BOARD OF SELECTMEN'S MEETING
September 10, 2015 6:00PM

Quorum noted

A. 6:00 PM: Meeting called to order by Chairman Beckert.

B. Roll Call: Mr. Beckert, Mr. Fernald, Mr. Murphy, Ms. Davis and Mr. Pomerleau.

C. Pledge of Allegiance recited

D. Moment of Silence observed

E. Approval of Minutes of Previous Meeting(s)

6:01 PM There were no minutes approved.

Mr. Beckert discussed some **administrative issues** regarding tonight's agenda. He said that, under G4. Public Safety, the two items are postponed because there is more work to do on them. He added that, under G2. 3), it should say November Town Meeting Warrant and that item will also include discussion on the budget referendum ordinance, as they go together.

F. Public Comment:

6:32 PM A member of the audience said that she would like to speak on one of the items on the agenda, the school board, and wasn't sure when that would be.

Mr. Beckert said that that was one of the first items to take up tonight.

G1. Department Head/Committee Reports

6:03 PM **1) Board of Selectmen: School Committee Appointment**

Mr. Beckert said that there were two letters of interest, one from Martha H. Leathe and one from Dannen D. Mannschreck. He said that this was the time for the Board to ask questions of each of the interested candidates. He asked the lady, who had asked to speak, to speak at this point before we get into any discussion with the candidates.

Ms. (April) Herbold, 13 Bittersweet Lane, said that she lives close by with her husband and children, one a junior and one a freshman in high school. She read from a prepared document (available at Town Hall) in support of Ms. Leathe for the open school board position because of her experience and dedication on the school board. She added that she firmly believed that, if we were to have a re-do of the last election, Ms. Leathe would win; that because Ms. Leathe was so well-liked and respected many assumed she would win again and did not make the trip

to vote for her. She ended by saying that we need Ms. Leathe back and asked the Board to please choose her.

6:08 PM Mr. (Mark) Berman, 667 River Road, said that he has two sons age 16 and 13 in the school system and came down to give his support to Ms. Leathe. He added that he was shocked she didn't win; that he also talked with people who assumed she would win and didn't feel the need to vote. He said that Eliot and South Berwick were two of the towns on his family's list when they moved to the area; that that was because of how good the school system is, drawing professionals to the area, and our budget is so good that our cost per pupil is one of the lowest in the State, which is tremendous, given the fact that we are ranked one of the best in the State. He added that he thinks Ms. Leathe has been a huge part of that. He said that he thought it would be a great loss to our community to not have Ms. Leathe on the school board. He said that he doesn't know anything about the gentleman running, that he may have wonderful credentials, and he has no doubt he is interested in the school system and would like to be a part of it. He added that Ms. Leathe has great experience and knows the system; that it takes several years on the school board to learn how to do things and what to do. He said that he offered his strong support of Ms. Leathe and urged the Board to consider putting her back on the school board.

6:11 PM Mr. (Randy) Stewart, 14 Great Hill Way, said that he is a longtime resident and business manager for the school district. He read from a prepared statement, saying that he was here tonight to speak as a private citizen and also draw on his 23 years of experience as a school business official. He said that it has been his experience that the learning curve for a new school board member is about one year, describing what needed to be learned and experienced during that first year. He added that the one-year learning curved worked fine for a newly-elected school board member on a three-year term; that he understood that the term the Board is considering tonight is only nine months. He said that the Board has two excellent candidates before them; that one of them, as far as he can tell, has no school board experience and up against that year-long learning curve; that the other is Ms. Leathe and can, because of her 12 years of school board experience, can hit the ground running on day one. He described the heavy-duty work the school board has ahead of it this year. He said that, as a citizen of Eliot who cares about the quality of education that we are giving our kids, he asked the Board to appoint Ms. Leathe to this interim position.

6:13 PM Mr. (Jim) Tessier, 57 Johnson Lane, said that, at the last election, there were 1,241 votes cast and, of that, Ms. Leathe received 495; that that's just a little bit under 40% of the people who took the time to go and vote; that he feels that that sends a pretty strong message that the residents in Eliot were looking for a change, someone to help the residents see a little more transparent system; that he would like to see a change there going forward.

6:14 PM Mr. Murphy asked Mr. Mannschreck if he was familiar with Maine State laws and their degree of control over school boards.

Mr. Mannschreck said that he didn't know the specifics of all the laws but he has a sense of where the laws are in the State of Maine; that it's an interesting combination of local control over State control, although he noticed the State's control varies from that, from time to time, including this recent addition of funding coming out; that it makes it a little difficult to quite get a handle on exactly what the legislature is going to do at any given time.

6:15 PM Mr. Murphy said that, as he understands it, under current law the school board doesn't have to allow any citizen to speak; that it's a closed society but they may choose to open it as much as they wish and some towns, he believes, have wide open public discussions about what the town may need. He said that we have a two-town district and, though kind of similar and rural, are quite different so it's not necessarily that Eliot's wishes in education correspond, exactly, with South Berwick's wishes; that it is sometimes difficult to express that when you have a school board, which can say they don't want to hear it or, if you do want to speak, you have a whole week to let us know what you're going to talk about; that it seems not quite a friendly discussion, at times. He said that he wasn't sure it was so difficult to learn what a school board member has to do and live through a whole year of change, you might say, and he suspects there will always be new problems that have to be considered. He added that he supposed it was valuable to have a certain amount of experience; that twelve years is wonderful but, what if something should happen to Ms. Leathe; why shouldn't we begin training another someone to fill in on the school board. He said that he raised the same question as Mr. Tessier; that the Townspeople were trying to say something; that Maine is kind of unique in this law that separates school committees, whether it's a town committee or a district committee and he doesn't know if it's time to soften that boundary, which such a committee can set up, and allow the citizens more input. He asked how else can we allow that expression to occur but to have a difference in the school committee appointment. Mr. Murphy said that the actual appointment by this Board is a rare occasion; that he doesn't think we should just go blindly in it or just listen to one or two people speak for or against. He added that he did not want this to be a popularity contest; that he wanted us, once again, to be thinking of Eliot's long-term needs and the operations.

6:19 PM Mr. Beckert asked Board members if they had other questions, saying that both interested parties were present and now is the time to ask them what their interest is and why.

Mr. Fernald asked Mr. Mannschreck why he wanted to be on the school board.

6:20 PM Mr. Mannschreck said that he has lived in Eliot not a terribly long time but his wife and he chose to come here. He added that he thinks it's time for him to start giving back to this Town; that it's been very good to me and it has been very good to his wife and he thinks it's time to give back. He said that he has some experience in education and he thinks this would be a good place to be serving the Town of Eliot.

Mr. Pomerleau, addressing Ms. Leathe, said that he wanted to read something that was going into our proposed charter, which will be voted on in November, with respect to the school board representative, "*Although Eliot Representatives to the School Board serve in accordance with State law and the by-laws of the aforementioned board, they are elected to represent the interests, concerns and public education-oriented ambitions of Eliot residents. As such these representatives shall be responsive to concerns, requests for information, and dialog with Eliot's Select Board, Town Manager, committees, boards, commission, and citizens.*" He said that he understood that that was not well-received on the school board and asked if Ms. Leathe would mind giving him her thoughts on how you see this particular article.

6:21 PM Ms. Leathe said that, first of all, she would want to read it, not just hear it, and study it a little more. She added that she thought that the office operation of the school board is often misunderstood; that it is a tricky balance between being elected locally and actually being beholden to State law. She said that she anticipated this question and brought her Maine School Law and Practice for Board Members; that she prefaced her comments by reading briefly, *"Of Maine's political bodies, school boards may well be the most complex and least understood. Maine's constitution gives the responsibility and authority for public education to the Maine Legislature mandating that, through its statutes, this requires Maine Towns to provide a suitable public education. Maine Supreme Court has concluded that school boards may exercise only those powers conferred on them by the State's education laws. Towns and town voters do not create school boards and, other than voting for school board members, budgets, and referenda, towns and town voters have no authority over school boards. That is why understanding the following principals set forth by Maine Supreme Court is so important. The school committee acts as a public board. It in no sense represents the town. Its members are chosen by the voters of the town but, after election, they are public officers deriving their authority from the law and responsible to the State for the good faith and rectitude of their acts."* She said that she thinks that's where it gets a little tricky because, unlike other boards where you are actually responding directly to citizens' requests, the school board is responsible for acting on what their hearts tell them. She added that, having said that, the school board absolutely listens to citizens; that we answer every email and every phone call; that one of the things we've tried to do is to meet on a monthly basis with the Town governments from Eliot and South Berwick as a

way to collaborate and keep things open. She said that she thinks one of the reasons the vote went the way it did in June is that people do have a perception that the board does not want to hear what the citizens have to say; that that could not be farther from the truth. She said that the reason for the public participation policy is simply to adhere to the State law, which is what drives the board; that all of the board's responsibilities are driven by law and the law states that you have to be extremely careful when you are talking about any employee or any student; that the policy simply states that, in order to get on the agenda, you need to speak with the superintendent a day, or so, before the meeting so that the meeting can run in an efficient way and the board members are careful not to run afoul of the law, which is what the lawyers always say. She said, for example, many times in her twelve years on the board we would get emails or phone calls from parents who might be upset with a teacher, a coach, might have something to do with playing time, or a student and those situations can get very dangerous very quickly; that we never wanted to be in a position, when she was on the board of ever having any situation that would be considered illegal. She added that, just to be sure that we knew what was going to be discussed at the meeting, we would ask that citizens get on the agenda. She said that it was the same for anyone; that if Jerry Brunell (principal) wanted to be on the agenda, he would go to the superintendent, or a teacher, etc. She added that, if you don't get on the agenda, it doesn't mean the school board doesn't want to hear what people have to say; that it just means the meeting may not be the appropriate time for it; that it might be easier to solve at the superintendent's office or resolved with a phone call. She said that not all of the citizen's concerns need to be addressed at a meeting but every single citizen's concern or question will always be answered, whether she is on the board or not; that every question is taken seriously. She added that the superintendent is extremely earnest about listening to every concern.

6:27 PM Ms. Leathe said that, in terms of the charter, she thought that that would have to come before the whole board. She added that another common misconception about school board work is that any one board member has power; that that's not true; that the board only has power when it's together as a group of six so the charter would have to come to the entire board to be evaluated.

6:28 PM Mr. Pomerleau said that a core question he heard from citizens that the problem they have with the school board is the extreme difficulty they have attending a school board meeting and being heard. He added that he read the school board meeting policy, words to the affect that you may request an audience with the school board in advance. He added that he's not sure why that word 'audience' is used; that it sounds pompous. He said that he went online and looked at Lewiston, Brunswick, and Portland's school board meeting and they are very wide open; that they don't restrict people to questions asked in advance but allow participation during the course of the meeting. He said that he believes the message from Eliot citizens at the election is that that's what they wanted to see. He asked if Ms. Leathe would support that.

6:29 PM Ms. Leathe said that, when she was chair of the board, she talked with a lot of chairs locally – Sanford, York, Biddeford – and asked them if they had what we sort of refer to as 'open mike', where you can just come and say whatever's on your mind; that many boards do allow 'open mike'; that she asked what happens, then, if you get into a situation where someone comes and is angry or upset, and it's usually at a person; that each of these chairs said that they would stop them right then. She added that it becomes a judgement, asking if one wants to be in a situation where you know in advance what the citizen wants to talk about…and that is really all it is; that we just want to know in advance what you have on your mind so that we can get it on the agenda; that if it's appropriate, that's great. She added that she thinks the word 'audience' just means we're going to listen to what people have to say. She said that she also spoke with their lawyers, at length, about this and they said we can have 'open mike' but the board runs the risk of running afoul of the law, adding that they (lawyers) have seen it happen, over and over again, so don't do it. She added that the lawyers highly encouraged the school board to keep that so that their meetings are respectful, organized, and the board maintains decorum; that you never have to stop the person from talking poorly about a teacher, coach, or student. She said, to answer Mr. Pomerleau's question, she thinks the policy is a good one; that she thinks, though, that maybe there needs to be another way to frame it or describe it; that she thinks meetings are for the purpose of school board business. She added that the legislative body at the meetings is the school board and is there to discuss what needs to be discussed; that everyone is a volunteer, principals have been at work since 7AM, and people want to run the meetings efficiently. She suggested that maybe they could set up a time once a month at a library where people could come in to just talk with members of the school board. She said that it seems the perception is that the school board doesn't want to hear what the people have to say and that's not true; that the school board wants to hear what everyone has to say; that it's a matter of where it's most appropriate to have that discussion.

6:33 PM Mr. Pomerleau, addressing Mr. Mannschreck, said that he heard the same reference to the ordinance and the question that he asked with regard to the citizen's desire to have a more responsive and open school board at their meetings, as far as the public, and wanted Mr. Mannschreck's comments on that.

6:34 PM Mr. Mannschreck said that he has been to these meetings before and it can get kind of contentious. He said that he thought that it was probably a better policy to, as you have here, a public comment period. He added that there are certainly things that, by law and, he thinks, by most perceptions that can't be discussed, or shouldn't be discussed; largely personnel issues, particularly, are a problem. He acknowledged that this can get messy; that this whole idea of public input into this can be a messy business and he thinks it ought to be easier for people to speak at these meetings; that he would suggest a public comment period, perhaps, and

the chair can easily, when we get into areas that have legal ramifications, and quite right to shut off those conversations. He added that he didn't think that put the school board in any sort of legal jeopardy; that he thought there should be care taken but he thinks there should be more openness in this board process. He said that it isn't that board members don't answer, as he has talked with other board members on this, as well, but he thinks it would be useful to have the opportunity to comment to the entire board at a meeting and to have other citizens discuss this. He added that, even though the law says the school board's in charge of this, still, public education in our Town, our whole school district should have significant input into this process; that, yes, we do have standards that have to be met but citizens are the ones who are paying for it, they are the ones most responsible for it, and it's the citizens that the school district should serve.

6:36 PM Ms. Davis said that the school budget has gone, in the last 10 to 12 years, from $20 million a year up to over $29 million a year and asked Mr. Mannschreck how he felt about that.

Mr. Mannschreck said that he didn't imagine anyone in this room is real enthused about paying taxes; however, he thinks that the cost of education is probably rising; that we have a very low per-student budget. He added that he thought we had to balance off our desire to pay fewer taxes with the benefits the educational system provides to us. He said that he thought we had a very good educational system, here, and that the school district has an excellent reputation to turn out a good product and we are serving the citizens of our communities but, to do that, we sometimes have to pay for that and he thinks probably, looking at this budget, it looks like a pretty reasonable budget; that he thought the increases were reasonable; that our per student cost is excellent; that he doesn't have a particular problem with that rise. He added that we do have to be careful; that it is our money and, sometimes, money isn't the only thing. He said that, on the other hand, he thinks that a quality education does cost some money and we should be willing to pay for that.

6:37 PM Ms. Davis asked Mr. Mannschreck if he was planning, at this point, to just accept this one appointment or are you looking forward to serving more time on the board, if you were to receive this appointment.

Mr. Mannschreck said that he would hope to, assuming that the citizens of Eliot, or the school district, would have him; that he would very much like continuing this.

Ms. Davis asked if, along with the transparency, you would consider it reasonable to appear at a Board meeting, occasionally, just to keep us updated on what's going on.

6:38 PM Mr. Mannschreck said that he thought that was very important that we have communication with this Board because, again, you represent the citizens, as well, in a much more hands-on way; that he thought that would be very important that we meet, as a group, to be the official spokesman for the board, or individually, to hear your concerns and listen to you; that, again, he doesn't think as an individual that he can come to the BOS as a single board member and answer all the questions; that he doesn't think that's right and he doesn't think that's how it works in a legal sense; although he thinks it's very important that we answer questions and listen to concerns that you have.

6:39 PM Mr. Murphy, addressing Ms. Leathe, asked if she and the other Eliot delegates ever kind of caucus and decide how you could best represent Eliot's input, and what is that input and how do you get it from the Town. He also asked if the Eliot school board members got any input from the Town, as a group, to represent the Town to the district.

Ms. Leathe said that the school board really functions as a group; that when she was on the board, the board, itself, functions as a group of six; that she doesn't think that their mindset is Eliot or South Berwick; that she thinks we think as a unit that is representing the district, not either/or. She added that that is just not the language that we think in, which town we represent; that we think of is representing the students and the district. She said that, having said that, we get input in many ways; that it's sometimes informal when she bumps into someone while out in the community, many emails from people asking questions. She added that, generally, the questions are not specific to either town but tend to be related to the district, as a whole. She discussed the different ways in which a school district functions versus a single school (Kittery) within a town, with a SAD not being as directly interactive with the town as a single school. She said that that was why MSAD #35 set up the monthly morning meetings, so that we could get more input from the town governing bodies.

6:42 PM Mr. Murphy said that he wondered if there might be some difference between the towns, which is being ignored, or some need that Eliot has in an educational sense that, somehow, isn't recognized, or South Berwick. He asked if we are lumped, intermixed, too completely; that he doesn't have children so doesn't have a direct way to measure that, himself. He asked where this feeling came from that seems to have arisen in the last several years; that to have just one answer on the budget, yes or no, seems too brutal and an unsatisfying way to control things, clarifying that the Town can vote for the budget, or not, and that is sort of the ultimate authority and, yet, that's not a satisfactory way of solving anything. He added that, if you don't have any way to talk about things, other than voting, because you're dissatisfied; that if your dissatisfactions are not accepted or listened to or recognized, it bodes ill for the future. He said that there seems to be some

dissatisfaction; that he's not close enough to the action to verify or justify it but that's kind of the feeling he gets, asking if something should be done about that.

6:44 PM Ms. Leathe said definitely; that she thought it was a huge misunderstanding, this idea of transparency; that the board has somehow not been transparent. She added that, addressing Mr. Murphy's question of the budget, you do come to the referendum and have 'yes' or 'no' but, for six months prior to that, there are meetings, workshops, and many ways to contact the board; that, in fact, during budget season you don't need to get on the agenda prior to the meeting; that you may come and speak and the reason that's different is because then the board knows what the subject matter is. She reiterated that the overarching reason for getting on the agenda is simply so the board knows the subject and makes sure it is appropriate. She said that it wasn't picking and choosing what they would discuss, or not; that we will talk about anything; that it's at what point is it appropriate. She added that, during budget season, any citizen may come and speak on anything that has to do with the budget and we have said that many, many times; that, typically, almost no one comes. She discussed how hard they have tried to get more public attendance during budget season; that the board wants to hear from citizens. She said that there is a perception of transparency, or of a closed society; that that is absolutely not true; that the board is wide open to hearing what people have to say. She did agree there was some kind of disconnect.

6:48 PM Mr. Fernald said that he would hope that both these candidates run in June no matter what the circumstances are tonight. He added that he did feel that experience in the nine months left in this year is very important, at this stage of the game.

Mr. Fernald moved, second by Mr. Murphy, that the Board of Selectmen appoint Martha Leathe to fill the vacancy on the MSAD #35 Board of Directors, effective immediately, with the term to expire June 2016.

6:49 PM DISCUSSION

Mr. Pomerleau said that he understood how the school board viewed their responsibility as a legislative branch responsible to the legislature; however, citizens don't feel like their children are wards of the State; that they belong to their parents and they want to be able to go to school board meetings and speak to the items the board is discussing. He added that parents won't know what the board has had to say about them (items) until they get there so they can't submit questions in advance, until they hear what the board has to say. He added that it can be done; that it's done all over the State in other school boards where meetings are open; that it's a matter of school board choice. He said that he thinks that, when the citizens voted in June, they tried to send the school board a

message that they wanted to see that open up; that as far as he is concerned, he is going to stick with what the citizens said in June and will not support Ms. Leathe; that he will support Mr. Mannschreck, if we get to that point.

6:50 PM Ms. Davis said that Ms. Saurman did run on a platform of more openness with the school board; that she thought that the citizens did speak by giving her more votes, that she was new to the job; that this is a good opportunity to try something new and see how it goes for the next nine months and, then, have a run-off in June.

DISCUSSION ENDED

VOTE
2-2 (Mr. Pomerleau, Ms. Davis)
Chair concurs in the affirmative to appoint Ms. Leathe

Mr. Beckert encouraged both candidates to run for the position in June 2016.

6:52 PM **2) Charter Commission – Presentation of Final Draft**

Mr. Beckert said that the Charter Commission has presented the Board with the final draft of the charter; that if the Board is in concurrence with the final draft then it would be up to the Board to put that on the warrant for November.

Mr. Fernald moved, second by Mr. Murphy, that the Board of Selectmen move the final draft of the charter the Board has before them to a referendum vote in November.

DISCUSSION

6:53 PM Ms. (Donna) Murphy asked if the copy the Board has includes the changes that were made last night.

Mr. Lee said that it does.

Mr. Pomerleau said that he would accept that motion with, probably, the provision that it is supposed to be accompanied by the letter from the attorney certifying that there's nothing in this charter that's inconsistent with federal and State constitutions or State statutes and signed and attested to by him (attorney).

Mr. Beckert said that he understood and agreed.

Mr. Lee said that he was expecting the attorney to provide us with the letter, as well as an updated glossary and updated index; that Mr. Lentz has an updated cover page, as well.

DISCUSSION ENDED

VOTE
4-0
Chair concurs

6:54 PM **3) Conservation Commission Appointment: Glenn Crilley**

Mr. Murphy moved, second by Mr. Fernald, that the Board of Selectmen appoint Glenn Crilley to the Conservation Commission as a regular member, term to expire in 2018.

VOTE
4-0
Chair concurs

G2. Administrative Department

6:56 PM **1) Town Manager Activities Report**

a. Boat Basin Revenues Report

Mr. Lee said that this informational for the Board. He added that he wanted to show the progress we've made toward the goal of self-funding the Boat Basin; that this is just from launch fees, not moorings or pavilion rental.

Mr. Fernald asked Mr. Lee to clarify 'self-funding', asking what this is going to pay for; will it pay for maintenance.

6:57 PM Mr. Lee said that that depends; that we are going to talk a little later about possibly a transfer of ownership from the State. He added that what he is getting at is that we have to pay for the attendants down there and we also wanted to establish a sinking fund; that any fees we collect are supposed to be in a sinking fund for ongoing maintenance of the facility. He said that, in speaking with the State about acquiring ownership, they admitted that they have no funds to put into these facilities anytime in the foreseeable future. He added that, if that road needs to be paved, if erosion issues will have to be dealt with, etc., then we will need some money to do that; that it's both payroll-type stuff and to do maintenance to that facility.

6:58 PM Mr. Fernald said that that's good to hear; that that really answered his question and he is all for that. He added that his concern was that we were using the money

being collected from launch fees to pay for the salaries of the people collecting the money only.

Mr. Lee said that it went well beyond that into a sinking fund, and it is permissible to do that, both to have attendants and do capital improvements to the facility.

6:59 PM Mr. Murphy asked if the sinking fund actually existed.

Mr. Lee said yes.

Mr. Murphy asked if we can specify and record the list of things that are intended to be covered by that.

Mr. Lee said that he needed to develop that in association with the Harbor Masters and Harbor Commission; that we want to come up with an actual capital improvement plan; that he will include the ECSD Director for the pavilion area, as well. He explained that this is the first time we've set up the sinking fund; that it was supposed to have been there since we've been leasing the facility; that now it's a matter of putting together an overall plan for what will happen with these funds over time.

7:00 PM Ms. Davis asked, regarding Line 14 (Town Manager Report), if Mr. Lee had made any progress with the homeowner.

Mr. Lee said that he spoke with her, again today, and we will be meeting in person next week; that she had been out of Town.

7:02 PM Ms. Davis asked Mr. Lee to elaborate on Line 64.

Mr. Lee said that someone came in and asked for the original EPA letter from 1983 that said that Eliot would be required to put in Town sewer; that he couldn't find it and has put out feelers to see if someone knows where it is.

Ms. Davis asked, regarding discussions with the Police Chief, if that was something that was just ongoing.

Mr. Lee said yes; that we are coming up to the end of his first contract and he thinks that he and the Kittery Town Manager need to know what the ongoing plan is going to be – do we want to continue this kind of relationship, does he want to continue, is he making any plans to retire – and those types of things have to be discussed as we go into budget season; that a memo will be forthcoming.

7:04 PM **2) Request for Consent Agreement – Cumberland Farms**

Mr. Beckert said that this was a request from Cumberland Farms to enter into a consent agreement (CA) with the Town on an issue of signage, he believed. He added that the Chair will state that the Board has a policy on CA's and we had best follow it before any discussion of CA's is had; that there are things that need to be done to exhaust all possibilities. He said that not all the administrative process has been exhausted.

Mr. Lee said that there remains the option of obtaining a variance from the Board of Appeals (BOA). He added that that is what the CEO and Assistant Planner (AP) have recommended, that they try the last administrative remedy and, then, engage in a discussion per our policy on CA's. He said that he was unaware of that as an option, at first, and he did not convey that to Attorney Guay that we had CA guidelines; that subsequently staff reminded him that there is the variance option and that may be the better administrative option; at least to exhaust that option before the Board is asked to enter into a CA.

7:05 PM Mr. Murphy said that we should not rush to go to court, either, until all local steps are followed or the court will send us back to do that, first, because that might solve the problem. He said that we should give the possibility for the BOA to be asked a question and have them make a decision; that then we would possibly consider.

7:06 PM Attorney Guay, representing Cumberland Farms, said that unfortunately, as far as the appeal goes, we are up against a deadline from the decision of the BOA; that there is a 45-day statutory deadline to file an appeal in court. She added that, generally, variances are extremely difficult to get and she didn't realize that would be an appropriate thing to do in this matter; that this is the first time hearing about it that it may be appropriate to go to the Town with a variance request. She said that because of the deadline we will have to file the appeal in court, absent a CA, because we are up against that statutory deadline.

Mr. Murphy asked if they had applied for a variance.

Mr. Beckert said no.

Attorney Guay reiterated that this is the first she is hearing, tonight, that that was an option.

7:07 PM Mr. Murphy asked if the CEO's letter didn't mention that to Cumberland Farms as a possibility; that he thinks we have a copy of the CEO's letter and that was the step for them to take.

Attorney Guay said that she did not recall seeing that.

Mr. Beckert said that the 45-day appeal period that may be coming to fruition, as far as coming to a close, is the 45-day appeal period to appeal the BOA's denial of Cumberland Farms appeal to overturn the CEO's decision; that one does not relate to the other; that it does but it doesn't; that there is still a process to go through for a variance.

7:08 PM Mr. Murphy asked if they were free to now apply to the BOA for a variance.

Mr. Beckert said that that was how he saw it.

Ms. Pelletier said that they always have been free to do that.

Mr. Beckert said that this Board had great discussions on this policy on CA's; that we had input from the BOA and he knew that the discussion was that a CA should be the last-ditch effort after every other administrative effort has been taken; that that is why he encouraged the Board to follow the policy.

Mr. Lee said, to repeat, he did want to apologize to Attorney Guay for him, personally, not saying that the variance was another administrative thing; that he did not do that purposefully but he did think that what we're hearing, tonight, is that they would have to proceed with the 80-B appeal of the denial of the overturning of the CEO's decision within the 45-day window but, concurrently, apply for the variance; that if the variance were to go through then, potentially, Cumberland Farms would drop the case.

Attorney Guay agreed. She said that that was fine and we will go ahead and do that; that she just didn't want any misunderstandings when the appeal gets filed, the reason that's getting filed, even though we will go through the process of requesting a variance.

7:09 PM Mr. Pomerleau said that, on the raw issue of a CA based on the BOA's decision, he sees absolutely no basis for it, whatsoever, because there's been no violation of even our policy; that there's no grounds for a CA to even be considered by this Board. He added that there is no sign that's been put up, there's no violation of the code and, therefore, no basis for a CA, according to our policy. He said that, in his view, Cumberland Farms should go for the variance; that that's the only avenue to pursue.

7:10 PM Attorney Guay asked for clarification on that; that Cumberland Farms has the sign, they bought the sign and paid for the sign; that if they go ahead and put up the sign then we can talk about a CA.

Mr. Beckert said no.

Ms. Pelletier said that it cannot be willful.

Mr. Beckert agreed that it can't be a willful violation; that that would probably not go well for Cumberland Farms.

Mr. Murphy said that you can't erect a sign without a permit and asked if they thought they already had one.

Mr. Beckert clarified that signage permitting in the Town is controlled by the CEO; that it always has been; that it isn't a PB issue. He added that there are requirements where the PB requires signage location be shown on the drawing; that the size requirements still have to be met, per the ordinance, and they have to be met and permitted by the CEO; that there is no PB approval for signage and never has been.

7:11 PM Attorney Guay said that, obviously, we aren't going to talk about consent but just to bring to the Board's attention that your ordinance requires all of the signage documents, including size, location, everything. She added that the ordinance and your findings of fact says that that goes to the code office for comment and review as part of that PB process; that perhaps that's not the way the PB intends it to appear but, in fact, that's the procedure that's laid out in the ordinance, and to the PB, and that's the procedure that was followed; that that is the issue that Cumberland Farms is dealing with now. She reiterated that she knew we were not going to get into a discussion tonight but wanted the Board to know that's where we're coming from.

7:12 PM Mr. Beckert asked what the Board of Selectmen's wishes were on the request for a CA.

Mr. Fernald said that he did not believe this needed to be discussed at this time.

Mr. Beckert said that there was a request made so the Chair would need a motion to deny the request, if that is the Board's intention, or to approve it; that there has been a request made to enter into a CA so you have an action that needs to be taken.

Mr. Pomerleau moved, second by Mr. Murphy, that the Board of Selectmen deny the request for a consent agreement with Cumberland Farms.

VOTE
4-0
Chair concurs

7:13 PM Mr. Lee said that the advice coming out of the meeting for Cumberland Farms is to seek a variance.

Mr. Beckert said that, per our policy, we need to make sure that all administrative avenues have been exhausted.

3) November Town Meeting Warrant

Mr. Beckert said that this includes the budget referendum ordinance, as well. He asked how Mr. Lee wanted to proceed with this; that he thought taking up the warrant, itself, would be the thing to do first.

Mr. Lee agreed; that that is probably the most urgent and also the simplest, at this point. He added that the Board had the latest copy in front of them, with a significant amount of feedback from the Selectmen; that there are five questions and, if the language is okay by the Board we could approve the warrant, then deal with any final adjustments to the actual ordinance that will be presented under Article #5.

7:15 PM Ms. Davis asked if the recommendations were going to go on later, or should they be on here now, because the Budget Committee has to vote on this. She asked if we have been remiss.

Mr. Beckert said that he didn't believe there's ever been any Budge Committee recommendation on anything that is to be paid out of the sewer funds, period.

Ms. Davis said that this is Town-incurred debt; that if they were to default on it, the fact that it's going to the people means the Budget Committee…and it's a financial article. She added that, if we look back at the previous two or three bonds for the TIF, the Budget Committee made a recommendation.

7:16 PM Mr. Lee said that this could be amended and should be, he guessed, if that's what we need to do.

Mr. Beckert said that he didn't think the requirement is there; that they are voting to either take it in or out of the sewer funds; that the Budget Committee has never had any authority over the sewer funds.

Mr. Lee said that it is a general obligation debt.

Mr. Beckert said he understood that but double check it; that we can add it. He added that he thought that what you're voting on tonight, as a Board, is the structure of the warrant articles; that we can added the recommendations but the Clerk needs this.

Ms. (Donna) Murphy said their next meeting wasn't until October but she could call a special meeting immediately.

7:17 PM Mr. Lee asked if, at this point, the Board wanted him to check on this and we'll come back to it.

Mr. Pomerleau said that he is of the opinion that they are allowed to; that if there is a recommendation then it must be provided.

Mr. Beckert said that he didn't care either way; that he just wanted to move the warrant forward so that we've got the time to get it to the Town Clerk.

Mr. Murphy suggested that the Board put in a recommendation, which would allow the Budget Committee to put in a recommendation.

7:18 PM Mr. Lee said that tonight the Board could act on making that recommendation and amending it, at least, with some advance on it.

Mr. Murphy moved, second by Mr. Fernald, that the Board of Selectmen add for Warrant Article 3rd "Board of Selectmen recommends approval" and that the Budget Committee make a pertinent recommendation.

VOTE
4-0
Chair concurs

Mr. Beckert said that the warrant is approved with those additions.

7:19 PM Mr. Lee asked if there was going to be any position taken on the charter or Referendum Town Meeting Ordinance amendment.

Mr. Beckert said to let the voters decide; that that's the Chair's position and asked if anyone else felt strongly the other way.

The Board and Budget Committee Chair concurred with Mr. Beckert.

Mr. (Jim) Tessier asked what the deadline was that the Board needed input from the Budget Committee.

Mr. Beckert said that the deadline was that it has to be to the Town Clerk by the 21st of this month.

Budget Referendum

7:20 PM Mr. Lee said that, in an effort to facilitate a discussion, he knew that Mr. Murphy had an opportunity to look through what Selectman Davis had recommended; that he has, as well, and they are very good suggestions; that what he wanted to do, if allowed, was to just quickly look at the memo that was provided to us by Selectman Davis. He said that he thinks the ballot form advanced by Ms. Davis is fine; that he thought it was actually cleaner. He added that "**at a minimum** each appropriation described in the following…"; that that allows some variation without having to change the ordinance in case anything in our operations change and he thinks it's a very good idea to add that. He said that he thinks the reversing of Budget Committee and Select Board is probably the right thing to do because, theoretically, the Select Board is the higher institution, if you will; that he's not sure why he put them in that way and switching those around, throughout, would not be any difficulty. He said that there is an error in lines 106-107 and will strike one of the two mays there. He added that he thought referencing Section 9 is a very good idea on lines 133-134. He said that, with line 136-139, he doesn't think we should do anything further with that because that is prescribed by State law; that it's the standard warrant article of the duly called town meeting; that he doesn't think that needs to be in the ordinance, as we have a method laid out very clearly for that. Regarding lines 143-144, he said that he does think that, if we don't want to get ourselves in a bind if there turns out to be some unforeseen, weird mix of recommendations that show up with all these potential recommendations, then, perhaps, we should leave ourselves some wiggle room with Ms. Davis' suggestion of "**Some of the** various possible ballot forms are set forth herein. **Their appearance may be formatted differently on the ballot**." He said that he thought that was good and leaves us a little room should there be something he did not foresee. Regarding line 240: Is the word "current" clear enough?; that he tended to agree; that "current **fiscal year budget**" might be a better way to put it. He said that, with regard to lines 203-209, he struggled to come up with appropriate language; that he even conferred with Selectman Pomerleau a little bit about this; that we do know that there could be an appropriation from the year prior that had some big amount of money in it and voters, by mistake, voted it down, and so it goes back to last year's appropriation, wherein, there was a fire truck being bought but we don't need that money this year because we bought our fire truck last year; that those are the types of things he is trying to put into some language so that he could come back to you and say, "Folks, you don't want to go back to last year's budget on this particular item.", or something like that. He said that he thinks he would let it ride and the Board could stop him from doing bizarre things adjusting budget amounts; that he doesn't think there is a big fear that this goes unchecked because the Select Board has final say on what's going to get adjusted.

7:25 PM Ms. Davis asked if we could at least add "the lesser of the two amounts".

Mr. Lee said that that's up to the Board; that he doesn't have a recommendation on this.

Ms. Davis said that it's counterintuitive to think that the voters would turn down, perhaps, two or three recommendations on the ballot and that, by some happenstance, we had a huge budget the year before; that this would violate the intent to go back to the previous year with an even bigger budget that they just turned down. She added that, for safety's sake, we go with the lower budget.

7:26 PM Mr. Lee said that as long as the rest of the Board is in concurrence, as it is your ordinance; that he is just drafting. He added that he does know of a circumstance where voters who were pro-education got together under a similar circumstance because, if you didn't pass the budget, it went back to last year's budget that was bigger than the current year budget; that they purposely shot the current budget down to go back to the bigger budget; that he didn't think you could necessarily know the will of a person that votes against a number that they do want another fire truck, for instance.

Mr. Pomerlau said that, obviously, that could happen – a prior year's budget was higher; that he thought the point was well-taken that if they didn't want to approve a lesser one they certainly didn't want you going back to a higher one; that he guessed the language couldn't do any harm, something like the "lesser of" or "shall not exceed". He added that he fails to see any downside to it and it does offer some protection against that oddball situation occurring.

Mr. Murphy asked if, when you say the "lesser of the two", do you mean after the Town Manager has reviewed the previous year's budget appropriation for expenses that were one-time or non-recurring and report the same; would it be that one that would be lesser than this year's, which was turned down. He said that he would like to go with the Town Manager's proposal, "In the event a previously approved appropriation article is not approved, the appropriation for the immediately preceding year shall constitute the appropriation for the following fiscal year, in most cases. In the event an appropriation article is not approved, the Town Manager shall review the previous year's budget appropriation for expenses that were one-time and/or non-recurring and shall report same to the Select Board for approval of an "adjusted" prior year budget."

7:29 PM Mr. Beckert said that there was one more point because it could be a totally different number. He added that, going down to line 209 to 212, the Board has one more shot at taking anything that's disapproved back to the voters; that we have the opportunity to adjust the number higher, lower or different; that he thinks it's fine the way it's written.

Mr. Pomerleau said that Mr. Beckert was right; that we would have a shot but the same thing could happen a second time and, then, we end back at that paragraph. He added that they might turn us down a second time so we are still looping back to the potential for that prior year's budget exceeding the one we just rejected.

7:30 PM Mr. Lee added that he didn't think that 'lesser' would be an appropriate word because, theoretically, you would have a BOS recommendation, a Budget Committee recommendation, you could have a citizen's recommendation; which of those is the 'lesser'. He asked if we are talking about disregarding the citizen's option, or do you take BOS and Budget Committee and compare it to last year's appropriation and, whichever one is the lowest of those numbers, is that what we're saying.

Ms. Davis said that it's disturbing if the residents turn it down twice; that, then, what you're saying is that the Board and the Town Manager are going to get together and decide what the citizens are going to do with this article after they have just failed you twice. Giving a far-fetched example, she said that, perhaps, the citizens as a group decide taxes are way too high and they want to get rid of the ECSD; that that is a standard department in the Town and she isn't picking on that department but they (citizens) decide they don't want it anymore so they vote no on the budget twice. She said that we come in here and say, "Well, we got rid of some of the pork and this is what we are going to do."; that now we are violating the will of the people. She added that, by the same token, this is pretty good and, maybe, we address it if the problem comes up.

7:31 PM Mr. Beckert said that he is of the opinion of not trying to over-engineer it. He added that he thinks we've got a good basis, right here; that we should go with what we've got and there's always a way to address an emergency situation, if we have to.

Ms. Davis said that she thought we would have to think long and hard if it fails twice; that we're going to have to find out why.

Mr. Lee said that there is nothing in this he wrote with any intent to thwart the will of the people. He added that, if they vote something down twice and fund zero and zero for any given thing, then he thinks the message is fairly clear. He said that if you leave last year's appropriation, then you're really putting yourselves in a bad spot, then, because you'd never get rid of anything because there's always last year's appropriation.

7:32 PM Mr. Pomerleau said that this is much better this way than we were originally, based on Ms. Davis' comments.

Mr. Beckert asked if the Board could agree that, based on the current discussion we just had, that we will take the recommendations and insert them into the proposed ordinance amendment, with the exceptions of the recommendation of Lines 136-139 and leaving Lines 203-209 alone for the time being.

7:33 PM Mr. Pomerleau moved, second by Mr. Fernald, that the Board of Selectmen accept the language of the Referendum Town Meeting Ordinance, as corrected with Ms. Davis' Memo to the Town Manager and the Select Board discussion tonight.

VOTE
4-0
Chair concurs

7:34 PM **4) Abatement(s) Request: RE Tax Acct. #924, Map 079, Lot 074**

Mr. Lee read a supplemental memo to clarify this situation and how best to handle it and that the following page has the total amount that would have to be corrected in the accounting system of $1,634.23.

Mr. Murphy moved, second by Mr. Fernald, that the Board of Selectmen follow the advice from the State Property Tax Division and deem the amounts specified from 2008 to 2010 related to Map 079, Lot 026-07 as uncollectible, and to further authorize staff to release said liens and to remove said owed amounts in the amount of $1,634.23 from the taxes due ledger.

VOTE
4-0
Chair concurs

7:36 PM **5) Boat Basin Change of Ownership Update**

Mr. Lee said that he talked with Ron Hunt (Bureau of Lands), that he received our letter, and that it looks positive as the State has no funds to invest and they appreciate that the Town wants to invest in this piece of land. He also spoke with David Rodrigues (Land Transfer Specialist), who will check deeds and any restrictions (preliminary research); that if it was agreed that they would transfer it, it would have to get approved as either part of a Lands Bill or by a legislative sponsor. He said that he recently spoke with Mr. Eisner, who owns Hammond Lane as part of his property near the Boat Basin; that that has a State ROW across his land but he actually owns the land under which Hammond Lane sits. He added that one of the things he thought we need to be prepared for, if we proceed with the transfer of Boat Basin property to the Town, is a pretty full explanation of why it is in our interest, what does it do for us, why would you want to acquire an asset that you're going to have to put money into, etc.; that he thinks some people will view it that way and others will view it as being great to have ownership and control of such a fabulous asset. He said that it could be a TIF opportunity for

eco-tourism, or any number of things, but he does think that there is some portion of the population that is going to need some sort of an explanation as to why we should do this. He added that the State doesn't have any money and they are basically off-loading property.

7:39 PM Mr. Beckert suggested the Town Manager develop a point paper of the pluses and minuses of acquiring this property.

Mr. Pomerleau said that, as a reminder, this all began as a preliminary inquiry for the TIF Committee to be viewing that particular aspect as a possible TIF project; that it didn't start out with the Town Manager, or anyone else, looking to get the Boat Basin for the Town but related to another objective.

Mr. Beckert said that there has been past discussion on the Town looking into taking this facility over, as well as past discussion by the Town looking to Maritimes Northeast with the possibility of acquiring, somehow, the adjacent 15 acres.

7:40 PM Mr. Lee said that he has had discussions with Maritimes Northeast and they are not really open to a transfer of property; however, if we did decide to do something like biking trails (non-motorized), they would be happy to grant a specific easement for where to go, if they had to tear it up we would have to restore our own trail, etc.; that, if we take on the Boat Basin, we might have a neighbor who would be willing to let us develop some trail systems over there for things like cross-country cycling, snowshoeing, cross-country skiing, etc.

7:41 PM Mr. Murphy said that, with all the discussion of trails and having innocent people wandering through that property, he hoped everyone will keep in mind that there is a small cliff, there, and it tends to crumble; that it might be necessary to have some restoration to stabilize that cliff.

Ms. Davis asked if there had been anything that came up in discussion regarding any minimum requirements or anything that was tied to the transfer of the Kittery park that.

Mr. Lee said no.

Ms. Davis said that part of her concern, when we're talking about the pros and cons of this, is that it's been such a nice, small neighborhood park that, when we think about bringing in enough money to pay for everything, we have to take into consideration whether it's really worthwhile that we fill it with a lot of people, especially out-of-town people, where it destroys the whole character of the place.

7:43 PM Mr. Beckert said that, whether we own it or the State owns it, that is something that the Town can control; that, as attorneys have told us in the past, the Town has the ability to control the use of its land.

7:44 PM **6) Public Water on Rt. 236/Kittery**

Mr. Beckert said that this was basically informational. He added that Mr. Lee had inquired with the Kittery Water District (KWD) about the possibility of running water up Route 236 to Marshwood Estates, due to their current water problem, and the KWD has basically come back and said that they would be glad to do anything as long as somebody else pays for it; that they are involved in improving their current infrastructure, which some of their areas are approaching 100 years old. He added that it was worth the shot to ask the question.

7:45 PM **7) Notice of Agency Liquor Store Application**

This was informational regarding Cumberland Farms.

8) Revised Board of Appeals Application

This was informational regarding the updated form used by the Board of Appeals.

7:47 PM **9) Overtime Issues - FYI**

This was informational regarding overtime eligibility.

7:48 PM **10) Request for Public Location/Access of Bound Town Reports**

Mr. Lee said that this was an issue that was brought to him by Selectman Murphy; that for many years we have had the entire collection of Town Reports, going back many, many years (1884), on the shelf and Selectman Murphy, very frequently, is referencing those. He added that he, the Town Clerk, and the Administrative Secretary were kind of concerned that, if anything ever happened to this building (fire, etc.) they are not really protected and we would feel better if they were locked up in the safe. He said that, if they are locked up in the safe they are of no use to anybody, the public can't use them or look at them, so, Mr. Murphy has asked that they be put back out. He added that we have been cleaning out the vaults and have come across many, many reports but, certainly, not a full set; that he has also put out feelers to the Historical Society to see if they had a full set. He said that, as long as there is another full set, we might feel more comfortable but, if there is not another full set out there, the Town Clerk is very uncomfortable having them out there but, again, there may be people who want to use them and having to ask to pull out all those books each time someone wants to do some research is not a lot of fun, either.

7:50 PM Mr. Beckert said that there are a set of Town Reports, but he wasn't sure how far back they went, at the library that are there for the use of the public but they do not leave the building.

Mr. Murphy discussed the history contained in the earlier Town Reports and that they are the source of some of why we do the things we do now, using the Contingency Fund (unpredictable expenses) as an example.

7:52 PM Ms. Davis said that she has not looked in the vault but asked if it was possible to have a rolling book-cart, like the library has, so that we could roll them in and out more easily for people who wish to view them, or, is there no room for a rolling cart.

Mr. Lee said that he didn't know if they would all fit on a rolling cart.

Mr. Murphy said that there were about 15 bound volumes, with each volume having anywhere from 8 to 15 Town Reports within it.

Mr. Lee said that he would look into the rolling cart and whether there was space to keep this out back and available.

Mr. Murphy suggested binding the Town Reports because they are fragile.

G3. Public Works

7:55 PM **2014/15 Stormwater Expenditure Questions/Return of PW Contingency of Boiler (Auditor Response on 9/10)**

Mr. Beckert said that we have a letter from RHR Smith & Company addressing questions raised by Selectman Davis and asked the Town Manager to address that.

Mr. Lee said that he was here quite a long time; that he spent three hours just going through minutes to get the background and history. He added that we spent a fair amount of money, he thought, trying to get to the bottom of this and to get a professional audit opinion of whether something wrong happened, or not. He said that the auditor deemed that nothing inappropriate took place; that the way that it was handled was clear, transparent, and came with approval along the way by the BOS; that they were closely related enough that they could have been within the same budget and that that is very unlike the general stipulation of taking money from Fire and giving it to the Clerk, for example. He added that this was one which was actually authorized and known; that we are taking money from Public Works to offset the cost of the stormwater project, again, this year; that we did that last year and the auditor has deemed that there is no wrong-doing or mis-

management; that he would like to think that this might end this chapter of enquiry.

7:57 PM Ms. Davis said that she thought it was very disturbing that our auditor could look at the list of expenses, which amount to $148,000 on a $90,000 warrant, and not consider this irregular. She added that close to $69,000 went to the construction company; that another $68,000 is actually spent specifically on stormwater for invoicing.

Mr. Lee said that he doesn't know how better to satisfy Ms. Davis' question, asking who could weigh in on it that she would believe.

Mr. Beckert said that he has read the letter and he thinks the auditor has done what he was asked to do; that he has answered the questions and gone back and looked at how the appropriations were done; that he has looked at the legality of the appropriations and has determined, from an audit standpoint (legal), that everything was done appropriately and aboveboard, with no misappropriation of funds from one area to another.

7:58 PM Ms. Davis said that it went from one warrant article to another; that when the construction contract originally came in over-budget, or over the estimate, we received a letter from Mr. Moulton stating that initial estimates…leaving an estimated $2,900 to $7,900 to come from the DPW operating budget. She added that she looked through the minutes and didn't see any other approvals of any other larger amounts than that and, yet, we are $58,000 over the warrant article approved by the Town for $90,000. She said that, according to the MMA, the BOS does not really have legal authority to defy what the legislative body approves for warrant articles. She said that these are big numbers, not little numbers where, if we had seen something less than $5,000 to $10,000 come through on this, then perhaps we would say no problem; that this is $58,000 and it is clear, by these numbers, that it was over-expended, it was applied to other warrant articles, the PB being one of them. She said that, in addition, her other questions in her memo have not been responded to. She said that she is not saying that this is fraudulent behavior but irregular behavior; that it has gone, now, for over a month that she has asked these questions, specifically, and none of them have been addressed. She said that a lot of this had to do with the fact that we had a workable stormwater plan that we could afford and budgeted for then, suddenly, it came in at 3 times the estimate and that was because work proceeded to change the scope of the project without anyone coming to the Board. She reiterated that these are big issues and this does not answer…and coming from our auditor, she is very surprised at the attitude that has been taken with regard to this. She added that there are other instances of this type of behavior where money is allocated for a specific purpose and we're circumventing that purpose. She said that, in one of the memos, she mentioned that this department was shorted $75,000 for the year

and, yet, $48,000 is coming out to pay for this stormwater work. She added that she can understand that we pay these guys for year-round work and we take that and put that type of work towards a project; that that is understandable, but these are direct costs; that perhaps we need a workshop because this is not an adequate answer on any level.

8:02 PM Mr. Pomerleau said that we had agreed long ago that we were going to try do this in detail at a workshop and we were waiting for this piece of it to include; that he suggested we still do that. He added that he found himself a bit dissatisfied by the auditor's letter, especially his last paragraph; that, after all the auditor's explanations that there was nothing wrong, he's kind of alluding that we should prepare for a recommendation to the voters for an overdraft; that that didn't leave him in a comfortable spot, especially when he reads MMA's criteria that, if the voters don't approve an overdraft we are personally responsible. He said that he wants to get to the point where he's comfortable come toward the end of the fiscal year, as the budgets get closer and closer, that he isn't signing something he has to pay for. He added that there are some items in the memo that Ms. Davis put out to you, and itemized, that strike him as how in the world is that stormwater. He said that he thinks we need to explore this to Ms. Davis' satisfaction at a workshop so that we can be done with it, once and for all.

8:03 PM Mr. Murphy said that he would be willing to have a workshop on it.

Mr. Beckert asked if it was the intention of the Board to have the auditor there because all of this information – Ms. Davis' memos – were all sent to the auditor; that the auditor had everything in front of him that we have; that he agrees it needs to be put to bed, once and for all; that he didn't know how else to put it to bed.

8:04 PM Mr. Lee said that this amount to an internal investigation; that he has done what was asked, going to the only independent, professional person we know that could give an opinion. He said that he was sorry that it didn't meet the expectation that there was wrong-doing but he can tell you that it was his hope this evening that this would be the end of it, or, that you formally do a vote to have an internal investigation because this half internal investigation is inappropriate as can be.

Ms. Davis said that, to have this characterized as an investigation when, per the MMA, the BOS is financially, ultimately responsible for the activity in this Town.

Mr. Lee agreed; that it was the five of them.

Ms. Davis said that this was not an investigation; that this is a question of how our finances are being spent.

Mr. Lee said that the five of you (BOS) need to decide if you want to spend more resources, time, energy, and money, that aren't budgeted, on this topic.

8:05 PM Mr. Fernald said that he thought we've gone through the right process by asking our auditor to look at the information to find if there's any problems; that he doesn't know who else that we can ask that is more qualified to make these determinations. He added that he understands Selectman Davis' concerns but he's not sure what step we should take next to satisfy this; that he's not sure it will ever be satisfied in her eyes.

Mr. Murphy said that he wasn't entirely pleased with the auditor's letter; that the fourth paragraph from the end was sort of a hazy statement, "If during the annual audit of the Town for the year ending June 30, 2015 we feel it necessary to propose adjustments to these accounts, the Town may utilize its contingency reserve to cover any potential overdraft these adjustments might create.", as if there were still open questions in the auditor's mind about what is the real state because they haven't discovered it, yet, because they haven't done the audit for 2015. He added that he didn't think we'll know the answer until they have done the audit.

8:06 PM Mr. Lee said that that is further evidence that nobody tried to tamper with this auditor; that he wanted the auditor to operate independently; that, if we had a problem, he was more than happy to rectify it by putting in a warrant article; that including that language is not helpful to him in this letter. He added that we did not try to tamper with this or influence him; that this is the auditor's own objective opinion; that we got all the minutes, everything he asked for, and he went line by line and he issued this opinion; that he just doesn't know how much further we can go with this; that he is at a complete loss over this.

8:07 PM Mr. Pomerleau said to have a workshop, let Ms. Davis present her arguments, which we have not yet done, item for item; that we give consideration to her arguments and, then, we decide after the workshop if it is finished, or not. He added that he, like Mr. Murphy, read that paragraph and it didn't convince him that the auditor had done a thorough audit, at all; that he left the door wide open in saying, if we find we're wrong; that he didn't go into the depth Mr. Lee is trying to tell us he did.

8:08 PM Mr. Murphy said that it was clear to him that they have not completed the audit for 2015, asking why we were raising questions when we don't even have an audited report for the year in question. He added that he thought we should wait until they have done that audit and see what they discover, particularly since they have been sort of cued that there might be a question about certain expenditures; that surely they will look at them very carefully when they do that audit, which they have not yet done. He added that he didn't think we should do anything at

the present time; that it's too early for a workshop; that we should wait for a full audit and see what happens.

Ms. Davis said that we allocated $90,000, we spent $148,000; that no matter how you 'johnny appleseed' it around various warrant articles, she is surprised that anybody could not have a question about whether this is right or wrong.

8:09 PM Mr. Lee reiterated that we are in the process of doing the same thing this year, at your request.

Mr. Beckert said that, as Chair, he has a tendency to agree that, until the full audit is done of the 2015 expenditures, unless there are any 'smoking guns' that come out in the audit, we are jumping to conclusions. He added that all items that were expended were signed for by this Board in the warrant; that if you're questioning what you signed for after you signed for them then he questions what you review when you are doing the warrant.

Ms. Davis said that she checks every line item code, at the time, and sometimes we have 250 invoices; that when she added up the invoices for stormwater from Integrated Engineering, she was shocked that it amounted to $68,000. She added that this stuff comes in throughout the year; that when two of these were allocated to the PB, she had no idea, asking why they would go to the PB. She said that there is not enough time in a day to check all these line items.

8:10 PM Mr. Beckert said that that is why we have a formal audit done every year.

Mr. Lee agreed and, if they find stuff, they have to report it.

Mr. Pomerleau said that he still wants a workshop; that he is still not convinced, one way or the other. He added that he didn't see that, if we get the figures out there and discuss them intelligently, a workshop would do any harm. He said that, if we don't do that and we keep putting this off, when stormwater warrants come before him, you're going to be giving him hard core dollar amounts as to where those balances are because they are not going to become his liability.

8:11 PM Mr. Beckert asked the Board, as a whole, if they wanted to do a workshop now or wait until the full audit is done, and then have the workshop on the issues.

Ms. Davis said that she has a lot of the documentation on this and can show the Board the rationale and the data on this; that we don't need an audit to look at this information and decide whether this is appropriate, or not.

Mr. Pomerleau said that he would just as soon do it now.

Mr. Fernald said that he would like to wait until the auditor goes through everything; that he thinks the auditor is qualified to look at the financial aspects of the Town so let's see what he comes up with, first, before we make any decisions or have a workshop.

8:12 PM Mr. Murphy said that he wanted to see the auditors output; that he thinks the auditor can be cued that there are questions in this particular area and ask him to be very careful what he looks at and, then, report to us.

Mr. Beckert said that it was his opinion that we need to wait for all the information before we sit down and have a workshop. He added that right now Ms. Davis has figures but he wants to see the auditor's figures; that the auditor has her information.

Ms. Davis said that he has some of my information but he hasn't talked to her.

Mr. Beckert said that if Ms. Davis hasn't brought all the information forward, so that we all have it…

Ms. Davis said that all the invoices are there but it's easier to have the research presented to you.

8:13 PM Mr. Beckert said that the majority of the Board is of the opinion that we will wait until the full auditor's report is done and, then, we will proceed with a workshop.

Mr. Pomerleau asked if there was anything inappropriate with having the auditor sit down with Ms. Davis.

Mr. Beckert said that he thought there was.

Mr. Murphy agreed; that if he sits down with anyone, he sits down with the whole Board.

Mr. Pomerleau said that the whole Board doesn't have the depth of knowledge that Ms. Davis does.

Mr. Beckert said that this is a five-member Board; that this Board will decide how we proceed and, as individual Selectmen, we have a workshop coming up with the attorney that will remind everyone what their authorities and duties are and where they start and stop. He added that he really wanted this put to bed but he really wanted all the information in front of the Board before we do that, not just what Ms. Davis has presented; that he wants the auditor to review the entire ball of wax. Mr. Beckert asked for a motion.

8:14 PM Mr. Murphy moved, second by Mr. Fernald, that the Board of Selectmen put off the workshop until such time as a full audit report is done for up to the June 2015 expenditures.

VOTE
2-2 (Davis, Pomerleau)
Chair concurs in the affirmative and will wait until all information is in before we review and have a workshop.

8:15 PM **2) DEP Pump Station Report of 7/1/15 Corrected**

This is informational for the Board.

3) Discontinuance of Roadways Process

This is informational for the Board.

Mr. Lee, discussing Dixon Road, said that it would be better to tear up the pavement and maintain it as hard-pack gravel because of its condition.

8:16 PM Mr. Beckert said that he has looked at Dixon Road, looked at what could be done, he's had some discussion on it, and he doesn't see the need for the Town to discontinue the road; that the Town can choose to use the road differently and maintain the road differently. He added that he didn't like the thought of giving up the Town's ROW; that if the Town needs to pull up the pavement because the pavement is bad, then there's no sense in leaving it down. He said that we can maintain it as a dirt road and, in the winter, plow just beyond the Police Station driveway and come in the other way to just beyond the one resident on that road.

8:17 PM Mr. Lee said that it would be our intent, barring any concern from the Board, to tear up the existing pavement and, at least, make it better this winter when we try to maintain it. He added that he didn't have any firm commitment from the Board to discontinue it, anyway, but he did want to share information on how you go about discontinuing a road.

Mr. Murphy agreed that the Town should not give up the ROW; that there are other roads in Town that we have abandoned and he wished we had them back now. He added that this road is useful, as a road, using Eliot Festival Day as an example; that we don't have to have traffic through it and it doesn't have to be tarred; that if the pavement is broken up to the extent it needs to be removed and, for a while, just have a gravel surface, then that's fine by him. He said that it is one more useful place in Town and reiterated that he didn't think the Town should give up the ROW.

8:19 PM Mr. Beckert asked if there was consensus to maintain the Town's ROW but just use the road differently.

Mr. Pomerleau asked how this came before us and what was the reason behind it.

Mr. Lee said that the primary reason was to allow for the expansion of Hammond Park, to make it bigger; that you still need a roadway down to the little red barn and you still have the one house on the end.

Mr. Murphy was in favor of keeping the ROW.

8:20 PM Ms. Davis asked if it would be more cost-effective to budget for paving in the next budget; that pavement is always better than a gravel driveway.

Mr. Lee said that another thing was that, even if we were to do something to that road like paving it, you would want the old pavement out of there; that you cannot overlay this because it has 'alligator' cracking and would re-crack right up through the new pavement; that we would want to get down to a good road base before we did any paving on this, regardless.

Ms. Davis concurred that we should keep it and use it differently, potentially, or explore other avenues.

8:21 PM It was the **consensus of the Board** to maintain the Dixon Road ROW and use it differently.

Ms. Davis asked, regarding the ROW near the King's Highway Pump Station, if we are going to have an issue with this because it seemed it would fall under 'discontinued ROW'.

Mr. Lee said that he would have to check on that, as it was not on tonight's agenda, and he did not prepare for that question.

8:22 PM **4) Kittery Wastewater Projects Update**

This was informational for the Board.

G4. Public Safety

The items under this heading were postponed.

H. New Business:

There was no new business.

I. Old Business

8:23 PM **1) Personnel Policy Amendment – Benefit in Lieu Of**

Mr. Lee read the response from the staff to the Selectmen. The staff had no desire to meet with the Board, directly, and were willing to agree to $250/month to opt out, as are the terms for the Public Works Department.

Mr. Pomerleau said that, as he was looking at this, he was thinking that what we should be targeting is a broad-based policy that we shoot for across-the-board. He added that he didn't know if we could ever satisfy this issue of consistency because there are different unions and different contracts and everybody doesn't end up with the same benefits. He said that he thought our goal ought to be to attempt to do that, if we can, and come up with a policy for future negotiations, including staff. He added that he thought the position we offered them to pay their cost up to $250 is an extremely fair offer; that they could be fully insured at a cheaper cost than they could in any option that he worked out any other way. He said that he doesn't go by a flat amount without restrictions, without evidence, that it's going for insurance; that this is supposed to be a benefit provided, not a revenue source; that he would just about reject what they've said. He reiterated that if we are going to anything that we should attempt to approach this from an across-the-board policy for future negotiations to create consistency.

8:28 PM Ms. Davis said that the letter that was drafted by the Finance Director showing the contrast between one insurance policy and another - one for Eliot and one for spouse; that in this particular case the spouse was paying more than what Eliot is paying. She added that, fundamentally and philosophically, she believes that the Eliot Town employees pay their 15% and their 25% and, so, that is sort of the basis of our health insurance employee contribution; that if this employee is paying more than they would pay if they were taking their insurance here, then we would like to make that whole for that amount. She said that if we just give an across-the-board $250, what that does is, using the example she gave us, is applying $250 against the $468 (spouse cost) and bringing their employee contribution down to $218, which is not fair in comparison for the other employees for the Town of Eliot; that she thinks it opens us up to problems from that order down the road. She added that she does think we want to make it equitable for all employees, so, if they would want to tell us, annually, how much they're paying…

8:29 PM Mr. Lee said that they do not and will not, and they are all telling me that they will opt for the insurance. He added that he doesn't think this will be back in front of the Board, again; that he doesn't think they are going to make any other offers; that he thinks they're going to sign up for health insurance.

Ms. Davis said that, if we make them whole, she doesn't see what the issue is in a case like this.

8:30 PM Mr. Lee said that he's a little bit lost on this but he can tell the Board that he thinks that it is their position that, perhaps, the Board is being too rigid on this and they're not going to give out personal and financial information; that that's not required of others and they would just as soon take our medical package and just as happy to do that. He added that he doesn't have the $66,000 so we will be addressing overages on that warrant article, for sure.

Mr. Murphy said that he thought the $250/month was a reasonable thing to do for this group of employees but he's not an expert on this; that he wished he had a better feeling for all the factors involved. He added that to find a long-term, one-size-fits-all for negotiation, he doesn't see how that can possibly come about because there are too many groups heading in too many directions, with too many factors involved personally.

8:31 PM Mr. Fernald said that this is a very difficult situation; that he really did think that giving some people an amount of money across-the-board isn't the answer; that he believes they need to get what they are due but he agrees with Ms. Davis' approach.

Ms. Davis said that she would like to say that, if they would consider this that when we had previously offered an option of up to $250/month, she thinks that, in fairness, this offer would be that, if they are paying more for the spouse cost, then we would make this up to the total amount extra; that the $250 is not necessarily the limit, that we're just going to make them equal with all the other employees in the Town. She added that it is still open for discussion.

8:32 PM Mr. Beckert said that it sounds like we are at an impasse with these employees; that if they do opt to take the Town's insurance, we're on the hook for it.

J. Selectmen's Report:

8:33 PM **1) Committee Vacancy Report**

This is informational.

8:34 PM Ms. (Donna) Murphy asked if the open positions were being advertised at the school for students who are eighteen and over that might be interested in any of these positions.

Mr. Lee said that we haven't advertised at all, at this point, but we do have a student intern that works with us. He added that that was a good idea and should probably send it up there periodically.

Mr. Murphy said that intern members don't have to be eighteen and our current ordinance has them as legal members, as interns, but not voting members.

Ms. (Donna) Murphy said that we may have many students coming up on eighteen that may be interested in some of these positions.

Mr. Beckert said that we can certainly send it up to the school.

K. Other Business as needed

There was no other business.

L. Executive Session

There were no executive sessions.

M. Adjourn

There was a motion and second to adjourn the meeting at 8:37 PM.

VOTE
4-0
Chair concurs

_____ _____

DATE **Mr. John Murphy, Secretary**