this because it was a little bit out-of-order.

6:35 PM Mr. Fernald said that it needs to be addressed as an individual circumstance, that it needs to be put in writing and addressed to the Board, then the Board would review it and determine what it needs to do. He emphasized that the Board needed as much information as possible.

The Board agreed by consensus.

6:37 PM

Department Head/Committee Reports

Mr. Blanchette said that they have an application from CMP for a pole location permit up on Brixham Road. He added Mr. Moulton would need to go out to look at the location to make sure it was far enough from the road to do proper plowing, etc.

Mr. Moulton said he has not had a chance to do that yet.

Mr. Blanchette agreed that they received this very late.

Mr. Fernald said to put this on the next agenda.

Mr. Moynahan asked if the Board could approve this based on Mr. Moulton's approval of the location.

Mr. Fernald said yes.

6:40 PM Mr. Dunkelberger moved, second by Ms. Place, to approve the Central Maine Power Company and Fairpoint request pending the approval of the location by Mr. Moulton, Director of the Highway Department.

VOTE

3-0

Chair concurs

6:41 PM Mr. Moulton gave an update on the sewer inspections. He said that they were about 25% complete of the 260 locations they needed to inspect or re-inspect and they have found between 7% to 10% non-compliance issues. He added that they have found some issues and that people have been very cooperative.

Ms. Muzeroll-Roy said that the York American legion contacted her regarding their Toys for Tots Program, something that has been ongoing but that Eliot has not participated in for the past couple of years, wanting to display a poster throughout the Town and leave a donation box at the Town Hall, with any donations being given throughout York County.

Mr. Moynahan asked if that was similar to what the Police Department does.

Ms. Muzeroll-Roy commented that Toys for Tots is a countywide thing and that may be why Eliot has not done it. She added that the Eliot Gift-Giving Tree goes specifically to Eliot families and they have to apply through the Police Department and ECSD in order to be put on the tree, adding that it was similar but not the same. She added that it was her understanding that last year Toys for Tots had a ton of toys left over because Eliot families did not apply for that and they ended up shipping them up Maine instead. She added that there are never enough toys to get around so this would be one more way to get some kiddos some toys.

Draft BOARD OF SELECTMEN'S MEETING
October 27, 2011 6:30PM (continued)

Mr. Fernald asked for an update on the USS Pasadena.

Ms. Muzeroll-Roy said that she spoke with Lt. Roberts today and told her that he and his crew were planning to attend the November 10th Veteran's day Celebration at the Marshwood Middle School and he would get back to her with some numbers for Eliot's Welcome Night for the Pasadena. She added that the committee, itself, needs to decide if they want a large group or a small, intimate group and that would be their decision, not the USS Pasadena's decision.

Mr. Fernald asked if they had a date for this.

Ms. Muzeroll-Roy said that the committee was meeting Monday to discuss that.

New Business (Correspondence List):

6:43PM

#1

TO : Board of Selectmen
FROM : Richard Donhauser, CPA
REF : Management Letter

Mr. Donhauser said that, to set this in a frame of reference so that they could discuss this, he would like to explain to the Board exactly what they were paying him to do, as any auditor would do – and that would be merely to express an opinion on the Town's financial statements. He added that he had been doing the Town's auditing for a number of years and what has been happening was that he was preparing the financial statements and that was not actually how it was supposed to work. He explained that he was supposed to receive the financial statements and then render an opinion on them that they fairly represent the financial position of the Town, or not. He added that it is not uncommon in small towns that the auditor prepares the financial statements, however, the American Institute of CPA's (AICPA) have come out with requirements that are trying to prohibit them from doing that. He said that their reasoning was that one didn't write a financial statement then render an opinion on it. Mr. Donhauser said that the frame of reference he was trying to develop was that, in order to make an opinion on a financial statement – one, one has to receive it, and second (very important), one has to have faith in internal control and the management letter is about internal control issues he thinks should be of heightened interest to the Board. Mr. Donhauser reviewed his management letter to the Board. He discussed that the first two talk about concentration and overall control of the accounting process. He said that what he has observed is that there is no one individual who knows everything about the accounting system. He clarified that he knows about by virtue that he has to know about it because he has to be in each component to make sure that they tie in to each other. He clarified that this is not to say that there is anything wrong or amiss but that the Town has grown in such a manner that it needs somebody with the knowledge in fund accounting that is able to look at the accounting system Eliot has and tie it all together, prepare a financial statement, and present it to an auditing firm. He explained that he was a very small auditing firm with no travel time and little overhead and, without exaggeration, hiring a larger firm out of Portland would easily double the fee, not only because of their overhead but because they would require the Town to prepare the financial statements, so the Town needs someone with the knowledge to prepare a set of financial statements that involve fund accounting. He further discussed that the next item – Concentration of accounting duties – was concentrated under one person and that was Ms. Spinney. He explained that she does an amazing amount of work, that the Town has transactions of almost \$50,000,000 yearly and that means she has to record almost \$50,000,000 worth of transactions into the general ledger. He said that she does not have time to prepare financial statements. He said that she does a statement to the Board that is revenue versus the budget and expenditures versus the budget but there is a lot more to the

Draft BOARD OF SELECTMEN'S MEETING
October 27, 2011 6:30PM (continued)

financial statements; such as the balance sheet, the assets, the liabilities, the receivables, account payables. He said that, as an auditor, he couldn't possibly look at every transaction and so he makes a determination of what he considers to be material and then he makes tests on certain accounts, of which the Town has many, doing independent computations with the banks and on receivables on people who owe taxes. Mr. Donhauser said that he sends those people a letter asking if they, in fact, pay this and if they report back to him that they have paid something different, then he approaches either Ms. Levesque or Ms. Spinney to resolve any discrepancies. He said that, in any event, they have this major concentration of effort in one person and, heaven forbid, if she had an extended absence, then the Town of Eliot would be in a significant world of hurt. As an example regarding the audit, he said that he had to wait at least one if not two months after the year just for Ms. Spinney to catch up with all the accounting to close out the books for the year ending in June while she continues in July and August. He clarified that the Town has one person doing both sides and it is very, very difficult. He praised her for the amount of work she did, adding that she also does all the payroll and, if something out of the ordinary happened, then she had to stop all accounting functions to deal with that issue.

6:50 PM

Mr. Donhauser recommended looking at hiring, at least part time, one individual who has the knowledge and ability to be a Controller, looking over all the accounting functions at once. He explained that several different people within the Town Hall worked within their own spheres and, while they did talk with each other, their positions were so individually busy, it was impossible for them to coordinate together. He said that it takes an enormous amount of time and he spends a lot of time making sure any year-end transfers, much of that time on cash because cash was a big function of the Town, as the Town receives a lot of cash. Mr. Donhauser reiterated that he feels the Town has too much concentration in one individual and they don't have any one individual, he believes, that was qualified with the current staff that has the ability to look at the accounting system in its' entirety and make sure it dovetails as it should. He recommended the Town look at hiring an individual, at least part-time, that does have that ability. Mr. Donhauser discussed the third comment, which covered personal property taxes. He said that the bills go out but there is not a really good follow-up. He discussed a recent situation where a large business went out of business in Town, with delinquent taxes, and there was no real collection activity taken. He added that, when they went into it, they asked if they could go after the owners of the company and the attorney said that they really needed the serial numbers of what the personal property was, there wasn't enough detail to run any UCC filings and the long-and-short was that it was very unlikely the Town would be able to collect that money. He recommended that they establish some type of parameters or written documentation on exactly how the Town would pursue delinquent personal property taxes and give some guidance on how to do that, when to pursue, how to collect the information. He said that, in speaking with Ms. Painchaud, she told him the State legislation is not real clear on what information she can gather. He added that he thought the Board could say that, if someone is a personal property taxpayer in Eliot, then they need to report by a certain date and, if they don't, then there is some form of a penalty because there needed to be some teeth to a policy on this. He added that, right now, they don't have a policy, so things are falling through the cracks. Mr. Donhauser discussed the fourth comment, which talks about department authorization to use debit cards. He said that that is not unusual, in-and-of-itself, but they come with their own set of problems, one of which is when one has people running all over Town and in surrounding communities buying things using their own authorization. He clarified that that was okay but there should be a level amount that they could buy – an "imprest" amount, for example \$3000 – that person could not charge more than that amount and the account would always be at \$3000. He explained that, if someone charged \$500 against that account, then that person would know he had \$2500 left and \$500 in receipts and, to get that \$500 back in to that debit card, then he would have to bring his \$500 in receipts in. He said that what he found in his review of debit cards is that, ultimately, receipts did come in but not without a

Draft BOARD OF SELECTMEN'S MEETING
October 27, 2011 6:30PM (continued)

lot of effort by Ms. Spinney. He added that that was problematic and only adds to Ms. Spinney's burden of accounting functions. He also added that there should be policies on what could be purchased by the departments. He said that, even though it wasn't a major issue, he became aware that there was a computer purchased (not an unusual transaction) and it may or may not have been approved. He added that he couldn't say that it was wrong or right but he could say there should be a policy against purchasing equipment on debit cards, he believes, or at least equipment over a certain amount. He did not suggest an amount but said that decision would be up to the Board. He explained that he thought equipment purchasing should go through the purchasing process to make sure it meets the bid requirements of the Town. He clarified that it was not a major issue at this time but urged the Board to be proactive and forward-looking in establishing some policies.

Mr. Moynahan said that he couldn't agree more with having some of these systems in place, these checks and balances being suggested.

Ms. Place agreed they needed checks and balances and that Ms. Spinney definitely needed some help. She asked Mr. Donhauser if a controller, if they should have one, could pull together the financial statements, then they could give them to him and he could continue to do the audit.

Mr. Donhauser said they should be able to do that and he could but, in reality, he was not supposed to prepare the financial statements. He said, looking at the financial statements, it says on the first 3-4 pages that it is a narrative written by management – he wrote those narratives, not management, on financial statements he prepared, audited, and rendered an opinion on, but is reviewed by management. He added that, in future, it has been becoming more and more difficult for him to meet his professional standards and write those comments and would be problematic for him to continue in the future. In hiring a controller, he explained that fund accounting was a very technical form of accounting and that he thought it could be done part-time.

Ms. Place discussed her concern over whether they should even be using debit cards and possibly using credit cards with approval only for a certain amount and with prior approval.

Mr. Fernald said that was something the Board could discuss; adding that any purchase over \$2000 required prior Board approval.

Mr. Dunkelberger added that, not only should they limit the total dollar amount on a particular card without applicable controls, but also the single-item purchase limit.

Mr. Moynahan asked Mr. Donhauser if he audited any other municipalities.

Mr. Donhauser said that he has but not at the current time. He named entities he did audit.

7:05 PM

Mr. Moynahan said that, based on a dollar figure in what the Town does, do they have controllers based on the volume that is exchanged.

Mr. Donhauser said that the venture capitalists did not, that they had accountants that prepare the financial statements and the same with the other entities. He added that, in the past, they have not had controllers on the staff to do the financial statements but, with the new pronouncements coming out in the audit profession, it was becoming problematic because of the risk for fraud.

Draft BOARD OF SELECTMEN'S MEETING
October 27, 2011 6:30PM (continued)

Mr. Moynahan suggested, as they looked at this, that maybe they could talk with surrounding towns about regionalizing, as they would run into the same or a similar situation.

Mr. Donhauser said that he used to audit MSAD #35 and they have a business manager (Randy Stewart) who is also a trained fund accountant and he prepares financial statements. He suggested that they might want to talk with Mr. Stewart and the Superintendent about whether he could spend some of his time to fill that role for the Town, sharing expenses.

Mr. Fernald suggested putting this on the Action Item List as a workshop item, as there were several items Mr. Donhauser pointed out in his letter that needed to be addressed.

Mr. Moynahan said that he thought Mr. Murphy was involved in this, as well, and he thought it would be important to hear from him on this.

Mr. Fernald added that the Board might ask Mr. Donhauser and Ms. Spinney to attend some of the workshop meetings, as well.

Mr. Dunkelberger recommended putting some priority to this because it was costing the Town money with personal property taxes and how that is handled, as well as, if Ms. Spinney wants to take a long vacation, then the Town's cash flow would come to a screeching halt.

7:08 PM The Board agreed to schedule a workshop on this for November 17 at 6:30 PM to develop a game plan for how to go forward.

7:09 PM Ms. Spinney addressed the new ways reports, invoicing, etc. are being done, saying that a lot of the invoices come in through email and that no one was opening her email when she wasn't in so they run the risk if she should not be in, such as being sick, then some of those invoices wouldn't get paid, reports wouldn't get to where they needed to go. She said that she thought it would be a good idea to have someone else involved in the day-to-day.

Mr. Dunkelberger asked if there were any software solutions that could help Ms. Spinney in doing her job.

Ms. Spinney said that she did not believe so. She said that the software they have now they have had for approximately seven years, with updates.

Mr. Dunkelberger commented that seven years is a long time in this day and age and asked if she could take some time to look around to see if there are other programs out there that might be more useful.

Ms. Spinney said that she would look.

7:11 PM At this time, Mr. Moynahan recused himself and stepped down from the bench.

#2 TO : Board of Selectmen
FROM : Michael and Susan Moynahan
REF : DEP issue

Mr. Fernald read a letter from Susan and Michael Moynahan detailing the issue they have had with DEP regarding construction of a barn on their property.

Mr. Moynahan said that, had he been informed that he was in a Wading & Wildlife Habitat, an application would have been given to him that would have cost \$65. He added that DEP indicated to him that, if he had given them the

Draft BOARD OF SELECTMEN'S MEETING
October 27, 2011 6:30PM (continued)

required \$65 permit application, then the structure would ultimately have been able to stay where it is and they would have advised any and all tree removal and earth brought in prior to construction. He explained that because he was not advised of any of this, he has an invoice from Attar Engineering through October 7th of \$5,265.76 and he has a quote for the trees and replanting, scheduled for next week, for \$3,826. He said that those were not costs he had planned on assuming when he built the barn. He said that he took out a loan for \$25,000 to build his structure. Mr. Moynahan said that he was trying to deal directly with DEP to try to make it go away and that was not going to happen, as DEP was standing firm. He informed the Board that his permit has been accepted as a permit-by-rule and not after-the-fact so there were no fines or penalties. He added that the replanting plan had been approved and was required to be done by the end of this month, so they have been very good to deal with. Mr. Moynahan said, however, that there was a 250-foot setback he was not made aware of, plain and simple. He added that, if that was made aware of to him or any other citizen that came in, then they would get an application that they would submit to the State. He asked how many people are out there, like him, who were not advised properly of what the State required in addition to this. Mr. Moynahan said that DEP only enforces if there is a complaint and he had a neighbor complain about some tree clearing that was done when he replaced a culvert on that great pond and his own expense. He added that there was no violation for that but, when they were, there they asked him if he built his building. He said that he told them, gave them the timeline and found he was in that protected area so, ultimately, turned himself in. He said that local officials are required to enforce local Shoreland Zoning ordinances, conduct on-site inspections, keep a record of all Shoreland-related transactions and submit a summary of its records to DEP bi-annually, review applications for new residential construction. He added that he has an email trail from members of the Senate, DEP, etc. and one statement (from Chris Coppi) was, "Several towns actually go to the point of requiring customers to obtain approval with us (DEP) before they would issue a local permit under the Shoreland Zoning Ordinance." He said that it went on to say, "I believe communication is very open between towns and the department and there is State regulatory information available at the local CEO office. A valid point I'd like to make here is that both local staff and department land staff, particularly field service and enforcement, know each others' regulations well enough to at least bring it to the attention of the applicant landowner." Mr. Moynahan read another one from another DEP member, "Most municipality CEOs inform applicants and landowners that certain proposed projects on their property may need department review and therefore they should contact the department." He said that that part is what was missing – that's something that should be afforded to anyone that is trying to construct a structure within the Town, if it relates to some of these setbacks. He added that he thinks he worked well with the CEO when he built his structure, as he obtained all permits, went through all inspections, just like anyone else. Additionally, when this came up, he believes he worked well with the current CEO and he has offered him as much information as he could, adding that the CEO might want to add his two cents to this situation. He said that he has all that paperwork for the Board if they would like it. Mr. Moynahan said that one thing he would like to point out was that in the Shoreland Zoning application that is available it says, "a vegetative strip shall be retained within 100 feet of a great pond or river", so that application is not consistent with the 250-foot buffer, which is what is asked of people currently. He said that, even if he was given this application, it would have been built incorrectly, adding that his barn was built over 150 feet from a great pond and clearing was done outside the 75-foot buffer. He added that he lived by the 75-foot setback rules and he was being punished for it – he did not think that was right and that he did not think he should have to pay for all these.

Mr. Dunkelberger clarified that DEP was saying that if Mr. Moynahan had applied originally it would not have been a problem.

Draft BOARD OF SELECTMEN'S MEETING
October 27, 2011 6:30PM (continued)

Mr. Moynahan said that, no, it would not, but would have been a \$65 permit application fee and they would have come out to try to move that structure, if they could, as far outside the 250-foot zone as possible. He added that they would have advised if any fill materials could be brought in, based on the land terrain, as certain fill has to be brought in to backfill a structure. He explained that there were a lot of sumacs cleared but that they were going on what (clusters of trees) was there, currently, as there are no pictures of what was there before. He said that they have been very good by saying, "Plant these 14 trees and plant grass." but he didn't want trees or grass – he wants what he has.

Mr. Dunkelberger clarified that they were proposing to move the structure from its current location.

Mr. Moynahan said that is typically what they do. He explained that, if it's in a 250-foot setback area and that was the only place the structure could be built, then they will allow that to occur along with any other building or construction items that occur – clearing, fill materials, etc. – but will work with the landowner to minimize the impact in that zone as much as possible. Mr. Moynahan said that he was 150 feet away, that he could possibly move that barn 15 feet closer to his property but that was still 165 feet away and he's still in a 250-foot zone.

Mr. Dunkelberger said that what didn't make sense to him was that DEP was kind of hitting Mr. Moynahan with both barrels with something that may or may not be his responsibility.

Mr. Moynahan clarified that the 250-foot resource protection area is anyone's responsibility, if they are in it. He explained that the pond is a man-made pond and could be taken out tomorrow but they classified it as a wading bird and wildlife habitat. He said that that was fine but, if the State requires the Town to enforce that zone, then the Town should at least afford an applicant the ability to do it properly without being hammered after the fact for costs they shouldn't be paying. He said that he did not need an engineer for the construction of his barn and he didn't need trees and landscaping, as he could have done that down the road. Mr. Moynahan said that he did not put himself in this position.

Mr. Fernald asked if the CEO had any comments to make.

7:25 PM

Mr. Marchese said that the reason why Mr. Moynahan needed a permit was because he is in the Wading Bird & Wildlife Habitat and the permit he gets from the State is a totally different thing than the Town's Shoreland permit. He added that it was a layered situation, explaining that Eliot designated it as Shoreland because of the size of the pond but, also in that layering system, the State has determined that to be a Waterfowl & Wading Bird Habitat and that is where the no structures within 250 feet come from. He reiterated that that was a totally separate permit and clarified that the Town was not responsible to issue that permit, which has to be gotten through the DEP.

Mr. Dunkelberger asked how a person would know that. He said that when those maps first came out, they had some problems with those maps on the Planning Board (PB), that there was a lot of discussion on the accuracy of those maps. He commented that he was not sure that the way it originally came out he could even build his house where it is.

Mr. Marchese said that the accuracy of the maps is the State's best estimate as to where the limits are to these natural resources. He added that it is the landowner, if they are in dispute, to develop more accurate information and present that to the State and have the zone adjusted to real circumstances.

Mr. Dunkelberger went back to his original question – did the CEO grant a building permit.

Draft BOARD OF SELECTMEN'S MEETING
October 27, 2011 6:30PM (continued)

Mr. Marchese said that he did.

Mr. Dunkelberger asked if the CEO mentioned anything about that 250-foot setback.

Mr. Marchese said that the Town has no record of that.

Mr. Moynahan read from an email from Bob DuChain, which said that he asks "What mechanism should Mr. Moynahan have known he needed an NRPA permit?" and it is answered, "Most municipalities and CEOs inform applicants and landowners that certain proposed projects on their property may need department review and therefore they should contact the department. For some reason, Mr. Moynahan was not informed by the Town that he should contact the department because of the IWWH Habitat – 250 feet from the wetland complex."

Mr. Dunkelberger asked the CEO if he were faced with this application today what he would advise Mr. Moynahan.

Mr. Marchese said that he has 20-20 hindsight – it's obvious. He added that he has no idea what position the prior CEO was facing. He also added that he felt, as CEO and even though he has been that for a short time, that the Town should not be liable for the CEO's decisions or miss-decisions. He explained that a CEO in a small community is responsible for so many things that it was asking way too much, saying that the burden was with the landowner. He said that it was unfortunate that this fell through the cracks and, obviously, the CEO made a mistake but it was not the Town's responsibility, it is the landowner's responsibility to make sure what is done on his property is done correctly.

Mr. Dunkelberger said that he is not sure he agreed. He said that he took a reasonable person's view of this and a reasonable man would not know to go to the Maine DEP to check for this 250-foot setback.

Ms. Place added, not unless advised by the CEO to do so.

Mr. Dunkelberger agreed and added, not whether he needed it or not but to check for it.

Mr. Fernald, referring to the map that was rolled up and discovered, asked if, at that time did the PB have that map in front of them or did the Planning Assistant have that map or was it found after the fact.

Mr. Marchese said that it was found after the fact.

Mr. Fernald clarified that even the PB was not going by that 250-foot setback at the time.

Mr. Marchese said that he doesn't know what the PB was using at the time the permit was issued.

Mr. Dunkelberger clarified that the permit did not go in front of the PB but through the CEO.

Mr. Fernald clarified that the PB was not using that particular map for their information because it was rolled up.

7:29 PM

Mr. Marchese said that he did not know. He let the Board know that that information was now on the Town GIS so that oversight should not occur in the future, although it may.

Draft BOARD OF SELECTMEN'S MEETING
October 27, 2011 6:30PM (continued)

Mr. Dunkelberger said that was good as long as one knew to go there and that was a key piece. He added that he would like to hear from Mr. Coppi of the Maine DEP with regard to this whole matter, what his views were, and why the costs levied were so significant versus what they had proposed if, by chance, he had known this.

Mr. Marchese said that he had a conversation with Mr. Coppi on December 20th of last year and Mr. Coppi indicated to him that, in his opinion, "the Town was not negligible."

Mr. Fernald said that he would feel a lot better about that if they had MMA...

Mr. Blanchette said that he contacted MMA within the past two days, talked with one of the staff attorneys up there and MMA says that the Town is not legally liable, as he put it, that for the Town to be legally liable for fraud or malfeasance – he couldn't remember which term the attorney used – there would have to be a willful intent on the part of the CEO to mislead.

Mr. Fernald asked if there was wording to that affect that they could see.

Mr. Blanchette said that he could get it in writing.

Mr. Fernald, addressing Mr. Moynahan, said that before they could make a decision on which way to go he asked if Mr. Moynahan had a total amount that he was actually looking for.

Mr. Moynahan said that he was looking for the cost of the engineering, only, because that is not of any benefit to his property at all. He added that the trees and whatever else they require are his forever. He said that there was no need for why he should have had an engineer involved, by any stretch. As to the costs, he said that he has been working with the DEP on his own for a year trying to resolve this nightmare, creating a replanting plan and getting that ultimately approved. Mr. Moynahan said that he had to ask one question, knowing that MMA would say that the Town was not liable, as he sits up there with the Board and he understands that, but at what point does someone take accountability for misrepresenting or misguiding people – at what point do they actually help people and not hurt them. He added that they should get some systems in place that work and benefit people – no one should be put in a financial situation like this.

Mr. Fernald asked what the amount was for the engineering.

Mr. Moynahan said that it was \$5,265.76.

7:35 PM After some discussion, the Board agreed that they should contact Mr. Coppi for his feedback and get the MMA advice in writing and, once they have that information, they would review that to come to a determination.

7:36 PM
#7

TO : Board of Selectmen
FROM : Dan Blanchette
REF : Public Hearing on Special Amusement Permit

Mr. Fernald opened the Public Hearing for a Special Amusement Permit for the Roadhouse Restaurant. He asked if they had any information from the Police Chief.

Mr. Blanchette said that he had sent this information to the Chief and to get back to him if he had any comments but he has not received any.

Ms Kilty said that this permit was to have karaoke on Saturday nights from 7 PM to 11 PM.

Draft BOARD OF SELECTMEN'S MEETING
October 27, 2011 6:30PM (continued)

There was no one from the public who wished to speak.

7:37 PM The Public Hearing was closed.

Mr. Dunkelberger moved, second by Ms. Place, to grant the application for a Special Amusement Permit to Roadhouse Restaurant, LLC.

VOTE

3-0

Chair concurs

7:38 PM
#3

TO : Board of Selectmen
FROM : McEachern & Thornhill
REF : Sewer Use Ordinance

Mr. Fernald explained that this letter was a response from Attorney McEachern concerning public sewer use and violation penalties.

Mr. Moynahan said that, on the last page, it says "...the Town would bear the burden of proving the violation.", adding that Mr. Moulton's inspections would prove any current violations, in-house, so, once they have the proof if there are any repeats, then they would have the resource to follow up on those violations.

Mr. Moulton said that they were drawing a schematic of the sewer as it discharges, documenting that, and taking pictures. He added that they have a small number of violations, at this point, and people have been very cooperative. He said that some people didn't even know.

Mr. Fernald agreed and added that, even if people know, they need help or guidance on how to correct any issues.

Mr. Moulton agreed and said that this wasn't a "slap your wrist you, need to do this tomorrow" but working together to get issues resolved and come up with a complete solution. He reiterated that everyone has been really cooperative to this point.

7:40 PM
#4

TO : Board of Selectmen
FROM : Matt Howell
REF : Wildbrook Lane

Mr. Howell, attorney representing Wildbrook Lane, updated the Board by letting them know that he had forwarded Mr. Moulton's information from testing the road to Mr. Michaud for him to write up what the potential costs would be and, then, how to tackle those costs. He said that they were forming a road association in the interim while they work towards having the Town accept Wildbrook Lane as a public way. He discussed that there were about eight parcels benefited by this private way but only four or five carrying the financial burden for everyone in maintenance, etc. and that burden, as the Board could imagine, becoming a little much for those four or five residents. He was requesting that the Town, under 23 M.R.S.A. § 3105-A, consider using its equipment during this winter season, alone, for plowing purposes. He clarified that his reason for the request is that the four or five people paying for maintenance right now are pretty financially tapped out and he was trying to get them geared up to pay for the reclamation and repaving process, probably next spring – summer, and to do that he did not think he could ask them to balance both; the plowing this coming winter and then going through this process next summer. He added that this was a common provision that was utilized by towns, that he has asked surrounding towns to do this before for private ways and is done often – it wasn't an exceptionally request – again, it was limited in scope as he was only asking for this winter, that it was not an open-ended request. He said that having Mr. Moulton on board has been a big help in

Draft BOARD OF SELECTMEN'S MEETING
October 27, 2011 6:30PM (continued)

collaborating and getting things moving in the right direction and he thought they would have resolution soon. Mr. Howell said that, if he could have the Town's assistance and, more importantly, if the residents of Wildbrook Lane, got the Town's assistance, he thought it would be very beneficial.

Mr. Moynahan said that he had a question regarding the State law. He said that above the pertinent section, in Historical and Statutory Notes, it read, "Before July 1, 1999, only owners who are members of road associations incorporated as of March 1, 1998 may utilize the process set forth in this Act."

Mr. Howell clarified that Historical Notes only apply to the particular section and every statute would have historical notes underneath it and, so, that would apply to the previous statute but this section was onward for the road association. He clarified that the residents met in his office in early October, they voted to form the road association and the road association was formally accepted in his office on November 30th, so the Wildbrook Lane Private Road Association was formally formed on November 30th and the Historical Notes do not apply.

Mr. Dunkelberger said that he would like to hear from Mr. Moulton.

Mr. Moulton said that this was the most information he had heard and only knew that Mr. Howell would be here tonight.

Mr. Dunkelberger asked if they risked any damage to their equipment if the Town were to plow that road.

Mr. Moulton said that, based on the condition of State roads that the Town does, no – they are in worse shape than Wildbrook. He added that he did not see this as an issue with his equipment.

Mr. Dunkelberger asked if the Town risked damaging the road that they might be liable.

Mr. Moulton said that, in the winter, there was always a possibility on any road, with pot holes and frost heaves, and could not honestly say that they would cause any more damage – not knowing, they have never plowed this private road and all he knew was what he has visualized and observed during normal conditions during spring and fall, and there were issues. He added that he could not say that they would damage it more but he would not want to be responsible for any damage that happened if they ripped up pavement, etc., but he didn't think that that would have an adverse effect on any of the equipment. He clarified that the Town roads, themselves, were in much better condition than the State roads.

Mr. Howell said that the association would be happy to do some sort of agreement that released the Town of any liability from any potential damage, adding that the larger point was, if there were some damage, it would have to be redone anyway, so that would not be a major issue.

7:49 PM

Mr. Moulton discussed the increased use of salt and its impact to the budget, while saying it would not be a huge increase, as long as it wasn't a huge or prolonged storm.

Mr. Dunkelberger discussed his concern that the Board was setting a precedent that the Board should be concerned with.

Mr. Moynahan said that the Board had been working with these folks for a while and there was a guarantee that this would be for only one winter season. He discussed his concern for any future situations that might come before the Board and how they might address that issue, before it happens, so that it would not be costly to the Town.

Draft BOARD OF SELECTMEN'S MEETING
October 27, 2011 6:30PM (continued)

Mr. Fernald said that that would be a decision of the Townspeople to decide and, for that to happen, there would have to be a Special Town Meeting that they would probably hold, anyway, in December.

Mr. Blanchette agreed.

Mr. Howell said that that was understood and that the Board could place it forward for consideration.

Mr. Fernald asked if the Board wanted to move that forward to a vote of the Townspeople.

Mr. Dunkelberger said that, with a couple of caveats; one would be that there would be a release of liability, and two, that the Board set some dates to this, from whenever the Town Meeting was to, for instance, April 1st, he would support this request.

Mr. Fernald asked for a motion on this issue.

Mr. Dunkelberger moved, second by Ms. Place, to move this request forward for a vote of the Townspeople to approve the plowing of Wildbrook Lane during the winter season of 2011-2012, ending on April 1st, 2012 and including a signed release of liability by the Wildbrook Road Association for the Town.

VOTE

3-0

Chair concurs

#5

TO : Board of Selectmen
FROM : Heather Muzeroll-Roy
REF : Shared maintenance position

Ms. Muzeroll-Roy clarified that she and Mr. Moulton had not had time to take this up earlier, so did not have time to put this in the Board's box beforehand so, if they wanted to review that really quick, it sums up the discussion.

This was a discussion regarding shared maintenance responsibilities between the Highway Department and ECSD.

Ms. Muzeroll-Roy discussed that, regarding this account, there had always been some discussion over who was responsible for doing what within the parks and recreation budget and how they could streamline this to make it more efficient and workable, clarifying that they were not creating anything new but switching rolls, so-to-speak, to shift responsibility from the Highway Department to the ECSD to make it easier to maintain the parks.

Mr. Moynahan said that he thought that was a pretty logical approach to allow the respective departments to have respective controls.

Mr. Moulton said that he assumed the summer maintenance of the buildings and islands and cemeteries. He added that it works well for them as it consolidates everything to do with the parks under one department and it has made it easier and more straightforward. He said that the Highway Department would continue to help with any major projects.

Ms. Place agreed that it sounded logical.

Mr. Dunkelberger asked why not take over all the grounds maintenance and put it under the Highway Department.

Draft BOARD OF SELECTMEN'S MEETING
October 27, 2011 6:30PM (continued)

7:58 PM

Ms. Muzeroll-Roy said that she and Mr. Moulton have gone back and forth about that, that she has her opinions on that, and that Mr. Moulton could share his opinions on that, as well. She explained that she has things that change on a regular basis – her rentals come in, there are cancellations on a regular basis, summer camps, sports camps, leagues – she has various things on a daily basis starting from April 1st to November 1st. She added that, although she enjoys talking with Mr. Moulton on a regular basis, he might not have the resources to stop on a dime to go change what she needs to be done at Frost Tufts Park – the lining of soccer fields, changing soccer goals – those are the types of things she needs done from March or April to November. She said that it was not a control thing for her by any means but she runs a million sports camps and leagues and soccer during that March to November timeframe, adding that they just picked up flag football and softball, and she has outside agencies who want to use the fields.

Mr. Moulton said that his goal in the spring was to help Ms. Muzeroll-Roy with spring clean-up of the parks. He added that he had no issue doing that, no issue helping, and they have no issues working together, but they would have to coordinate the spring clean-up and then the rest would be on her end. He said that they both figured it would be simpler and have fewer questions. Mr. Moulton said that he did not mind helping with the spring clean-up as Ms. Muzeroll-Roy would buy the material and the Highway Department helped put down the mulch and whatever else she might need done. He said that, by springtime, he has spent the majority of his budget so it was okay to assist with clean-up and moving forward with non-expensive budgetary things because he was winding down the budget and would not be doing a lot of major things. He added that springtime was the ECSD's gear-up time and that works with his department. He said that, for spring and fall, his department was there for her and definitely there for any major issue but the management was easier if it was under one person. He added that he would still have seasonal summer maintenance people but she would have someone she could utilize quickly and she would not have to call him and he wouldn't have to do this or that. Mr. Moulton said that was what they were trying to eliminate, to make it a little more consistent, and eliminate the questions at Town Meeting.

Mr. Fernald said that that was one of the issues they struggled with every year when it came to the budget process, especially with the Budget Committee.

Mr. Moynahan clarified that they currently both shared the maintenance position so would it now just be your maintenance position.

Ms. Muzeroll-Roy said yes, that that would have to be the case for her department.

Mr. Moynahan clarified that that was all this person does now.

Ms. Muzeroll-Roy said yes.

Mr. Moynahan clarified that, whoever this person is now, that person would continue for six months out of the year.

Ms. Muzeroll said yes and that it would streamline a lot of things, that she needs one person to own her parks. She explained that she wants one person to be able to walk into Frost Tufts and know that rock was out of place – that is the way it should be – and she wanted one person to be able to do that on a regular basis, knowing that when that person comes in on a Monday morning that person, right off the bat, is doing inspections and getting right into the job. She said, yes, that one person would work under her for that five-to-six month timeframe.

The Board agreed to this request by consensus.

Draft BOARD OF SELECTMEN'S MEETING
October 27, 2011 6:30PM (continued)

8:01 PM

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

This was informational.

Old Business (Action List):

8:03 PM Mr. Fernald said that they would add the financial issue that Mr. Donhauser discussed to the A. I. List.

1. Sewer Contract Committee – Mr. Moynahan, Mr. Murphy, Mr. Marchese, Mr. Moulton and Mr. Blanchette – IMA Update
2. Monthly Reports from Department Heads
3. TIFD reports and updates
4. Health Insurance Costs
5. Review existing Sewer User Rates and update – Sewer Committee
6. Regionalization of Town Services
7. Sawgrass Lane Association
8. Auditor – Management Letter
9. Waste management – charges
10. Consistent Format – Budget, Time Sheets, etc. – Mr. Moynahan and Mr. Dunkelberger
11. Monthly Workshops – 3rd Thursday of the month
12. Employee Reviews in monthly Department Head Reports
13. Carry in – Carry out Policy for Town parks - Ms. Muzeroll-Roy
14. Legal issues – pending and Consent Agreements
15. Community Services Building
16. Fireworks Ordinance for October 20th workshop
17. Police Union Contract

Selectmen's Report:

8:04 PM Mr. Moynahan said that he was approached by a resident regarding any policy for owed taxes. He explained that this resident received a notice from his lender about being overdue on his taxes and there was a lien on his property but the lender did not even have a loan on the specific parcel of land that the taxes were not paid on. He added that the resident came to the Town and the Town informed him that they sent out a certified letter. He added that when the resident told them he didn't get it, they opened his file and there was the certified letter. He said that that goes directly to his credit rating for someone who was looking to acquire a \$400,000 and now he is concerned about his whole credit rating. He asked if there shouldn't be a mechanism in place that, if a certified letter comes back with a tax lien that is was hand-delivered or resent before any liens are imposed.

Draft BOARD OF SELECTMEN'S MEETING
October 27, 2011 6:30PM (continued)

Mr. Fernald asked Mr. Blanchette if he knew what the policy was.

Mr. Blanchette said that he did not know off-hand and would have to check State law for what the procedure was. He did say that people get a notice either 30 or 45 days prior to the tax lien being put on the property and then they get a copy of the tax lien. He added that he did not know which notice was in the file.

Mr. Moynahan said that, either way, he thought they could come up with something internally that, if a certified letter comes back, then they assure that the resident at least has a chance to open it to pay before they started getting creditors after them and potentially hurt credit ratings. He added that he thought the tax bill was for \$500 on a vacant piece of land so it wasn't even a big bill.

Mr. Fernald asked Mr. Blanchette to check on this issue.

Other Business as Needed

Mr. Fernald said that they had the Halloween parties tomorrow at 5:30 PM, which he would attend, and asked if any other Board members were attending.

Mr. Moynahan said that he would be there.

Mr. Fernald asked if everyone had received an invitation from the Eliot Elementary School about their Blue Ribbon recognition.

Not all the Board members had.

Mr. Fernald asked them to check their mail. He said that he hoped that everyone could attend this, if at all possible, and it is Friday, November 18th at 6 PM.

8:08 PM Mr. Fernald said that Mr. Murphy was coming along quite well and is doing rehabilitation at Durgin Pines. He added that he went over yesterday and that Mr. Murphy was very energetic and wants to be out of there and back on the Board. He said that, if anyone would like to go over and see him, he is in Room 150 by himself and would enjoy seeing people.

Executive Session

There were no executive sessions tonight.

Adjourn

There was a motion and second to adjourn the meeting at 8:09 PM.

VOTE
3-0
Chair concurs

DATE

Roberta Place, Secretary