

BOARD OF SELECTMEN'S MEETING
May 22, 2014 5:30PM

Quorum noted

5:30 PM: Meeting called to order by Chairman Moynahan.

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

Absent: Mr. Hirst.

Pledge of Allegiance recited

Moment of Silence observed

Approval of Minutes of Previous Meeting(s)

5:32 PM Motion by Mr. Dunkelberger, seconded by Mr. Beckert, to approve the minutes of May 8, 2014, as amended.

VOTE

3-0

Chair concurs

Public Comment:

5:33 PM Mr. (Charles) Rankie thanked the Board for three significant actions: selling a property for a profit and getting it back on the tax rolls; the establishment of a Town Manager Search Committee, letting them do their work with minimal supervision and commending the Board for their choice; keeping the Harbor Master position in Eliot.

G1. Department Head/Committee Reports

5:34 PM **1) Conservation Commission: Appointment – Valerie Nardone**

Ms. (Valerie) Nardone was present.

The Board thanked her for volunteering.

Mr. Murphy moved, second by Mr. Dunkelberger, that the Board of Selectmen appoint Valerie Nardone to the Conservation Commission, term to expire June 30, 2016.

VOTE

3-0

Chair concurs

2) Conservation Commission: Appointment – C.J. Cogswell

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Mr. (C.J.) Cogswell was present.

The Board thanked him for volunteering.

Mr. Beckert moved, second by Mr. Murphy, that the Board of Selectmen appoint C.J. Cogswell to the Eliot Conservation Commission, term to expire July 31, 2015.

VOTE

3-0

Chair concurs

5:37 PM 3) Business Development Committee: Correspondence

Mr. (John) Chagnon, Chair EBDC, said that the committee was very concerned about the upcoming referendum vote regarding the TIF District and requested that the Board develop a statement for the voters alerting them to the perils of this being adopted. He discussed two alternatives submitted – a tech school and development of a village – and that those two good ideas would benefit by the ability, if needed, to connect to sewer. He added that they were wondering what the Board's opinion was of this and they wanted to say, pretty seriously, that if this passes that economic development in Eliot would be significantly stymied.

Mr. Dunkelberger said that he thought that it behooved the Board to take a formal stand on how the Board feels about this particular article. He suggested, as well, that they ought to sit down with the press – particularly the Herald editorial board – to explain the Board's position; that he thought this was a hot button item for the future of Eliot as his particular concern was with what would happen if the TIF was dissolved.

5:40 PM Mr. Murphy said that he thought that this Board, itself, had the authority to make a statement. He added that he had answered questions submitted to him by the Portsmouth Herald. He said that he thought the petition was ill-advised based on far greater mere hopes than was the original sewer plan. He discussed the lack of detailed plans, so far, for the mentioned alternatives; that the village development alternative is in Eliot's Comprehensive Plan and one of the foremost requirements of that village, with its smaller lots, is to have sewer and water available, which would become available with the big pump station that would be installed as part of the original plan for the economic development of the TIF District.

Mr. Moynahan suggested the Board take a poll of what their opinions are with that referendum. He added that Mr. Murphy just expressed that he is not in favor of the recommended question, as posed, to terminate the sewer.

Mr. Murphy said that he absolutely agreed with that.

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Mr. Dunkelberger said that he was definitely against it.

Mr. Beckert said that he was opposed to it, as well.

Mr. Moynahan said that he would be opposed to eliminating all discussion of sewer, also; however, moving forward, how does that get vocalized outside this meeting.

5:43 PM Mr. Lee said, as a suggestion from the EBDC, that he reached out to Debra McDermott (Portsmouth Herald) to ask if the editorial board would be interested and she said that she would take that to the editorial board next Wednesday; that one or more Town representatives would need to speak with the editorial board on the primary issues.

Mr. Moynahan suggested Mr. Lee and one member of the Board do this, if they are asked.

The Board discussed the request by the EBDC to send out a mailing and decided not to because of timing issues and perceived bias; that a factual newsletter had already gone out to residents.

The unanimous consensus of the Board was that they were not in favor of the language that is within that referendum article.

5:44 PM Ms. (Janet) Saurman said that the fact that all the sitting Board members are opposed to this would be really important for voters who are still, in spite of everything each side has done, confused about it. She said that, if she wasn't sure how to vote, she might read a letter to the editor that was signed by the five members of this Board saying here is where they stood, then she might say all five people the voters elected have a position, they know the ins-and-out of the Town; that she thought the Board should take a stand. She added that she thought the Board should make it clear in a letter to the editor, signed by all of them, would be a welcome addition to those of us who are confused and, frankly, trust in many cases the people they voted for to do the right thing. She urged them to write the letter.

5:47 PM Mr. (Bob) Pomerleau clarified that there were only two ways the TIF got terminated: if the voters decided to or the Town fails to provide an identifiable project that the voters could approve within the timeframe. He added that it seemed there was already some common ground in that the Chair of the EBDC agreed with the two alternatives mentioned. He said that the petition didn't require a detailed plan but just identify alternative projects.

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Mr. (Russ) McMullen discussed the two mentioned alternatives – a college and development of the downtown – and said that the TIF clearly states that commercial development cannot be accomplished without water and sewer. He added that a college would not come into this community without sewer and water; that he didn't see these alternatives going anywhere because they were clearly stating to all of us that we cannot go forward with any bright, exciting change to this Town without sewer and water.

5:42 PM

Ms. (Nancy) Shapleigh said that, as a long-time broker in Eliot, whenever anyone calls for a piece of property and they find there is no sewer, it is rare they contemplate doing further business in Eliot. She added that sewer would protect the environment, as well as bring in more people. She discussed the private land ownership in the district and that it was not up to the Town to tell private landowners what they could or could not do with their property; that building and zoning codes did that. She said that everyone needed to remember that, in this country, people still had private property rights; that it was up to the owners of the land to sell or develop their land but they cannot do it without the sewer that the Town can pay for, and benefit from the development of those lots.

Mr. Dunkelberger said that he thought that Ms. Saurman's idea had a lot of merit. He suggested the members of the Board give him a blurb of their objections then he would be happy to craft a letter that he could run by everyone for their signature. He explained that this would go as a letter to the editor, not as a mass mailing, to the Portsmouth Herald.

Mr. Moynahan asked for Mr. Lee's input on whether that was allowed.

5:51 PM

Mr. Lee said that he thought that the Board had every right to take a position on anything that is being voted on and recommend to the voters what the Board sees for good points and/or bad points. He added that he thought they could write a letter to the editor, signed by the Board; that they could proceed the way that Ms. Saurman suggested in addition to the editorial board or in lieu of if we don't end up talking to the board.

Mr. Chagnon reiterated that the land would be more developable with sewer for things like a school or village development. He agreed with Ms. Shapleigh that it wasn't up to the voters to vote on specific projects; that that is between the landowner, an applicant, and the Planning Board. He added that they were talking about infrastructure development; that that was what the TIF was created for, not to have certain projects voted on by the voters. He said that he thought the Board was well-advised and fully able to take a position on, especially on a citizen's position, and he felt they were well within their authority.

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5:55 PM The Board agreed to get their thoughts to Mr. Dunkelberger for his drafting of a letter to the editor.

Mr. Rankie suggested the Board also send the editorial to Foster's Daily Democrat.

The Board also agreed to meet with the editorial board should they call.

4) Business Development Committee: Appointment – Melissa Horner

Ms. Horner was present.

Mr. Beckert moved, second by Mr. Murphy, that he Board of Selectmen appoint Melissa Horner to the Eliot Business Development Committee, term to expire June 30, 2015.

VOTE

3-0

Chair concurs

The Board thanked her for volunteering.

G2. Administrative Department

5:58 PM 1) Town Manager Activities Report

This was informational to the Board.

Mr. Murphy informed the public of the length of the list of activities and thanked Mr. Lee for his work.

2) MSAD #35 District Budget Validation Warrant (Counter-sign)

Mr. Beckert moved, second by Mr. Murphy, that the Board of Selectmen authorize the signing of the Warrant and Notice of Election calling School Administrative District No. 35 Budget Validation Referendum, 20-A M.R.S.A. §1305-B and §§1352-1353.

VOTE

3-0

Chair concurs

At this time, the Board signed the warrant.

3) Closing of Clerk's Office: June 10 (Election/short-staffed)

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6:02 PM Mr. Beckert moved, second by Mr. Dunkelberger, that the Board of Selectmen approve the closing of the Town Clerk's Office on June 10, the day of the election, due to short-staffing.

VOTE

3-0

Chair concurs

4) Update: Park Street Survey; MMA Legal Opinion

Mr. Lee said that he had been approached by a resident who recently had a survey done on Park Street and conflicted (road boundaries, setbacks) with others done; that this was the second such survey. He added that the conversation was around whether everything would have to be uprooted and changed; that he wrote to MMA for confirmation on what could be done. He quoted from MMA "*...it appears to me that the town can rely on the concept of prescriptive use to continue to use and maintain this road in its current location, despite the fact that the location may be inconsistent with the original layout of the road.*" He discussed prescriptive use. He said that Park Street can remain the way it is and 'prescriptive use' would be the Town's defense for not uprooting everything to try to change it all back to the original layout.

There was discussion of what this opinion actually did and the impact to the residents on Park Street.

Mr. Dunkelberger asked if there was a legal way to fix this in the long-term other than just relying on prescriptive use.

Mr. Lee said that his understanding was that the Board could make a claim of 'prescriptive use', have a surveyor go out and identify where the road way actually is on the face of the earth, then deeds could be corrected to line up with the actual layout of the road so that the deeds would match with the new surveyed, accepted ROW where that road would lay.

Mr. Dunkelberger asked if the expense for this would be carried by the residents of Park Street.

Mr. Lee didn't know. He discussed the current physical layout, saying he didn't know how much it would cost as it is a short piece of road that would be impacted. He suggested it was whoever had the incentive to make that correction. He added that, for the Town's part, the Town could advise people that, as a 'prescriptive use', the Town would not ask the residents to do anything but if the residents wanted to clear up their deeds for future sale, etc., they might want to make a neighborhood effort to do so.

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Mr. Moynahan said that it would be pretty easy to locate that road.

Mr. Lee agreed, saying that Civil Consultants has the survey of where that road is and that he thought it would be a simple matter of just adjusting what the deeds say, then reregistering the deeds.

6:05 PM

Ms. Saurman discussed her concerns for the current layout of the road and properties, as well as a potential pathway down to the river with the public walking much, much closer to their properties than was ever anticipated. She added that she didn't have a problem with leaving it the way it was or fixing the drainage issue but, as a Park Street resident, she would like to be re-approached about the idea of building a new ROW to the river because she doesn't think that's feasible, now, with the way things are.

Mr. Beckert said that his concern was access to the river with the Town-owned ROW and how to resolve this.

Mr. Dunkelberger suggested that the Town Manager and DPW meet with the Park Street residents to see if they could come up with a plan that would work for everybody.

After further discussion, agreed with Mr. Dunkelberger's suggestion.

6:17 PM

5) Kittery Sewer: 5-Year CIP notification

Mr. Dunkelberger commented that this was due by May 1. He said that Kittery estimates \$200,000 but, looking at their figures, it's really \$240,000 for Pump Station #7; then \$135,000 for the wastewater treatment plant. He asked if Kittery was bonding it so that Eliot doesn't owe the entire amount.

Mr. Lee said yes to the bonding; that it was \$28,000 and would come out of the Sewer Capital Fund.

There was discussion regarding IMA language and Eliot reviewing the plans.

Mr. Lee said that he would obtain those plans for Eliot's review.

Mr. Moynahan said that the Sewer Committee and the DPW would benefit by reviewing those plans.

6:21 PM

6) Update: River Road Cemetery

Mr. Lee said that Gravestone Services of New England (GSNE) has a two-party check for \$7,375; that they have ordered the pieces necessary; that they would be

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out there to do the repairs and at that time GSNE and the Town would counter-sign the check.

Ms. (Rosanne) Adams let them know that there was \$600 in there for police, which she questioned the need for that much, so when the Town Manager handed over the check, to make sure there was \$600 worth of police at that site. She added that she would like to know when the repairs take place so that she could be there to inspect what they were doing and protect the other stones.

Mr. Moynahan said that he was sure that Mr. Lee would follow up with the Eliot Historical Society and others interested on this.

6:23 PM 7) Update: Administrative Budget

This was a memo from Mr. Lee discussing a potential \$65,000 shortage in the Administrative Budget and his plan to remedy that shortage. He discussed his review of all the bills that have gone through Administration and found bills that should have been paid out of other budgets/accounts, as well as his plan to resolve this.

Mr. Moynahan said that the suggestion to take money from the TIF account for stormwater expenses was not an approved TIF expense; that that shouldn't be in the Administrative Budget but should be in the DPW Budget.

Mr. Lee said that the stormwater was the I&I that fed into the sewer system.

Mr. Moynahan said that that would be sewer-related; that it would be born on sewer users or sewer reserves, etc. but not out of the TIF account.

6:29 PM There was discussion around the overage in the salary line item and it was determined that the cause was an overlap in staff positions.

Mr. Moynahan discussed the \$30,000 from the sewer account, saying that stormwater has always been a separate account because it is a federal mandate and asked if that should be born on the sewer users.

Mr. Lee said that the other item that kind of hurt was that at the end of last year's budget \$39,300 was left over and was to be carried over and become the stormwater budget for 13/14; that that did not occur but dropped into the fund balance; that it was voted to be put into the next year's budget as the placeholder for expenses related to stormwater.

Mr. Murphy asked if Mr. Lee could get that back.

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Mr. Lee said no, not with gross budgeting.

Mr. Moynahan said that there was a plan in place; that Mr. Lee was informing the Board of that plan and where they were with it.

6:32 PM Schedule Town Manager Probationary Review

Mr. Moynahan asked Board members to fill out the review form and forward that on to Mr. Moynahan for compiling for the review date.

The Board agreed to hold a meeting on June 5 at 4:30 PM specifically for this review.

G3. Public Works

6:35 PM 1) Update: PW/TS Bargaining Unit PPC/Payout/Negotiations

Mr. Lee said that the total amount of back pay for Transfer Station personnel affected by the hours of reduction is \$16,713.48 and has been agreed to by the union. He added that the intent was to do the payout concurrent with the signing of the contract, which they would be taking up in executive session.

Mr. Moynahan asked, regarding the item "The Town of Eliot shall return employees of the Transfer Station to their former work schedule and hours of work.", if they were aware that would result in layoffs.

Mr. Lee said that they were.

6:37 PM 2) MSW Disposal Contract (Extension) with ECOMaine

Mr. Lee discussed the fair treatment the Town was receiving from this company.

Mr. Beckert moved, second by Mr. Dunkelberger, that the Board of Selectmen authorize the Town Manager to enter into an extension of the contract with ECOMaine for the period of three years.

VOTE
3-0
Chair concurs

G4. Public Safety

6:39 PM 1) Award Revised Roofing Bid (Bond/Additionally Insured)

Mr. Lee said that that bond for \$1,350 would only cover two years; that he told them not to issue the bond as it would not do what was wanted; that he had

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checked with Mr. Hirst, who was in agreement not to issue the bond. He requested the Board award the bid in its original state without the bond.

Mr. Beckert moved, second by Mr. Murphy, that the Board of Selectmen award the roof work to Williams Roofing, Inc. for the sum of \$37,629.

VOTE

3-0

Chair concurs

6:40 PM 2) Update: Harbor Master Hours (Tuesdays 8AM to 10AM)

Mr. Lee said that the Harbor Master also worked at the Boat Basin and that people could catch up with him down there; that he was there from 5AM to noon Saturdays and Sundays and had some down time mid-morning if anyone had a question or concern.

New Business:

There was no new business.

Old Business

6:41 PM 1) Recommendations for Amending Consent Agreement Policy

Mr. Beckert said that the Board took the BOA recommendation under advisement; that he went back and looked at the whole policy and this particular sticking point was added at the recommendation of the Town's attorney and recommended keeping the paragraph.

Mr. Beckert moved, second by Mr. Murphy, that the Board of Selectmen keep the paragraph as it was originally put into the policy by the attorney.

DISCUSSION

Mr. Moynahan said that it wasn't a policy but more a guideline; that he thought that was where the confusion came. He added that it needed to become policy, whether the 'F' stays or goes.

Mr. Murphy said that he believed there should be some working of these guidelines to explain why paragraphs 'F' and 'G' are needed; that it should be changed to point out that this Board can use a C.A. to solve problems that have nothing to do with the PB or BOA.

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Mr. Beckert asked the Chairman if it was his intent that the existing C.A. guidelines become Selectmen's policies.

Mr. Moynahan said yes.

DISCUSSION ENDED

VOTE

3-0

Chair concurs

6:44 PM Mr. Beckert moved, second by Mr. Dunkelberger, that the Board of Selectmen have the existing Consent Agreement Guidelines become Selectmen's Policies and those policies be incorporated into the entire Selectmen's Policies.

VOTE

3-0

Chair concurs

6:45 PM **2) Proposed Investment Policy**

Mr. Lee said that the one comment he received at the last meeting on this draft regarded 'maximum maturities' and amended the language to incorporate longer time investments for certain reserve funds, etc.

After some discussion, it was the consensus of the Board that this was a 1st Reading of the policy and, on 2nd Reading, the Board could accept this as long as there were no substantive changes.

3) Personnel Policy Workshop Date – June 5 at 5:30 PM

Mr. Moynahan said that they would already be here for the Town Manager Review so they would have this at 5:30 PM if that worked for the Board.

The Board agreed.

6:49 PM

Executive Session

Mr. Beckert moved, second by Mr. Dunkelberger, that the Board of Selectmen enter into executive session as allowed by 1 M.R.S.A §405.D – Labor negotiations – to take up the MAP Bargaining Unit Labor Contract and to discuss the Local 340 PW/TS Labor Contract.

VOTE

3-0

Chair concurs

7:40 PM Out of executive session.

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Mr. Dunkelberger moved, second by Mr. Beckert, that the Board of Selectmen enter into contract agreement between the Town of Eliot and the Maine Association of Police for a term of May 1, 2014 to June 30, 2015 subject to corrections to Article 6, sections C and D.

VOTE

3-0

Chair does not concur

Mr. Moynahan said that the Town Manager had been given additional guidance with regard to negotiating the Teamster 340 contract with the Public Works Department.

Other Business as needed

Mr. Moynahan mentioned an additional item, a memo from the Town Manager about a hiring plan for the Tax Collector position.

Mr. Dunkelberger moved, second by Mr. Beckert, that the Board of Selectmen issue a quit claim deed to Corinne Evans for 601 River Rd.

VOTE

3-0

Chair concurs

Mr. Moynahan noted that they had just received a draft executive summary of the Road Management Plan.

Mr. Lee said that it was his intent to have CMA Engineering come to the meeting on June 12th to do a short presentation.

Mr. Beckert reminded folks of the Memorial Day parade that starts promptly at 9:00 from the school.

Adjourn

There was a motion and second to adjourn the meeting at 7:44 PM.

VOTE

3-0

Chair concurs

DATE

Mr. John J. Murphy, Secretary