

BOARD OF SELECTMEN'S MEETING
November 12, 2015 5:30PM

Quorum noted

A. 5:30 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)

5:32 PM Mr. Pomerleau suggested to the Board, moving forward, that we dispense with the reading of grammatical errors and deal with substantive issues, only, and allow any members who have grammar or spelling errors to simply turn them in to the clerk and approve minutes based on submitted clerical errors and deal with substantive errors so we can deal with minutes a lot faster.

Mr. Beckert asked for the feeling of the rest of the Board.

Mr. Fernald said that he would agree with that.

Ms. Davis asked if it would be possible, either for the secretary or one or two members of the Board to volunteer to read the minutes before they are handed out to the rest of the Board, correct the grammatical errors and, then, we would probably reduce that number by quite a bit.

Mr. Murphy said that he wasn't alone in this; that it depended on whether we wanted them correct, or not; that he would like to see them correct and not have any misunderstanding about what was actually meant to be said. He added that what Mr. Pomerleau just said just moves the decision to another level by other people - who do you want to decide - and he didn't think it took that much time, actually.

Mr. Pomerleau said that he was suggesting that, if you see something that would impact the meaning of it, by all means, bring it up but, if it's just a spelling error or a punctuation error that isn't going to change anything, then, just dispense with that and turn it in to Ms. Lemire to let her fix it.

Mr. Murphy asked how we would connect with our recording secretary.

Mr. Lee said that, if you mark up your minutes and submit them to him, then he would get them to the recording secretary so she could make grammatical corrections.

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Mr. Beckert clarified that that would be prior to the night of the regular meeting.

Mr. Murphy said that he just got through looking at these.

Mr. Pomerleau suggested that the night of the meeting, he might have ten grammatical corrections and could turn them in to Ms. Lemire; that here are a couple of substantive issues he wants to address; that we address them and go from there. He added that he wasn't terribly worried if there was a spelling error in the minutes.

Mr. Fernald said that he still thought we could correct the grammar and spelling; that it just needs to be turned over to the secretary and it doesn't influence the purpose of the sentence, or whatever, in the minutes.

Mr. Beckert said that he was hearing divided opinion on this; that he can't get consensus.

Ms. Davis said that, if Mr. Murphy could look them over, first, and work out any grammatical corrections with Ms. Lemire before the Board received them and, then, on the night we could just pick up any loose ends.

Mr. Murphy said that, sometimes, he doesn't have time to do that; that he has a full life outside this Board.

Mr. Beckert suggested we give it some thought between now and the next meeting; that tonight we will go through them, as we normally do; that we will take an action on it at the next meeting.

5:40 PM Motion by Mr. Fernald, seconded by Mr. Murphy, to approve the minutes of August 13, 2015, as amended.

VOTE
4-0
Chair concurs

Motion by Mr. Fernald, seconded by Mr. Murphy, to approve the minutes of August 27, 2015, as amended.

VOTE
4-0
Chair concurs

F. Public Comment:

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

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G1. Department Head/Committee Reports

5:46 PM 1) TIF Alternatives Report of Survey Findings

Mr. Lee said that the TIF Alternatives Committee recently met and we have been working on drafting some summary interpretations of the results for what would be most acceptable in the community and what would be least acceptable, according to the survey; that this survey is also going to be going into a request for proposals for a consultant that also takes a look at where Eliot fits in to the regional economy and what types of TIF projects would be most likely to succeed in an economic sort of way. He added that he wanted to thank the community; that we had an overwhelming turn-out – 949 surveys submitted; that we hoped to get around 600, so, we had a very high response rate and that was a big confidence level with a very small margin of error on our results. He said that, probably within a month, or so, we will have some interpretive comments for this, as well, to share with the Board.

Mr. Beckert clarified that the report in our packets tonight is strictly the results; the raw data.

Mr. Lee agreed.

Mr. Beckert asked how many we sent out.

Mr. Lee said approximately 3,200.

5:48 PM 2) Business Development Committee: New Applicant: Diane Schroeder

Mr. Beckert said that we have a new applicant, Diane Schroeder, and she is here; that you have her information in your packets and now is the time to ask her any questions you would like to ask her.

Mr. Fernald asked Ms. Schroeder why she selected Business Development.

Ms. Schroeder said that she was a new business owner and has lived in Eliot for close to thirty years; that she just wants to be part of the community and wants to see good things happen.

Mr. Lee said that he has had a chance to meet with her; that she has come in and talked with him a couple of times; that she seems to have some good ideas about marketing and seemed that she would be a great addition.

Mr. Beckert asked Mr. Murphy how many vacancies they had on that committee.

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Mr. Murphy said that there were two on the list for this month and this would wipe out one of those vacancies.

Mr. Lee added that he have some folks on there who haven't been showing up, too, so he wasn't sure it was as healthy as it could be on paper.

Mr. Murphy said that their meetings have been a little bit ragged this summer, with our Chairperson giving birth.

Mr. Beckert asked for the pleasure of the Board.

Mr. Fernald moved, second by Mr. Murphy, that the Board of Selectmen appoint Diane Schroeder to the Business Development Committee.

VOTE

4-0

Chair concurs

G2. Administrative Department

5:50 PM 1) Town Manager Activities Report

Ms. Davis said that this might be a good time to just ask how things are going at Marshwood Estates.

Mr. Lee said that there were no improvements, at all; that with regard to the water there are no improvements. He added that he thought that a plan had to be turned in, this month, by the owner and he believes the owner will be refinancing the mortgage on the whole property, which right now, does not allow the second mortgage; that the reason we are talking about a second mortgage is because the Clean Drinking Water program with the State is willing to make a loan to him to improve the water system; that the reason we are talking about a second mortgage is because his first mortgage doesn't allow a second mortgage to be placed upon it, so, he has to roll the whole mortgage in order to fold this new debt in on it; that he believes that is coming up this spring and, then, he'll get money to fix the water system at Marshwood Estates to some extent; that it's only a portion of it and only the pumping and controls portion of it, not the pipes, themselves. He said that the pipes in the Park are just barely underground and loose, and are occasionally being fixed, too, quite often; that this (remortgaging) doesn't help distribution but just that there will be a constant source of clean water and distribution might be still be an issue from time to time. He added that he doesn't think we'll see any resolution until spring.

Mr. Pomerleau said that Mr. Lee has a couple of entries in the report with regard to the Kittery Town Manager and the Police Chief; that he read a newspaper

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article that implied it was all done, all said; that he thought we clearly said we wanted to meet with the Kittery Town Council and discuss this, asking what was going on.

Mr. Lee said that we will be discussing it in G4. 1.

5:52 PM a. York County Advocacy Report – FYI

Mr. Lee said that the big thing is that the State has now set up a \$500,000 fund for targeting skilled workforce; that business owners can access some of that money and they will be offering those programs through the community college for such things as machinists and other jobs that we don't seem to have enough of a skilled workforce in. He added that it looks like there is going to be about a \$600,000 deficit at the York County Jail; that they have 3 or 4 other bills coming out that will further change the jail funding. He said that what they'd really like is to have the whole system returned to what it was before they consolidated it under the State, going back to where they had their own opportunity to make their own revenues by taking in prisoners and that sort of thing. He added that this jail consolidation has not worked well and actually made them in worse condition; that that means property taxes because that's how it's funded.

Mr. Beckert asked if that was a legislative initiative to change that.

Mr. Lee said yes; that we have been trying to advocate that they properly fund the jail so that we don't have to raise more money through property taxes.

Mr. Beckert asked that it would take an act of the legislature to overturn and put it back to where it was.

Mr. Lee said yes; and/or fund it properly.

5:54 PM b. Preliminary, Summary Draft 14/15 Audit (December Presentation)

Mr. Beckert said that this was a preliminary report of the audit and that there would be a presentation next month in December from the auditor.

Mr. Lee said that these pages, here, are probably the most critical; that they are the wrap-up pages and give you the whole picture as opposed to a fund-by-fund picture. He drew that Board's attention to Schedule 1, pointing out that our fund balance has increased by \$349,746 and now we are just over \$2,000,000, which is about where our target was according to the auditor, pointing out that most of that was in excise taxes. He added that we did increase the overlay this year to try to build it up a little bit and he thinks we can ease off on that now; that if we could stay right around the \$2,000,000 that would be great.

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Ms. Davis said that we had discussed a while back about replacing the contingency fund from the DPW budget, asking if Mr. Lee if he had heard anything about that and what decision the auditor had made about that.

Mr. Lee said that he believed the auditor was coming in for the first December meeting to present the whole audit and, at that point, we were going to discuss that issue and the stormwater issue. He added that one of the things, as he recalls, is since there is a concern and an issue in the law that says you can't swap between departments, etc., what he needs the auditor to give him an opinion on is, if there were money left over in that account, could we then transfer it back over to a contingency account or should it, under gross budgeting, drop through to fund balance. He added that the plan was to put it back into that (fund balance or contingency?) and he would think the auditor would let us do that; that he just needs to confirm that with the auditor.

5:56 PM 2) Elizabeth Donovan: Property Request

Ms. Donovan was not present for this agenda item.

Mr. Beckert asked if we should take this up or should she be here.

Mr. Lee said that he thought the Board could take care of it; that it depends on what you want to do with regard to the policy on it. He added that he contacted Ms. Donovan has been at 153 Moses Gerrish Farmer Road for nine years and we recently learned that we had a very small sliver of tax-foreclosed property; that part of her garage sits on this property and this property is owned by the Town. He said that it wouldn't make much sense to put it out to public sale because it's so narrow he didn't know that you could put the smallest mobile home on it; not to mention we've got a building sitting on it. He added that he went back and calculated the back taxes we should have taken in on this property from when it was foreclosed back in 2007; that the back taxes are only \$1,680. He said that she felt that nobody else would want the property, that she ought to rightfully have the property, and would still have some expenses after she got the property to clear the deed, clear the title, etc.; that she has offered to pay \$100 for the property and then commence paying taxes on it from that day, forward. He added that that wasn't really the way we would do things according to policy but this is a fairly unique circumstance. He also said that he mentioned to her that he didn't think she'd ever be able to sell her house under these circumstances; that she'd never get a clean title search.

5:58 PM Mr. Beckert said that he was surprised she was able to buy it. He added that, if the banks had done a title search then it seems as though they should have found it, so shame on the banks. He said that, in his opinion, if we sell tax-acquired property for the back taxes then he doesn't see that we make any changes in that policy. He

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added that he would like to get a piece of property for offering up \$100 to pay for it but that's not the way we do things. He said that the property doesn't encroach upon property, the buildings encroach upon property so he doesn't like the way the letter s worded.

Mr. Murphy asked how this sliver came into existence.

Mr. Lee said that he didn't know how we ever ended up with it except that we apparently do have it by tax foreclosure; that he would prefer it be combined with her property for her benefit and to get it off our untaxable property list.

6:00 PM

Mr. Pomerleau said that, in looking at the tax map, it's more than just a small piece of her garage sitting on it but more like half of it and given the potential complication she has, from a legal standpoint, he doesn't know why she wouldn't jump at the chance of picking this up for back taxes.

Mr. Lee said that he has explained it a couple of times and he's not getting far.

Mr. Pomerleau said that he thought that back taxes was more than fair and reasonable.

Mr. (Bill) Selsberg suggested that the Town might want to keep that property to be able to widen that road at some point.

The Board said no; that it would be too small.

Mr. Lee said that he thinks what he would do is make one more offer to her that we could direct-sale it to her or he does the public bid and put it out with a price of \$1,680 as a starting amount.

Mr. Fernald commented that that garage has been there a long, long time.

Ms. Davis concurred that our policy is to sell it for back taxes but she wondered if it could ever prove useful if we start to run sewer up this way, asking if it might be big enough for a station.

Mr. Fernald asked if Mr. Lee was saying that taxes were not paid on that barn.

Mr. Lee said that he thought she's been paying taxes on the buildings but not the land; that he thought this sliver was viewed as land only. He said that the piece of land is valued at \$10,000 so it was only paying \$160, a \$130, a year.

6:04 PM

Mr. Beckert said that he didn't know what the pleasure of the Board is but he would suggest we instruct the Town Manager to go back to Ms. Donovan and

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reiterate that the policy is that it be sold for back taxes and, if she wants to acquire it for back taxes, that's fine.

Mr. Lee said that the follow-up question is, if he puts it out for public bid, does he put a minimum bid price of \$1,680.

The Board said yes.

Mr. Murphy asked if she had funds that she could possibly buy this.

Mr. Lee said that he didn't want to discuss her personal finances.

Mr. Murphy said that that might be an issue.

Mr. Lee said that she was no more destitute than any of the Board members here.

Mr. Fernald asked how long she has known about this.

Mr. Lee said that just recently he notified her.

Mr. Fernald said that, okay, that's his point; that if we send out tax bills on these properties, they pay the tax bill and, now, all of a sudden we tell them that there is a piece of land the Town did not charge them for taxes for; that we then require them to come up with \$10,000 to appease the Town.

Mr. Beckert said it was \$1,680; that she didn't buy it when she bought her property.

Mr. Lee said that her building has been sitting on that property for years and years.

Mr. Beckert said that he thought there was a little more that needs to be looked at but, as with any piece of property that a municipality sells for back taxes, it is up to the person who purchases it to quiet the title; that we might have to go back and do the research or have their attorney do that; that we only sell it to them with a quitclaim deed.

6:06 PM

Mr. Fernald said that he understood but added that we are assuming that that person actually knew.

Mr. Beckert disagreed that we are assuming that; that we and they now know that there's a piece of property...

Mr. Fernald said that they now know but, in past years, they didn't know.

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6:08 PM Mr. Lee agreed, saying that that's her point; that had she known all those years ago, she would have paid her \$130/year in taxes and she wouldn't owe the Town \$1,680 all at once; that nobody notified her until a couple of months ago.

Mr. Pomerleau said that that property is not listed in her name so she never got a tax bill for it, asking who had title to it and where were the tax bills going.

Mr. Lee said that they weren't going anywhere; that it was held by the Town.

Mr. Pomerleau said that she never paid any taxes on it, as she was never obligated to; that now we've discovered there's a piece of land, there, that her building sits on that's not hers; that we are informing her that her building is sitting on Town-owned land and asking her if she would like to buy it for back taxes. He reiterated that she hasn't had to pay anything for something she didn't own; that she's never gotten a notice of any kind because it's not her property.

Mr. Murphy asked how the Town happened to own it.

Mr. Lee said that, when he got here, there were probably 14 to 17 parcels that we had owned for various lengths of time that were all just sitting there and we gradually cleared them all up; that he thought he'd gotten them all but this is a straggler that he didn't pick out. He added that, for some reason, he believes his predecessor thought that, until you take possession, we haven't really foreclosed and that's not true; that that's not how tax law works. He explained that it is a perfected security and, once foreclosure happens, you own that property; that you have to insure it and have liability for it.

6:10 PM Mr. Fernald said that she didn't even know that until this year; that her buildings are sitting on it so she is assuming that's her land.

Mr. Lee agreed, saying that she has believed that for many years.

Mr. Fernald said that, now, we are telling her it is not and she has to pay \$1,680.

Mr. Lee agreed.

Mr. Beckert, after settling the meeting, said that this is Town-acquired property, at some point, and the way we dispose of Town-acquired, tax-acquired, property is to sell it for back taxes. He added that that is the policy and we don't get to pick and choose.

6:11 PM Mr. Lee said that there was one caveat to this; that if you don't put a minimum bid on it, then, whoever bids the highest amount, gets the property; in which case she could roll her dice and bid \$100 and sees if she gets it.

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Mr. Beckert said that he would say the right thing to do for the Town is put it out to bid; that, if she doesn't want to pay the \$1,680, then put it out to bid for the \$1,680 for back taxes; that that follows the policy. He added that it doesn't matter where the property sits or who it is next to, they don't get to pick it up for \$100, they get to pick it up for back taxes, by policy. He said that it doesn't matter where it is or when they found out.

Mr. Fernald disagreed, saying that it does matter.

Ms. (Janice) Bakula asked if she could clarify something because she doesn't know if Mr. Fernald is quite getting what she is getting or, maybe, she is misunderstanding. She added that the property is valued at \$10,000 and Ms. Donovan has been using it tax-free; yes, unbeknownst to Ms. Donovan that it was not her property but she has been using it for 8 or 9 years, tax free; so the fact that she is being asked to pay a whopping \$1,680 in 2015 is chump-change, really, versus its value of \$10,000. She asked if she was right in what she is saying.

6:13 PM

Mr. Beckert said that her analogy was correct.

Mr. Murphy asked who owned the property before Ms. Donovan and could the unpaid taxes go back to them.

Mr. Lee said that whoever had it let it go to foreclosure; that we should have dealt with it back in 2007.

Mr. Selsberg said that there may be alternatives that we may not even know, at this point; that, for example, she could have had a survey done and we wouldn't be in this position, right now, she would know exactly what she was buying but there is a possibility that she purchased title insurance. He added that, if we would to give her some time, telling her we insist on the \$1,680 but would give her some time, 60 days or something; that she might, if she did have title insurance, contact the title company that's going to come up with the money, more than likely. He said that that would be fair to her and we aren't in a rush.

Ms. Bakula said that it seemed there should be some culpability by the bank and the title company.

Mr. Selsberg said that, if the Board insists on it, that might start the ball rolling in another direction.

Mr. Beckert said that that was a good question. He asked for the Board's pleasure.

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6:15 PM Mr. Pomerleau moved, second by Ms. Davis, that the Board of Selectmen instruct the Town Manager to put this property out to bid with a minimum of back taxes due of \$1,680, including all fees, following an offer to Ms. Donovan to purchase it first for that same amount and giving her 90 days to contact her title insurance company and to inform the Board of Selectmen what she wants to do.

VOTE

2-2 (Fernald, Murphy)

Chair concurs in the affirmative

6:18 PM **3) BOA Variance Discussion**

Mr. Lee said that, at the last meeting, there was some concern expressed by the Board of the decision that was rendered by the Board of Appeals (BOA) and the Board asked him to pull together some information regarding it, which he's provided. He added that he believed the Board also had a memorandum from Attorney Saucier that talks about the process for appeals decisions of the BOA from the BOS and, in that, it also talks about, in the last paragraph, related cases, in which the attorney discusses what Cumberland Farms would be doing if this goes back under appeal within the 45-day period. He said that we would have to decide no later than November 30th, as that is the appeal date deadline. He added that the Board does have standing if they want to challenge the variance in Superior Court. He said that, right now, there is a stay on Cumberland Farms' 80-B Appeal, which is a land use appeal; so, there would be two separate 80-B appeals that Cumberland Farms will pursue if this goes to Superior Court to overturn the variance.

Mr. Pomerleau said that he went through the entire file and he has been following this case on the video streaming of the hearings, and so forth; that, as far as he is concerned, on the merits of an appeal, absolutely. He added that he thought the question we need to resolve, from a fiscal standpoint, is the cost involved for an attorney to defend the Selectmen and the BOA and, probably, a second court case where they have a stay on the original appeal, which he figures they have no chance of winning. He said that he wasn't terribly concerned that we are going to lose anything but he thinks on the merits of it...he read one specific area of the variance ordinance regarding the criteria for the variance that goes as far as to say "*provided that such variance will not have the effect of nullification of the intent*". He said that that does nullify the condominium sign ordinance. He reiterated that it really boils down to how much it's going to cost; what's going to be gained, what's going to be lost and, undoubtedly, if we go forward and prevail in both areas, there will probably be a subsequent appeal by Cumberland Farms; that he would like to have a sit-down with our attorney to go over the merits of this and the potential costs to have a solid handle on what the eventual outcome will be for the Town financially; that he would certainly like to know that before we went forward. He said that on the merits of the case he is 100%; that he thinks our Code

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Enforcement Office did their job precisely with the ordinances; that Cumberland Farms is completely in violation of them and the criteria that was used is highly questionable in his view; that he thought we should stand behind our Code Enforcement Officer for a job that she did correctly.

6:22 PM Mr. Fernald said that one of the things that he thought the Selectmen need to do is...he's not going to support the Board of Selectmen going forward with this. He added that he understands what the Code Enforcement Officer (CEO) did and, rightly so; however, it went to the BOA, it went through the process that it was supposed to go through, and the BOA made their decision; that he thought this Board should respect the BOA's decision and not go forward. He added that, if someone else wants to take them on, for instance, some of the businesses that are actually in that area, then that's who should do this, but not the Board of Selectmen. He said that he wanted to point out that, if this does go to court, it is very possible that, and he has seen this in the past, the court sends it right back to the Board of Selectmen to make a decision. He said that that was going to complicate a lot of this situation, he believes.

6:23 PM Ms. Davis said that the two issues that stand out for her are that, one, the CEO works for the Town and that she needs someone to back her up in her decisions when she is enforcing our ordinances and there doesn't appear to be any wrongdoing or misinterpretation in here; secondly, although it's said that there is no precedence set by these decisions we would be hard-pressed, given the lack of substantiation for meeting the criteria for which this was passed, to deny another business within the condominium to have a sign of equal magnificence with Cumberland Farms. She added that one thing that completely nullifies the argument, for her, is the CEO's report when she gave her Notice of Decision that "*your proposed signage would exceed the maximum signage allowed for a single lot in the Commercial/Industrial Zone*"; so not only do they exceed the signage for condominium, they exceed it for what would be a single lot, as well. She said that there seems to be a strong reason for staying with this and, having said that, she doesn't know what all the rules may be but it would be nice if we could solve this some other way than having to appeal our own BOA, asking for some discussion on that possibility.

6:24 PM Mr. Lee said that he thought it was incumbent upon him to mention one other thing; that he has gone through this and he's had many people, including staff, come to him but, mostly, outside residents have come to him about the decision that was rendered by the BOA; that he was brought some minutes and some background and what's been taking place and expressed some concerns with the functioning of the BOA with regard to at least one of the members who does not seem to really care much for the four criteria and has openly expressed his desire to find ways around the criteria so that variances can be granted. He added that that's not really the intent to find ways around the four criteria; it is to follow the

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four criteria; that there are a few folks in the community that are pretty exasperated by that. He said that part of his job description is to raise the red flag when a committee may be functioning beyond, or outside, of its rules and he wanted to bring that to the Board because this could be the first of other decisions that we're going to be handed that we may not agree with if those criteria are not carefully followed. He added that he mentions that to the Board; that he doesn't want to name names; that he doesn't have first-hand knowledge of this but he thinks there is supporting material that would indicate that. He said that this was a very odd thing, too, that one person was made to step down due to a perceived conflict, it ended up being only three people voting; that another one had a conflict, another wasn't present, etc., so it ended up being a three-person vote on it, which wouldn't be normal, but that's how it ended up; that in an odd way it got through and he doesn't know that, if all had been seated, it ever would have gotten through. He said that he just wanted to bring that to the Board's attention in case the Board is concerned about any of the membership on the BOA.

6:26 PM Mr. Fernald said that we have a picture in our packets of Cumberland Farms; that he wanted to ask if this picture was part of the packet that Cumberland Farms presented of what its intent was, as a picture of Cumberland Farms with the sign.

Ms. Ross said that that was correct.

Mr. Fernald asked if that wasn't some indication of a red flag that they were going to have that sign.

Ms. Ross said that she doesn't know if that was part of the original Planning Board (PB) packet; that that may have been part of what came in when they were seeking the sign permits, which they didn't apply for until June.

6:28 PM Mr. (Charlie) Rankie said that he doesn't know what the Board was presented by the Town Manager in your packages, asking if the Board was presented with a copy of both the minutes of August 20 and October 15.

The Board said that they had the October 15 minutes but not the August 20 minutes.

Mr. Rankie said that, if you were to look at the August 20th BOA minutes, there is an administrative appeal from Cumberland Farms, which essentially mirrors, in his evaluation, the request for a variance, and you can read some very conflicting comments from one of the three members that were voting at the October 15th hearing. He added that he would also like to emphasize, once again, what our Town Manager just said; that there were only three people voting for the October 15th variance request; that, in his opinion, the ruling was very poor and the variance that was granted, very clearly, doesn't meet the four criterions; that

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there's a direct conflict with comments, if you look at the August 20th minutes of the BOA from an individual voting affirmatively for the variance to be granted. He said that, for the sake of transparency, he was not allowed to sit because there was a motion that he become a voting member and there was no second because there was a short-handed board. He said that he strongly recommended that the BOS appeal this decision.

6:31 PM Mr. Pomerleau said that he just reflected back, as he was with the Department of Labor for thirty years and we had an appeal process and an adjudication process bound by the Administrative Procedures Act; that with the first level of an adjudicated decision, any decision they had that was overturned on appeal, the adjudicator had a lawful right to appeal it as a policy. He added that we went over these things with our adjudicators and, if there was a question of hurt feelings or frustrations, at the next level, they just took different evidence in than was available at the first level. He said that we didn't allow a lot of these appeals to go forward; that when we thought there was a violation of the statute, we thought there was a violation of precedent in law, then we went forward and we appealed at that next level and allowed that adjudicator to go forward. He said that that is where he is today; that he thinks our CEO absolutely followed our ordinance, made no error, and this decision nullifies the intent of the ordinance for condominium signs, as a matter of principle and a matter of what the purpose of the ordinance is; that what we've wanted to prevent has now happened and he thinks it is important for the Town to proceed forward.

Mr. Rankie said that one thing he forgot to mention. He said that, when Mr. Fernald said that the courts often send these decisions back to the BOS, he thought what Mr. Fernald might have meant to say is that they send it back to the BOA to rehear the case; that he thought that was the process.

6:33 PM Mr. Fernald said that, for many years, the court, itself, will send it back to the BOS and tell them to solve it.

Mr. Lee said that, at times, he has seen the courts send it back to the board that made the decision and tell them, this time, to follow the criteria.

6:34 PM Attorney Guay, representing Cumberland Farms, apologized; that she got held up in traffic coming down from Augusta. She asked if the Board could re-cap, very quickly, where you are on this right now.

Mr. Beckert said that there has been a discussion, at this point, on the BOS' questioning as to whether they want to go forward with appealing the BOA' decision to grant the variance; that minutes will be available afterwards. He added that the Board has made no decision, yet; that there are members in favor of

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supporting the CEO's decision and don't feel that the BOA acted according to the ordinance but no decision has been made by the BOS at this point.

Ms. Guay asked if she could still offer any comments.

Mr. Beckert said that she could certainly offer comments.

6:35 PM

Ms. Guay said that we're talking about two different things; that there was an appeal of the CEO's decision and that was denied by the BOA and that's been appealed to the Superior Court; that on an agreement with the Town that has been stayed; that that's just being held there right now, presumably, while, after this variance had been granted, the sign permit was issued, and the appeal period ran; that Cumberland Farms had agreed, at that point, to dismiss that initial appeal. She said that the second item we went back to the BOA for, and that actually originated from the meeting with the Selectmen; that we had come before the BOS to talk about the possibility of a consent agreement (C. A.); that that was based on a letter she wrote requesting that, which was actually written at the suggestion of the Town's attorney. She added that we went before this Board and the Board, at that point, said we needed to go to the BOA to ask for a variance before they would consider discussing a C. A. She said that we went to the BOA asking for the variance; that the BOA did grant a variance; that they didn't grant everything Cumberland Farms was asking for, which were the permits that had been reviewed and, we believe, approved by the PB; that she knew Mr. Beckert was shaking his head and she understands; that, actually, Mr. Beckert is in a very interesting position because you are the Chair of both boards.

6:36 PM

Mr. Beckert agreed he was in an interesting position; that he will shake his head and make one comment; that the PB does not approve signage and it never has.

Ms. Guay said that she understood that we have a disagreement; that that's fine.

Mr. Beckert said that it's not a disagreement, it's just the way the ordinance is written; that signage approval is done by the CEO, only. He added that the PB approves location of signs on the property, period, and size is done by the CEO.

Ms. Guay said that, without getting into all these issues we raised on appeal, and it has to do with the fact that what your ordinance requires as part of a site plan review application and is a part of that review process, so there may be some confusion; however, that's the basis of the initial appeal, not the request for the variance. She said that the request for the variance says that we understand that there is a disagreement, we've appealed that, that's in court, and now we're coming and asking for a variance; that what the BOA granted was a very limited variance; that it didn't grant all of the signs that the PB reviewed, it granted two signs; that it granted the free-standing sign and it granted one sign on the building.

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She added that it was her understanding was that the BOA, at that time, felt that that was a fair resolution and that was appropriate based on the direction in the ordinance for limiting a variance to the smallest grant possible; that she thought the BOA did feel that was an appropriate limitation, based on what we were asking for. She said that she also just needs to say, for the record, that although the Selectmen, under the State statute, are named as a party when there is an appeal or a variance that's filed, on your ordinance and on case law, a party, in order to bring an appeal, needs to appear before the board that made the decision and raise their concerns to that board. She said that there was nobody from the Select Board there that night; that the only person who raised an objection that night was a BOA member who was asked to recuse himself by another BOA member, and he did recuse himself. She added that that member sat in the audience and did raise some objections; that other than that, there was one member of the public there and she basically just said that she hoped there could be a compromise, she used Cumberland Farms and liked Cumberland Farms and just hoped there could be a compromise. She said that those were the only public comments raised before the BOA when we were there for the variance; so, just to get all that on the record and make sure that the Board understands all of that. She added that we are still hoping to go forward to be able to put those two...Cumberland Farms is actually already gone forward and started removing the other signs that had been put up that they thought they had an approval for; so they are already moving forward with what the BOA had required – just those two signs. She said that Cumberland Farms is obviously still hoping that we can move forward with just those two signs and dismiss the appeal that's pending in court right now; that obviously, that's up to the Board, if they chose to do that.

6:39 PM Mr. Pomerleau said that we are not going to adjudicate that issue, here, tonight, going over issues and pros and cons or rehash the evidence or lack of it of the BOA; that he thought they should move forward and discuss this with our attorney as to the merits of it and proceeding forward with intent of appealing this decision.

Mr. Beckert asked if Mr. Pomerleau was saying that he wanted to meet with our attorney to discuss the merits of how advantageous of possibly moving forward with this would be.

Mr. Pomerleau agreed; that he has his own views of the erroneous application of the variance criteria but he would like to hear an attorney's view in terms of the merits of that consideration and proceed forward with some legal counsel. He added that some of the points the attorney brought up here, tonight, already conflict with the advice we've been given; that we have standing, we can move forward; that he thinks we need to proceed forward, conservatively, but proceed forward.

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6:40 PM Mr. Beckert asked what was the pleasure of the rest of the Board as far as meeting with the attorney to see what the merits are of this.

Mr. Murphy said that he is in favor of that; that he would also like copies of the August meeting Mr. Rankie referred to.

Mr. Fernald said that he had said his piece; that he is not in favor of going forward. He added that he thought the BOA had made a decision and we should stick to that.

Ms. Davis said that she thought we should move forward for the reasons stated previously.

Mr. Pomerleau moved, second by Mr. Murphy, that the Board of Selectmen move forward in consultation with the Town's attorney on the merits of proceeding forward with the intent of appealing this case against Cumberland Farms as set forth in the variance with the Board of Appeals.

VOTE

3-1 (Mr. Fernald)

Chair concurs in the affirmative

6:42 PM **4) TM Annual Evaluation/Contract Negotiation**

Mr. Lee said that this is the time of year that the Board would do an appraisal performance on him; that he has asked that the performance evaluations be completed by January 1st and sent, or dropped off, to the Chairman of the Board so that we can have an executive session on January 14th with the intention of discussing contract extension, as of June 30th, when his first contract will run out June 2016.

6:44 PM **5) BOS Workshop: Nov 19 at 5:30 PM – Purchasing Policy**

Mr. Lee said that, if we could get through the purchasing policy in short order, we might want to start talking about sewers; that he would put both down. He added that, if we could go in with any concerns about the purchasing policy, we could probably scoot through it pretty quickly; that he knows it primarily gets down to at what level do the department head, the Town Manager, and the Selectmen operate and make purchasing decisions; which ones go to formal bid, and so forth; that that's really what we've got to nail down.

Ms. Davis asked if Mr. Lee could just email out the latest version.

Mr. Lee asked if she just wanted the purchasing policy.

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6:45 PM Ms. Davis asked if we finished the financial policies.

Mr. Lee said that we did.

Ms. Davis asked if we voted on that.

Mr. Lee said no; that what we've got is everything wrapped up except for one remaining policy within those overall comprehensive financial policies, the purchasing policy; that he could send them the whole thing, again, if you like.

Ms. Davis said that she thought we made some changes to financial policies and she doesn't remember seeing the revisions to that.

Mr. Lee said that we have.

Mr. Beckert suggested we get the purchasing policy nailed down and, then, once he has that, he can codify the whole thing; that, then, we'll get, hopefully, one final version to go over for the whole, entire financial package.

6:46 PM Ms. Davis said that one thing she would like for future consideration on our workshops is the emergency plan; that a while back she read the paperwork that was handed out and it's really interesting but she feels like we just don't have a clear picture in one place of exactly what we all need to be doing in the event of an emergency, and different types of emergencies.

Mr. Lee said that there actually is going to be a table-top exercise in December that's being conducted over here at our Fire Station that he's been invited to participate in. He added that he spoke with the Fire Chief, recently, and he and one of the EMA folks are finally going to get around to getting out a 2-3 page handout for people on where to go, what to bring, what to do with pets, who to call, etc.; that they actually have a big one that's many, many pages but he wanted something that is a simplified, quick reference. He said that they are going to take the big one they already have and whittle that down to be reader-friendly. He added that he did put the emergency plan on his agenda list to talk about.

6) Election Results

This is informational.

G3. Public Works

6:48 PM 1) Sewer Pumps Bond Failure: Next Steps

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Mr. Lee said that the sewer bond question, which had asked for 100% funding of the bond through sewer users, failed 690 to 643, with 25 blanks, a relatively close vote. He added that he thought a number of the people here tonight are here because they want to know what the next steps are with sewer. He said that he didn't think we had any particular plan, necessarily; that he did put in some stuff that Mr. Pomerleau had suggested about how we go forward, and so forth, but we still need to get some sort of legislative approval from the voters on what we're going to be doing. He added that this really is a policy discussion for the Board, at this point. He added that we've tried 45% taxpayer/55% sewer users and that was defeated; that we've now tried 100% sewer users/0% taxpayers and that was defeated.

Mr. Pomerleau said that he thought this was a good subject for a workshop; that we need to get into detail, welcome open ideas, and we've got to find a solution; that we simply have to find something, we can't just keep going forward like this as we eventually run into a catastrophic event, here, and it's going to be nothing but cost for anybody involved. He reiterated that he thinks we need to get into depth of this at a workshop and discuss some of our next steps forward.

Mr. Lee said that, speaking of meetings, the next meeting for us is supposed to be on Thanksgiving and you said you were not sharing Thanksgiving with us.

Mr. Beckert said no.

Mr. Lee said that he thought everybody concurred with Mr. Beckert. He added that this building would be closed on that day; that as he was looking through the calendar, that November 19th for the workshop probably is about the only other time in November that we're going to be able to meet. He said that he was thinking that we would go to the first; that this one is a pretty stacked agenda as he tried to get a lot in this one so that we could go to the December one, if necessary, and bypass the Thanksgiving one. He added that, if that is the case, they might want to race through that purchasing policy and get into the sewer issue.

Mr. Beckert agreed to put that on the November 19th workshop agenda.

6:51 PM Ms. Saurman clarified that, at a workshop, the public gets to speak.

Mr. Beckert agreed they did.

Mr. (Charles) Bradstreet said that you said 'catastrophic event' and asked if he could explain to the users what is anticipated and why.

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Mr. Pomerleau said that he would defer that to the Public Works Director where he gets his information from.

Mr. Moulton said that a catastrophic failure might be if a pump station fails and you have an illicit discharge into the river and, then, you are subject to fines, maintenance to fix and maintain, and cost to repair; \$100,000's just for repair is estimated never mind the cost of keeping the system running while the repairs are being made.

6:52 PM Mr. Bradstreet asked what the reason would be for this catastrophic event.

Mr. Moulton said failing mechanical systems – the pumps, the panels, everything; that it's outdated, it's worn, it's beyond its useful life.

Mr. Bradstreet asked if the worst one we have is on Main Street.

Mr. Moulton said yes, Pump Station #2.

Mr. Bradstreet commented that those pumps are 10 years old.

Mr. Moulton said no, they are 30 years old.

Mr. Bradstreet disagreed, reiterating that they were 10 years old.

Mr. Moulton reiterated that they are 30 years old.

Mr. Beckert said that we are not going to get into semantics of how old somebody thinks the pumps are.

Mr. Bradstreet said that he has proof right here if you would like to look at it.

Mr. Beckert asked that the proof be forwarded to us so that we can see the proof instead of blind-siding us.

Mr. Bradstreet disagreed that he was blind-siding anyone; that he has been telling you people and he's been called a liar that these pumps are not 10 years old; that he found the proof. He asked if he could ask Mr. Dupuis what type of pumps were in this well station #2.

6:53 PM Mr. Dupuis said that they were Gorman Rupp.

Mr. Bradstreet asked Mr. Dupuis if he knew what the originals were.

Mr. Dupuis said that he did not.

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6:54 PM Mr. Bradstreet asked if he would like a copy from SEA Consultants; that they were Fairbanks Morse; that that's the manual that came with the pumps. He said that, in the BOS minutes of November 10th, 2005, the motion by Gove and second by Kibbatt approved the expenditures to replace the pumps for approximately \$18,000 by a 4-0 vote; so, they are 10 years old.

Mr. Murphy asked if that vote was followed up and implemented.

Mr. Bradstreet said that as far as he knew it was; that according to Fairbanks Morse that was originally installed from SEA Consultants, their handbooks, maintenance schedules, fees; that that's the whole thing. He added that now he tells us it is Gorman Rupp; that they don't magically change in the middle of the night. He said original equipment, and the reason why it stuck in his craw was, when we put those new pumps in Pump Station #1 (PS#1), you have the Gorman Rupp pump in that, asking if that was correct; that you have four pumps now that are the same for parts, replacement parts, and whatever.

Mr. Dupuis said that that was not true; that they are the same brand name.

Mr. Bradstreet agreed they were the same brand name, and there's a reason they went with that.

Mr. Dupuis said that he was not involved with that.

Mr. Bradstreet agreed; that he was telling Mr. Dupuis, just as an informational thing, that the reasoning back in 2005 is that they wanted to keep the same parts on the shelf; so, it was changed out, they are 10 years old, and the company is still in business; that he went on the web site 15 minutes before he came here and he got three hits – parts, replacements – the original company has been in business for 80 years. He said that he doesn't understand this thing about why this catastrophic event is going to take place; that proper maintenance has been on these things, these parts are replaceable, asking why this Town is insisting on going \$1.5 million to build a whole new system when they can be repaired, and you keep on insisting on putting it on the backs of the sewer users. He added that he isn't pointing at Mr. Dupuis; that he is saying this whole Town.

6:56 PM Mr. Pomerleau said that we have been relying, now, for a couple of years on the advice of Underwood Engineers, our Sewer Committee Chairman, and the DPW Director on the status of these pumps and he welcomes any factual information contrary to what we've heard; allow him to bring that forward; allow them time to examine it; be prepared to respond to us when we do our workshop so that we can move forward, either give it credence, dismiss it, or whatever the value of whatever these documents are; that he more than welcomes it but let's do it at a workshop and give people some time to prepare.

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6:57 PM Mr. Bradstreet said that we have people who sat on the Sewer Committee in 2005 and some of the BOS, he believes; that he hasn't investigated the names but these people knew that this took place and none came forward; that he had to do the legwork to find it. He added that there are 624 households down there that are disappointed in this BOS and the Sewer Committee, or anybody else that was involved, that didn't take the time to find it. He asked if they wanted a solution on how to fix it; that he could give them that, too.

Mr. Beckert said that we will expect Mr. Bradstreet to share his information with us.

Mr. Bradstreet said that he would, as he did before, but there were certain people that say that the little factual sheets that got circulated in South Eliot were unfactual.

Mr. Beckert said let's see the information, give it to everybody so that we've got it to digest; that what was done in 2005, was done in 2005. He added that he didn't remember what he did in 1992 but, it seems as though, with some of Mr. Bradstreet's comments, everybody should remember exactly what went on in 1992.

Mr. Bradstreet said particularly when it's in the sewer system.

Mr. Beckert said that Mr. Bradstreet has been an advocate for that sewer system for years and he has sat and talked with Mr. Bradstreet and his father-in-law about that sewer system; that he understands Mr. Bradstreet's frustration but we all need the information in front of us so we can digest it; that if you have presented it before, so be it, but, please, present it again so that everybody has it and everybody can look at it and respond to it.

6:59 PM Ms. Saurman said that she was at the Sewer Committee Meeting the other night and suggested that, perhaps, and maybe this would work out for your workshop, that an accurate history of this Town's sewer, with all of this kind of information be provided for us, so that we can find out exactly when things were replaced; that it's very confusing, if you are a sewer user, to hear all the different stories that people are telling you about our sewer. She added that the other thing that she would suggest, when you folks have your workshop, is that it seems to her that there are three words, as far as the statutes as she is reading them (and she is very new at this) is 'repair', 'maintenance', and 'upgrade'; that that is what has been confusing for a lot of us sewer users. She said that, if you are asking us to fix something that is broken, we get that that's what we're supposed to do; that if you want to maintain and upgrade, at least the statutes that she has read, those two words are always connected to municipalities; that that's where the confusion is; to ask us to 'maintain' and 'upgrade' is quite different to ask us to pay for that

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than to simply pay for 'repairs', which we get. She added that she wasn't sure what it is that you folks want us to pay for; that she would like to be real clear on whether she is being asked to pay for something that is broken or whether it's the Town's responsibility to pay to maintain and upgrade their own equipment.

7:00 PM Mr. Lee said that he agrees with her about those three words, but, one of the things that make it difficult is that codes change over time – access codes, safety codes, confined spaces, electrical codes, etc. He added that there is no disputing that we have had breeches in that sewer; that it has broken and we have had discharges; that thus far it has not been significant; that there's no disputing that; that we've had four, or so, just in this year but, part of what needs to be done, too, is that it needs to be brought up to current standards. He asked what is that, is it that a repair, is that maintenance, is that an upgrade, and maybe that's upgrade; so, it's more than just the pump; that there is a pump; that there is also a 30-year-old electrical panel that was designed when people didn't care if you got in confined spaces, and so forth, quite as much. He added that it's got a lot of other issues that need to be repaired other than just the pump.

7:02 PM Ms. Saurman said that 'repair' is when something breaks, you fix it; 'maintenance' is somebody is supposed to be paying attention to when codes change and whether we're meeting them, or not. She added that, as she has tried to express to every person she has met with, she never thought it was up to her that, every time she flushed her toilet, she should have been checking the Town to find out if you guys were keeping the 'upgrades' and the 'maintenance'; that she assumed, and she gets it that she was assuming incorrectly as she looks at her bills and the talk of higher bills, that somebody in her Town Hall was taking care of the business of the sewer because it was a Town sewer. She reiterated that she thinks it's something that's really easy; 'repair' is something that breaks; 'upgrades', 'maintaining', codes that change; that she thinks it's real clear the difference between those three words – 'repair', 'maintain', and 'upgrade'.

7:03 PM Mr. (Everett) Hall, 368 Main Street, said that he thinks we've been blindsided too much by our Selectmen and they're not keeping us informed properly. He added that we don't see the right things in the paper; it goes one way, goes back the other way. He said that he pays more for his sewer than he does for his taxes; that he has a little apartment house and he paid more for sewer than his tax bill is; that that's not right.

Mr. Bradstreet said to Ms. Davis that he knew she had worked her numbers, and stuff like that, but he was told that the assessed value is \$17 million for that sewer system times the \$14; that if you do a little calculation as to what South Eliot contributes in the way of taxes because of that sewer, and now...

Mr. Beckert said that Mr. Murphy already did that.

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Mr. Bradstreet said that these are things that need to be out because in the municipality, the "Maine Revised Statute §3403 Proper maintenance drains required" to public sewer is: construction the person paid to connect with it and municipalities shall maintain and keep it repaired. He added that he's got pages upon pages where the M.S.R.A. tells us that the municipality is responsible for the repair and upgrading of the system. He said that he understood that you people need to separate the thing between ownership, which you three right across the Board told him that, yes, Eliot owns it; that the first vote that came across to ram it down our throats for 100%, five across the Board. He asked what was going on.

7:04 PM Mr. Beckert said that, from his perspective, we tried everything else.

Mr. Bradstreet said that, in actuality, the Board didn't know what to do.

Mr. Beckert said that we did know what to do; that we put it out there scientifically the first time around and nobody got out voting for it.

Mr. Bradstreet said that that was because scientifically was not correct; that, again, that's a point of argument that got voted down again.

7:05 PM Mr. Beckert said to let the Board take our information, go to our workshop and take a look at it; that if Mr. Bradstreet has new information, or old information that's been brought to light, we'll look at it and see where we go. He added this last thing, this 100% thing; that he would tell Mr. Bradstreet right now that he swallowed hard before he supported putting that on the ballot.

Mr. Bradstreet said that he was sorry; that, in his personal opinion, you lost a lot of respect of 641 households down there.

Mr. Beckert said that 641 households should have gotten out the first time and voted.

Mr. Bradstreet said that they did; that they voted it down, the 55%/45% split.

Mr. Beckert clarified that that wasn't the first time but he would not even go into that discussion. He added that we can't go back and revisit everything.

Mr. Bradstreet acknowledged that they couldn't; that that's history; so move forward and take the responsibility.

Mr. Beckert acknowledged Mr. Lee.

7:06 PM Mr. Lee said that we have a public hearing that is supposed to start at 7:00 PM; that he would also point out we have two folks here, Janice Bakula and Ron

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Garment and they are both looking for some quick answers, he thinks. He added that he didn't know if Mr. Bradstreet had a couple of extra minutes but they have been waiting patiently for their quick answers and, then, we could do the public hearing. He asked if we have already decided that this (sewer) can go to workshop and any information is welcome.

Mr. Beckert agreed.

Ms. Davis said that there have been a lot of meetings with Underwood Engineering present so, that when you say that the BOS did not consider this decision carefully, that's inaccurate; that we've had Mr. Keith Pratt in here several times explaining what needs to be done and she's read multiple reports from Underwood Engineering. She added that the only way Mr. Bradstreet can say that this is inaccurate is if he are trying to imply that what Underwood has told us is false information.

7:07 PM Mr. Bradstreet asked the Board what they asked Underwood Engineering to do.

Ms. Davis said that we have always just wanted them to give us the minimum that needs to be done to fix this and to bring it up to code; that it's been a two-pronged thing where we've had to consider the age of the equipment and, then, bringing some of the safety issues up. She added that Mr. Dupuis has been in here on multiple occasions specifying his concerns for his own health concerns and potential mortality when he goes down into these pits. She said that the last time Mr. Pratt was here from Underwood one of the things that swung her decision on that was that he said that Portsmouth has below-grade pump stations and they also need to bring these up to code; that they are spending, on their pump stations, the same amount that these are going to cost. She said that, unless you're going to say that Underwood is completely falsifying the information they've been giving us for months, now.

Mr. Bradstreet said that what he was saying was that, for less than \$150,000, you could probably bring that back up to code; a very simple fix.

Ms. Davis asked if she could continue.

Mr. Beckert said that he didn't want to get into a big debate, back-and-forth, on semantics and what it's going to cost.

Mr. Bradstreet said that, if his information is correct, part of the problem is the suction line.

Mr. Dupuis said that that is a very small part of the problem.

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7:08 PM Mr. Bradstreet said that you're working one pump and they need to be primed when they're going through second stage, or emergency situation, on the suction side.

Mr. Dupuis said that the design is for two lines and we only have one suction line off there.

Mr. Beckert said that we are getting into too much of the details of this thing; that he wants to pull this back; that we'll discuss this stuff at the workshop because we are not going to solve it tonight; that this has been an ongoing problem; that people feel we've bounced back and forth on the issue. He said we'll sit down at a workshop, discuss what we've got for information and try to come up with a clear path to move forward; that we may not all agree so let's agree to disagree.

Mr. Bradstreet said that sewer is good but the idea of expansion and upgrading, as a whole Town, if you want to do that, he'd go with it; that he's 100% behind it and, the more people on this, the better off it's going to be. He added that the problem being is getting those 641 households down there and separating them; that we've been paying dearly for years; water infiltrations; that whole system when we bought into this thing was lousy; that we've been nothing but paying and paying and paying. He said that the Town, he understands, kicked in some by M.R.S.A. statutes; that 50% of that bond was supposed to be paid for by the Town; that there was a lot of squawking; that the Town says they don't own it, they do; that everybody owns and we just rent it.

Mr. Beckert said let's see how we can sit down and come up with a clear path forward that, hopefully, will be palatable to the multitudes within this Town.

7:11 PM Mr. Dupuis said that their next Sewer meeting is on November 18th at 4:15 PM here at the Town Hall; that we have three vacancy openings on the committee and we've been trying to get sewer users on the committee. He added that, if you welcome that opportunity, paperwork can be picked up at the office, and we welcome people to come forward. He said that he wished we had this type of output with the very first public meeting we had.

Ms. Davis asked if we needed to have Keith Pratt attend this workshop so that he can answer the technical questions.

Mr. Beckert asked Mr. Lee if he felt Mr. Pratt needed to be at the workshop.

Mr. Lee said yes, that he absolutely thought that we do.

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7:13 PM 2) Citizen Request: Pleasant Street Stormwater Request

Mr. Lee said that the Board has a nice letter from Ms. Bakula explaining the issues they have with the work that was done down there. He said that they met on-site, and some of what she was referring to was very understandable; that Mr. Moulton wrote a memo providing options to resolve the issues regarding the rip-rap and the boat launch. He added that one of the things they find distasteful is the erosion stone (rip-rap) does not look like grass; that it's rocks and it doesn't look good to them; so, for between \$1,500 and \$2,000 we could improve the appearance of that pretty significantly and they wouldn't just be looking at erosion control stone. He said that the second one is probably a great idea, too, and that is that, right now, that cement ramp goes down just to a point where, if you back down there with a motorized water craft, you're going to get stuck. He added that it goes down and, then, it doesn't go into the water and you couldn't safely launch there, really; that you're bound to get stuck; that if it encourages people down there, there's no place to park; that there is no parking for anybody launching any kind of a vehicle unless they do it illegally or on her lawn or some neighbor's lawn. He added that that's another \$1,200 to \$1,500; so, for somewhere in the \$2,700 to \$3,500 range, we could probably make those folks in that neighborhood a little happier with its appearance and functionality.

7:18 PM Ms. Bakula said that she and Mr. Lee have met to talk about this; that the original map that we had been provided by the Town didn't clarify that they were going to excise so much, or any, of our property; that it didn't indicate that they were going to put a drain on that side, necessitating removing that much of the property; that that's a moot point right now. She added that, in the two weeks since she and Mr. Lee met, we've had three instances of people coming down there to pull boats out. She said that, with one of them, and she has numerous photographs, a car parked, the driver exited the vehicle, another parked on the corner in the middle of the road, and they got out to help the other person to pull a boat out. She said that it was an out-of-state because, when she went out to take pictures, there was no license plate on the front of the truck; that she didn't walk around back because it was Saturday morning and she hadn't gotten dressed yet; so, she can only assume that it was probably a Massachusetts vehicle. She added that they have already found the fact that they can attempt to pull their boat out, which she wouldn't do. She added that, in the twenty years they have owned the property, we've seen numerous people attempt to pull their vehicles out of there; that a mile down the road we've got a perfect location that's been groomed very nicely that people can take in and take out regardless of the tide for a very minimal cost. She said that she has no qualms at all about people walking down there, that we walk down there, ourselves; that her daughter comes to visit with her dog and her dog loves to swim; that we would walk down the crumbling asphalt down to the edge of our property and let the dog swim; that people do that all the time and she has no problem with that, whether they're walking on our

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property or the Town access. She reiterated that the biggest problem is that people park; that we used to put No Parking signs up on our side right off of this ramp; that they would tear them down, drive over them, they'd park there. She said that she knew they say to call the police department to have them come down and ticket them but, truthfully, she thinks the police department would get tired of hearing from her. She added that she understands what you are saying; that it's their job, and she doesn't refute that, but she truly thinks that they'd say that it's Janice Bakula, again, and she's calling, she's got more people parking, etc. She said that she's trying to negate that; that she's also trying to like the way her waterfront looks again. She said that, when they first started carving out the property, she just assumed, and we all know where we go with assume, that they were going to do their job and restore our property the way it was; that she then came home one day and they had this rip-rap there; that, to her, it looks awful and she has to look at that every day; that, then, two days after it was completed, she got her tax bill; that she got a tax increase and she gets to look at the fact that they've carved out a section of her property. She added that she is trying to look at this from both perspectives – me, as a property owner, and the Town, as well. She said that that's why she wrote the letter that she did, offering options. She added that she's not demanding anything; that she thought you can ascertain that from her letter but she is asking that we meet somewhere in between to not let people load and unload their boats there when Dead Duck is a mile away for \$6 or \$8; but to allow people to go down there and utilize it for the waterfront it is. She said that, with her waterfront property, she is very limited, as it is, as to what she can do because, as you are well aware, that pendulum for use goes from 'here' to 'here'; that you're able to use it for whatever you want over 'here' and, then, the Corps, or whoever says, no, you can't do anything. She added that, according to the Army Corps of Engineers this year or last year, she can't even put a pop-up screen house down there but people have no problem parking in the middle of the road. She reiterated that we have had three instances in two weeks; that with one of them she very actively took lots of photographs.

7:23 PM Mr. Fernald asked Mr. Moulton where the money would come from.

Mr. Moulton said that it would probably come from the savings we had from doing portions of the project with Town forces, reminding the Board that when the original proposal was before the Board he was asked to do a certain portion of the work with Town forces to try to save some money, which we did. He added that there is a savings in the project and that's where the money would have to come from, which would be the Stormwater budget.

7:24 PM Ms. Bakula said she and Mr. Moulton talked about this, as well, because he was there when she and Mr. Lee met at her house; that we had talked about a handrail down the middle; that, ideally in her case, she would like to see it cut in half but she realizes that's probably a little more than you want to do. She added

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that Mr. Moulton had not mentioned anything at the top, which she thought was a great idea followed with a handrail; that the reason she said a handrail is because Mr. Lee walked down the ramp and onto that pea stone and it was a little treacherous.

Mr. Lee said that he didn't find the pea stone treacherous; that he found the ramp to be a little slippery, to be honest.

Ms. Bakula said that she thought that what Mr. Moulton is suggesting of, instead of a couple of stanchions at the top, just one at the top and, then, a handrail drilled and concreted in place so that people who are walking down there, if the purpose is to allow the public access to the waterfront, are kept safe as they walk down. She added that the Board knows as well as she does that the way the public is sue-crazy and the way the tort laws are, if somebody slips and falls going down that public access, that they're not going to be so amendable.

7:25 PM

Mr. Pomerleau said that he would like to ask Mr. Moulton to back up, here, to the 'public access' feature of this; that he is presuming that it is public access by virtue of State law that says there has to be free public access to any waterway and that happens to be one such designated public access, asking if that was correct.

Mr. Moulton said yes.

Mr. Pomerleau said that public access means the public has to be able to use it. He added that what bothers him, here, is that we spent all that money to make that public access more accessible; that now we're getting a proposal that we stop access to it for boat-launching. He said that he was opposed to shutting off public access and he doesn't know if, legally, we can; that if it's a State requirement that there has to be public access, and then it has to be public access. He said that the appearance thing he guessed he would have to see it to truly appreciate the ugliness of it but the question is if that is standard use and why did you use that stuff, to start with, rather than the solution you have.

Mr. Moulton said that it's a two-fold thing regarding the erosion stone; that, one, we worked within the limits of the Town's ROW; that what happened when we excavated, we put in a swale and there's some drainage in there, and such; that we fixed the boat ramp, which was deteriorated asphalt, and the access was actually worse than what it is now. He added that the engineers' design was to put in erosion stone versus seed and loam; that seed and loam isn't really practical; that there would have had to be at least a minimum of erosion stone for it. He said that the best solution for the stabilization of an embankment, with flow coming off the road and down along the boat ramp, was the erosion stone. He said that the alternative thing to go over the top of it was the seed and loam; that it wouldn't be

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grass all the time because there is invasive bamboo down there and will eventually take over, at some point, no matter what you do to it. He added that the erosion stone helps to deter it as it has fabric underneath; that the erosion stone is more of a stabilizing factor that controls erosion versus trying to get vegetation to grow and stay. He explained that there was a section of their property that, when the excavation was done, sloughed in, so the contractor didn't necessarily go out and take the land; that what happened was that, when the excavation was performed, the embankment, because it was so steep, sloughed in; that when they built it back up they put erosion stone back in as we all suggested and agreed to, himself and the engineer, to stabilize the embankment; that it was our opinion that it was a better fit and would stabilize and last longer. He said that it is roughly a two- to three-foot wide strip of their property that was affected and the rest of it is within the Town's ROW and there are markers out there for the limits of the property.

7:30 PM Mr. Lentz said that he thought they had a bigger potential problem with that access; that if you're turning off of Main Street onto Pleasant Street heading west toward the river, there used to be a bunch of old bamboo growing up over that access; that you have no clue that that road doesn't go straight ahead into the river. He added that, if you're not familiar and know that you have to make a sharp left turn, bye. He said that he thought they should take a look at that.

Mr. Moulton said that that's why we put chevrons on the corners, to delineate the radius of the road; that he installed those chevrons, along with No Parking signs, because we did open it up a bit more and wanted to make sure of safety for the travelling public.

7:31 PM Mr. (Steve) Bakula said that he spent, and he hates doing it, several times a year getting out there and hacking down that bamboo. He added that he tries to keep the view clear for people to look and see; that he was told that no one could touch a blade of grass down there according to the feds. He said that the big issue is that people take their canoes and kayaks down there but he would like to see the Town prevent boat-trailers from going in and out of there.

Ms. Bakula said that they've mentioned the term 'public accesses several times, asking if they could define 'public accesses.

Mr. Pomerleau said that he doesn't know if it was intended to incorporate boat access, he assumed so.

7:32 PM Mr. Beckert said that that was one of the 'public landings', the ancient public landings in Eliot that go back to the 1800's and, maybe, even before that and before Dead Duck. He added that there are several Town landings – Pleasant Street, Sturgeon Creek, Grover Avenue, Park Street, Woodbine, and River Road.

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Ms. Bakula said that she would love to do a census of all the neighbors surrounding those particular ones and find out how many people are actually utilizing them as this one is.

Mr. Beckert said that his point is that they are the Town's ROW's, the public's ROW's, through the Town to the river.

Ms. Bakula said that she understood that. She said that now, again, and please let her finish this time because she did let Mr. Pomerleau finish, she's asked if you can define 'public access'; that we aren't saying that the public should not have access; that what we are saying in our argument is that the way the people come down there, they block the road, park in the road, endanger the general population because of the way that they do it; that they are too cheap to drive a mile down the road to spend \$6 or \$8 but they can afford a boat. She reiterated that they aren't saying to not use it for public access but public access can be defined in many ways; that foot traffic – canoe, kayak, dogs, whatever – that's public access, as well.

7:33 PM

Mr. Lee said that the question before the Board tonight is should we effect the repairs that Mr. Moulton has recommended in response to their concerns. He added that he thought that to rehash all the issues is really not getting us very far; that we are half an hour late for a public hearing and we still have Mr. Garment. He said that it is a pretty simple, straightforward question: "Shall we do something with the rip-rap or shall we put bollards or a center handrail down?"

Ms. Davis said that she thought the bollards and handrail would have some impact on access if we are constrained by some State law; so, she doesn't think we can make a decision tonight. She added that, for one thing, she'd like to go down and see it and talk with Mr. Lee; that, secondly, she thinks we need to find out what the access parameters are before we can make a decision, one way or the other.

7:34 PM

Mr. (Jeff) Furbish, Park Street, said that he was an abutter when it happened on Park Street and he would submit that, if you are going to decorate their rip-rap, he'd like you to decorate the rip-rap on Park Street; that we've got the same visuals.

Ms. Bakula asked if they came down and pulled boats in and out.

Mr. Furbish said no; that we don't have a boat access. He added that, to that access, he's lived here 50 years and we've always been able to put boats in there; that he'd hate to see that stop. He said that, if you're going to put a rail so that you have to put kayaks, you're still going have cars stopping to unload kayaks so that they can walk down because there's no place to park. He added that he thought you would still get parking violations if you block that ramp; that, if you have the

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ramp, at least they can get the car down and out of the road so that people can go in and out of the corner.

7:35 PM At this time, Mr. Beckert pulled the discussion back to the Board, asking if there were other comments from the Board. He said that Ms. Davis wants to see it.

Mr. Fernald said that he thought we should; that there are many Town access' that you really can't get to; that the one on Grover Avenue goes to a place where it's just all rocks and drops off. He added that, if the State requires that we maintain access to the river, then we do have to have access to the river.

Ms. Bakula said that this would be accessing in a pedestrian way.

Mr. Beckert asked for the Board's pleasure; that he is hearing that Ms. Davis wants to see it.

Ms. Davis said that she would like a more technical definition of access and what we can, and cannot, do.

Mr. Pomerleau and Mr. Fernald agreed.

Mr. Murphy said that, obviously, there are different kinds of access; that this could be a limited access for small things; that having a handrail down the center would presumably stop the automobiles from driving a big boat in or out but it would allow small ones; safety of people sounds like a sensible idea; that he's in favor of it.

It was the **consensus of the BOS** to view the site and get information regarding the definition of 'public accesses'.

7:36 PM **3) American Legion 188: Request Waiver of Sewer Charges**

Mr. Lee said that, two years ago, they shut down the water and stopped heating the building because they couldn't afford the cost of the heating fuel, so, they've not had use of their kitchen or bathroom in two years; that they use a space heater when they meet there and that's about it. He added that they were pretty close to folding up, at one point, and hurting for money; that they are asking if we can waive their sewer fees.

Mr. Pomerleau asked if we can do this.

Mr. Lee said that, by ordinance, they can be waived.

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Mr. Pomerleau asked, if they are shutting off water and heat, are they in violation of code using the building.

Mr. Lee said no; that it's not habitation, it's just a meeting space.

Mr. (Ron) Grammont, 16 Bayberry Drive, said that he is the American Legion Treasurer. He said that the letter is self-explanatory, and he doesn't know if he picked a good or bad night to have it read, but we only use the building once a month for, give-or-take, an hour; that there's nobody living there. He added that we had to do this because, as Mr. Lee just mentioned, we cannot afford to heat the building; that it's just not feasible; that our funding has dried up, like most organizations. He said that the sewer charge has been creeping up and, now, it's become quite a burden, along with everything else.

7:39 PM Mr. Beckert confirmed that the water is shut off, you're not using the sewer, so you're not contributing anything to the system.

Mr. Grammont said no.

Mr. Pomerleau asked where they were heading with the building, do you see eventually selling it.

Mr. Beckert said that that's a Town-owned building; that there's a little history there, too. He said that, by ordinance, we are allowed to waive the sewer fee, they are not contributing anything to the sewer, water is obviously shut off and sewer fees are based on water usage.

Mr. Murphy moved, second by Mr. Fernald, that the Board of Selectmen waive this fee for the American Legion Post 188.

VOTE

4-0

Chair concurs

Mr. Grammont thanked the Board.

4) Sewer Allocation: Julianne Maloney Losee Map 6/Lot 42 (120 GPD)

Ms. Losee was not present. This was revisited after the public hearing.

7:53 PM Mr. Beckert said that even though Ms. Maloney-Losee is not here, there is a sewer allocation request for Map 6/Lot 42 of 120 gpd; that it has been recommended by the Sewer Committee that the Selectmen approve the allocation.

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Mr. Pomerleau moved, second by Mr. Murphy, that the Board of Selectmen approve the sewer allocation for Julianne Maloney-Losee for her property at Map 6/Lot 42 for 120 gpd.

VOTE

4-0

Chair concurs

7:41 PM Public Hearing: Solar Array at Landfill

Mr. Beckert said that this is for the public; that we had a presentation from Mr. Case on the proposal to put the solar array on the landfill; that we decided to have a public hearing to find out if there were any concerns from members of the public, any questions the Energy Commission could answer. He added that he didn't want to go into a long dissertation of what the Selectmen have for a proposal; that Mr. Case did a very good job with his presentation.

7:42 PM Public Hearing opened.

Mr. Garret Bent, 36 Ogunquit Road, York, said that he was here on behalf of the York Energy Committee; that we were interested in seeing how this proposal is going and how we could initiate our own.

Mr. Beckert said that he thought it would be advantageous to the York Energy Committee to get together with the Eliot Energy Committee in a meeting; that a public hearing is usually intended for information to the public of the municipality to answer questions or concerns of our municipal residents may have on the solar array. He added that he thought that you folks, as two organized committees from two municipalities could certainly get together and discuss at great length. He said that that was his suggestion and asked Mr. Case what he thought.

Mr. Case said that he moved south of the river so he's not really the right person to suggest.

Mr. Beckert said that you're our consultant.

7:43 PM Mr. Case said right; that his opinion, of course, is that that's the right thing to do. He added that he would like to give the gentleman a really quick answer right now if you wouldn't mind.

Mr. Beckert agreed.

Mr. Case said that, back around 2010, the Energy Commission (EC) really started seriously considering how we could put solar into the Town and, ultimately, generate all the electricity we need for everything; that with the metering study,

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we studied how to do this in phases. He added that, with the first phase, we put a 50,000 kwh/year system on the Town Garage, which was turned on in July of 2013 and has run, now, for over two years just perfectly. He said that it was done by a company called ReVision Energy and they did a fabulous job; that we had several bidders at the time and they gave us the best financial deal. He added that we've always been talking about the next phase; that, initially, we thought we had enough space on the capped landfill, adjacent to the Town Garage, to put a 1.3 megawatt system that would power all of the municipality and a good portion of the schools; that, at this point, we are not going to include the schools and it looks like an additional 175,000 kwh/year will cover the Town of Eliot municipal buildings, which is where we think we're going to be in a few years, because we continue to make great strides in reducing our energy usage. As an example, he said that 'this' building and all the other municipal buildings now have LED lighting and the most efficient lighting we could get. He said that that's where we're heading; that we think we can, just with the 175,000 kwh/year system, save almost \$900,000 for the Town over a 40-year period; that we could explain to you how we would do that. He said that it doesn't require any upfront money from the Town and what we want to do is basically put aside money every year for six years and then, after that, buy the system for about half the installed cost, which turns out to be a really good deal. He explained that the reason that it's better for us to do that rather than buy a system outright is that the installer and investors can benefit from a 30% federal tax credit and we can't; that that makes a huge difference in how to construct a contract and installation. He added that he didn't know if that helps Mr. Bent.

7:46 PM Mr. Bent said yes and thanked Mr. Case.

Ms. (Janet) Saurman asked why we are not including the schools in this.

Mr. Case said that they decided they didn't want to be part of it; that part of the reason is that the schools are larger users than the Town municipal buildings so they aren't called Small General Service, they are called either Medium General Service or Intermediate General Service; that the way you pay a bill for the school buildings is simply different; that even though it looks like they're paying exactly the same thing as we are, it's calculated very differently. He explained that the delivery charge by CMP is not based upon kwh usage, it's based on peak loads, and that makes it very complex. He added that we got into a long discussion with the schools on how we could help them reduce their peak loads, what they needed to do and, at that point, he didn't think they were ready to get into a serious program to do that.

7:48 PM Mr. (Jim) Tessier said, again, that he is very much in support of what the EC has done and he thinks they were having a great project; that he thinks this is another good project. He added that what he's concerned is that we're not complying with

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the State requirements on getting this approved by the State. He said that there's a Maine compliance document for development on, or near, landfill cover systems; that it says DEP review process complete and alternative assessment and outlying conceptual project design, submitting both to the department, and requesting a preliminary review and/or site meeting. He added that it also says, "If agreed to by the department, complete required additional site assessment work. If the additional site assessment work confirms the conceptual model will work, then complete the final planning and design for the project. Submit completed design, including plan specifications on the inspection and maintenance plan to the department. The department will issue a written finding concurring with the plan, concurring with the plan but needing changes, or concurring with the plan and not agreeing with the plan." He said that it was surprising him that we're making decisions about financing and progressing forward without having State approval.

7:49 PM

Mr. Case said that we don't have a detailed design, yet; that Barrington Power gave us the most complete design but he thanked Mr. Tessier; that we are now well-aware of that as you brought it to the Commission a few months ago. He added that we've discussed, at length, with Barrington Power; that Mr. Moulton has been talking with the State all along so it's not like they don't know what we're talking about; that CMP knows what we're talking about, here. He said that we're not talking about something we want to install tomorrow; that what we're basically looking at is we'd like to turn the switch on November 1, 2016, which is almost a year away. He added that it takes a long time to get all these approvals and get a detailed design; that we want to get people's questions like yours right now and crank that into our process.

Mr. Lee said that it's a matter of the chicken and the egg; that he would not go pursue permits from DEP on a project that will never get approved at the Town level; that if we get approval at the Town level, then we'll go seek permits necessary with Barrington Power assisting in it because they've done it many, many times; that we are well-aware that this step needs to be done; that it's just that you wouldn't do it first and get approval after.

Mr. Tessier said that the piece, though, is the preliminary piece; that it's not talking about the final step; that it says here that you "complete an alternatives assessment and complete a conceptual project design and submit both to department requesting preliminary review and site meeting." He said that if the State isn't going to agree with your conceptual plans, he doesn't know how you're getting bids for the project on what it's going to cost because the State could come back and say you need to make changes to the plan; that if you have to make changes to the plan, the cost could be substantially different.

7:51 PM

Mr. Case said that we've already made three changes to the plan in terms of the size; that we've changed how the supports...we're looking at pouring, in place;

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that we're looking at things that are better and better. He added that he concurred with Mr. Lee; that if we can get the Town to agree this is a good idea then is the time for us to go to the State; that, again, he would say that this is no big surprise to the DEP; that they know perfectly well that we're here working at this. He said that, from what he understands, this would be the first municipality installation that would power all the municipal buildings in the State of Maine; so, of course they're going to be very interested; that they will probably have some concerns about the landfill and not penetrating it; that he assumes that is the biggest concern they will have and we absolutely cannot build a system that penetrates it at all.

7:52 PM Public Hearing closed.

Mr. Beckert encouraged people to take an interest and go to the EC meetings.

Mr. Lee offered his thanks to Mr. Case on behalf of the whole Town, the work that he did here with the EC; that he's moving, unfortunately, but he did want to thank Mr. Case for staying through this process, even as he's heading out the door. He added that, hopefully when we do the ribbon-cutting, we're going to give you the giant scissors.

At this time, the Board went back to item # G3-4.

G4. Public Safety

7:55 PM 1) Joint Police Chief Search with Kittery

Mr. Lee said that he met with the Kittery Town Manager and she had come to the conclusion that, after considering the position of her Town Council, she did want to try to search out for a joint Chief and would like to see if the Town of Eliot would like to do that, as well. He told her that he needed to confirm with the Board of Selectmen that there was a desire to go forward and look for a joint Chief. He added that, under their form of government and, arguably, under our form of government, she's the Personnel Director and he knew you could argue this is a policy thing, and all that; that he guessed she's been given the authority under their form of government that she would sort of make that decision that she does want to go forward and do a joint Chief search. He said that he doesn't think there was an interest on her part, or even on the part of the Kittery Town Council, to meet with us on it; that he thinks they're kind of leaving it up to what she wants to do and what she can work out with us. He said that he tentatively agreed with her that it might be valuable to go out and do a search just to see if we can find a good Chief who could do both departments. He said that he is coming to the Board tonight to say that it is the intent to go forward with a joint Chief search unless he is told otherwise.

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7:56 PM Mr. Pomerleau said that he is still leaning in that direction; that he did some research at the Maine Public Safety website last night from 2014 crime data and he has some serious reservations about going forward with the allocation of 60/40 that we have.

Mr. Lee agreed with him.

Mr. Pomerleau said that, of all the factors he looked at, it's obvious that they're using population; that based on crime data and arrests...

Mr. Lee said that he has those numbers, now, too; that we are at 6.something % on crime, Kittery is 18%; with call volume, we are the lowest of the four communities that are considering regional dispatch, by far; that we have the lowest crime rate, by far; that Berwick, surprisingly, is right up there with Kittery in terms of crime rate and calls.

Mr. Murphy asked Mr. Lee to provide those to the Board.

Mr. Lee said yes; that he just got them today at a meeting.

7:57 PM Mr. Pomerleau said that he has some, here, that we can make copies of, too. He said that you can pick a number of different items but population would be the one he wouldn't take; that just on arrests, alone, combining all the arrests, Kittery had 72% of them and we had 28%; crime rate – Kittery had 87% and we had 13%; total staff – Kittery has 26 and we have 10. He said that nothing comes remotely close to justifying 60/40 and, in the 60/40 split, with what we thought were going to be savings, we made some after-the-fact changes in the department that diminished some of those savings in upgrades in other positions, and ended up paying the entire cost of the cruiser. He added that how much we saved in the 60/40, he thought, was very questionable.

Mr. Lee agreed but asked what cruiser.

Mr. Pomerleau said that if they have any reservations about not changing the 60/40...

Mr. Beckert said the Chief's car.

Mr. Lee said that we never bought one; that he's still in the old car; that we never reached a conclusion on what to do about that so he stayed in the old one.

7:59 PM Mr. Pomerleau said that any reservations about re-negotiation of the 60/40 then he'd be inclined to back out of it.

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Mr. Lee said that that was good advice; that he agreed with him; that he didn't understand the 60/40 from the time he got here.

Mr. Beckert said that it was his opinion that, if the two municipalities are going to go forward to search for a joint Chief, then that opens it all up, the negotiations.

Mr. Lee said yes; that he also thought there would need to be some additional language that is ultimately negotiated about time spent in each department. He said that one concern that he would have is that, if we can find the right candidate, and he told them before that the police consultant that we talked to said that there's a dearth of good candidates out there and a lot of positions that are seeking them; that if we can find the right candidate, he thinks Kittery has more of a history that needs attention, probably, from a dedicated Chief who really needs to dig in and work through some of their long-standing issues, whereas, Eliot does not have those types of deep needs; that he would hate to see us hire someone, jointly, and have them spend the vast majority of their time worrying about Kittery and restoring Kittery's Police Department to full functionality, etc. and we're seen as okay and can kind of cruise along and not have leadership; that we need leadership in that department, we need to have a presence in that department. He added that we need to write in there that there needs to be a time allocation for Eliot that is comparable to what he believes our officers need, in terms of a Chief that has facetime with them; that that's no reflection on Chief Short but he is just saying that whoever we find needs to understand it's not one or the other and the person prefers to hang out down 'there' or hang out up in 'here'; they've got a split responsibility, these two departments are not like one another, they are built very differently, they have different policies, and he doesn't know if we're ever going to get to the point where Eliot citizenry and Kittery citizenry are going to want to combine departments into some sort of a police department. He said that, short of that, you are really taking on two separate, independent agencies with different needs and, so, it's going to be kind of tricky finding the right candidate.

8:03 PM

Mr. Murphy asked if anyone had asked Chief Short for his recommendation or other members of our Police Staff.

Mr. Lee said yes; that he met with the entire Police Staff last Thursday night and he advised them that, short of being told do not go looking for a joint Chief, it was our intent to go look a joint Chief; that those statements he just made about facetime here, now, we do need facetime; that that was part of the thinking that came out of that meeting with them. He added that Chief Short has recommended that we do continue the shared chief arrangement; that he believes it can work and he isn't unique; that there would be other people who could also do it; that he thought the Chief would advocate that we do continue this. He said that, like the landfill, it is novel; that he thinks there's only one other group that's sharing a police chief in the State. He reiterated that that's our intent unless told otherwise.

BOARD OF SELECTMEN'S MEETING
November 12, 2015 5:30PM (continued)

8:05 PM Ms. Davis said that initial newspaper reports, which is where we've been getting a lot of our information, is that you guys were definitely not in favor of doing this but, now, you're in favor of doing this.

Mr. Lee said that it is actually where we've come, to be honest with you; that he thinks, like him, that there are certain pressures to be considered when you are a Town Manager and who your masters are and what you need to do, and so forth. He added that, when we met on Thursday, one of the first things he said to the Kittery Town Manager was that he expected them to go their own way but there had been a change of heart and, so, he was just as surprised. He said that he knew she was releasing something on Monday, her report that would hit the newspaper, but it wasn't until last Wednesday that he met with her and there was a change in plans. He said that he's given the Board as timely a notification as he can without... that we have to be careful; that that's the other thing about sharing a Chief – let's say that one of us is not happy with the Chief, it takes both of us to let the Chief go or one of us backs out of the contract and the other one is left holding the contract; that it's not an easy row to hoe, not clean from an organizational structure standpoint.

8:07 PM Mr. Pomerleau said that he isn't real clear where we are, here; that it sounds like you're going to proceed in discussions with Kittery's Town Manager on seeking out a joint Chief contingent on their willingness to re-negotiate the cost.

Mr. Lee said that that's a new wrinkle tonight; that he's glad he brought this to the Board; that he was thinking the same thing but wanted to know if we had some concurrence that, probably, the 60/40 doesn't make sense in terms of how different our communities are; that, if that's the case, that's wonderful and he would love to go back with that; in which case, she may change her mind and say, if Kittery is going to be 82% and Eliot is going to be 28%, or however it changes, then she'd as soon pay 100% and be in control of her own Chief; that that would be fine with him and he would go his own way.

Mr. Pomerleau said that, whatever she decides, he can certainly appreciate that she didn't publicly announce what "we're" doing without us being involved in the decision.

Mr. Lee said that she was very good about that, actually; that she sent over to him what she intended to release on Monday and he told her to add "upon confirmation by the Eliot Selectmen" to that release because he's not sure they (newspaper) view his Personnel Director title the way that her Personnel Director title is viewed, and he still needs to check in.

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8:09 PM Ms. Davis said that she was under the decided impression that the Chief wasn't recommending this early on and that we had sort of planned to have some discussions with him about this. She added that she doesn't know when that changed, or why, but she was anticipating some kind of a talk with him. She added that the citizens have not even been asked what they're in favor of with regard to this and, thirdly, are there other options that might prove more beneficial to Eliot and, consequently, to Kittery, that we need to look at within our own force that might work better for us, if we can discuss alternatives; at least to have it on the table before we make any kind of final decision.

Mr. Beckert said that he was hoping to get consensus on this.

Mr. Pomerleau said that he was comfortable with Mr. Lee moving forward but, like the Board says, re-examining the split; that what he thinks Mr. Lee needs to be conscious of, if it doesn't go that way, is what we're going to do about the changes we made to accommodate it.

8:10 PM Mr. Lee said that he did have a plan for that.

Mr. Pomerleau said that it would be nice to know; that we'd like to have some knowledge, here, about what the ultimate goal and plan is going to be.

Mr. Lee said that there are some sensitivities here, you know, that kind of stay within the staff; that not everything goes to a public vote about what we do with a Police Chief.

Mr. Pomerleau said that he thought last time that we clearly agreed we were going to have a meeting with their Council and this Board.

Mr. Lee said that they have to agree to meet with us.

Mr. (Bill) Selsberg said that, now that we've had the experience of sharing the Chief of Police, just from an economic point of view because there are other concerns, does anyone know how much we saved and whether that savings was enough to justify not having our own Police Chief.

Mr. Beckert said that he wasn't so sure that, when it all is figured out and put on paper, it might be a wash.

Mr. Lee said that it's not much; that he would say it's somewhere in the \$25,000 to \$30,000 range because, see, we probably wouldn't pay so much for a chief that was just running Eliot as we do for this chief; that when you take that out, etc., and the 40/60 split, which is a deal for Kittery, really, he doesn't think there's been a lot of savings to be had.

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8:12 PM Ms. (Donna) Murphy said that, in addition to the low savings that we had, is there data available for how much time the Chief has spent in Kittery.

Mr. Lee said that there is not.

Ms. (Donna) Murphy said that that came up quite some time ago as a concern and she was surprised to hear that there is no data,

Mr. Beckert asked for consensus to let the Town Manager, along with Kittery's Town Manager, to move forward with a preliminary search for a joint Chief; that they may not find anything.

Mr. Lee said that it was his understanding that he was going to go in with a preliminary discussion about, when we do a new search, the new IMA has to be different percentages and, if he's told that, after a month or so, that they are unwilling to change the percentages, then he'll come back to the Board and then we can have another discussion about the next plan; that he thinks we've got to put, again, the chicken and the egg, you know, that there's a lot of chicken and egg stuff that he does.

Mr. Beckert said that, when a contract term comes to an end, such as this one, he would think that everything is on the table, again; that they should understand that.

8:14 PM Mr. Lee said that he thinks they do; that he gets along with the Kittery Town Manager and he doesn't want anything to come out of this that we don't. He added that he thinks that both of us have had varying degrees of changes of mindset; that he's sorry that the news has been conflicting; that, sometimes, our minds are conflicted.

Mr. Beckert said that, if the data supports the 60/40 split is not adequate, then that needs to be discussed.

Mr. Lee said that we are right in the middle of discussing formulas of how we're going to allocate our regional dispatching, if we ever get to regional dispatching; so, we've been looking at calls, crimes, population, etc.; so it's a perfect time to use that data and he will get it out to you folks so you can see what we have.

Mr. Pomerleau said that he was in consensus.

Several Board members agreed.

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November 12, 2015 5:30PM (continued)

8:15 PM Ms. Davis said that she wasn't happy that we've not discussed the alternatives; so, here we are six weeks down the road and we're jumping into this without having discussed any of the alternatives.

Mr. Beckert called for a motion.

Mr. Murphy moved, second by Mr. Fernald, that the Board of Selectmen agree that our Town Manager should proceed, for the time being, with a joint search with Nancy Puff, the Kittery Town Manager, about finding a joint Police Chief and to discuss contract changes in the allocations.

VOTE

3-1 (Ms. Davis)

Chair concurs in the affirmative

8:16 PM **2) American Ambulance Contract Extension – 1st Review**

Mr. Beckert said that this was the first review and we have a memo from Fire Chief O'Brien from Kittery.

Mr. Lee said that this was very similar to what we had before; that they did have some things on the Kittery side of this like, they are in a Kittery building and they wanted the exterior painted and the interior cleaned up and some things like that but, other than that, this is strictly for the Board's review if you had any problems, comments, etc. He reiterated that there are no major changes in it but, if anyone does have any between now and the time we adopt it in early December, hopefully, bring those to his attention so that he can get them to Kittery and Chief O'Brien and Paul Robidas from American Ambulance.

Mr. Beckert said that we do have some homework.

H. New Business:

8:17 PM Mr. Lee said that he would like to recommend that the Board of Selectmen issue certificates of recognition, or appreciation, to the Charter Commission that has worked so long and for so many months and put in so many hours and managed to get a charter that the Town could live with; that it passed quite strongly and he thinks they all deserve to get some sort of recognition for the hard work that they did.

It was the **consensus of the Board** to recognize the hard work and dedication of the Charter Commission.

I. Old Business

BOARD OF SELECTMEN'S MEETING
November 12, 2015 5:30PM (continued)

8:18 PM **1) Replacement of 2004 PW Truck**

Mr. Lee said that Mr. Moulton wrote a memo for the Board and, in it, he gave four estimated prices that he found of four different types of vehicles, used, new, what year they are, the range and pricing on it, etc. and, ultimately, at the end of his memo, we'd be looking for some sort of an authorization to do something in the form of a \$30,000 to \$48,000, depending on which way he can find the best deal; that a used vehicle, obviously, they would not be able to put out to bid because there are no comparables; that a new vehicle, we would certainly, if that were the better and we can't find something used that would be a good, long-term vehicle. He added that he would be happy to answer any questions.

Mr. Beckert asked what the recommendation was out of what you've given us here.

Mr. Lee asked if Mr. Moulton would speak to the recommendation of what he found and where you think you'd...

Mr. Beckert asked for his best scenario out of what we've got.

Mr. Moulton said that, to him, he thinks he's stated that in his memo; that, to him, the best recommendation would be to go with the new because you get the warranties, the 3 year/36,000 mile minimum, 100,000 mile drive train; that the new 1-ton truck range is between \$38,000 and \$40,000 versus even something as new as 2014 of \$38,000 to \$40,000, used, with no warranties.

Mr. Beckert said \$33,000 to \$48,000 depending on whether it's gas or diesel.

8:19 PM

Mr. Moulton said that, dollars to dollars, they have diesel that we use when we buy fuel for the Garage and we wouldn't have to have a gas alternative for a back-up truck, which is by no means a deal-breaker but, to him, the better deal looks to be the newer option for less money because you get the municipal discount that the dealerships offer to municipalities and you get the warranties that go along with it. He added that that would be where he would look to go based on the research he's done but the decision is up to you folks; that he's given you as much information and he's now looking for direction on which way to go so we can move forward.

Ms. Davis asked if the only difference between these two is whether they take regular gas or diesel; that the regular gas vehicles look like they are considerably cheaper, asking if he was leaning in that direction.

Mr. Moulton asked if she was directing him to go used.

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Ms. Davis said no, new.

8:20 PM Mr. Moulton said that he would direct to go diesel; that everything we have is diesel, even the pickups we drive; that they have better fuel mileage, more power; that he thinks the diesel option is always the better option and the maintenance portion of it is that much simpler. He added that he would recommend going with new diesel versus gas; that it's more durable.

Mr. Pomerleau said that you have a budget, stay within your budget, use your judgement, and do the best you can. He added that he doesn't want to pick between these things because he has no clue, especially without putting miles on them; that even buying a used car for himself he wouldn't know regarding mileage. He added that he doesn't want to sit and judge what vehicle it is, he doesn't have any idea; that as an administrator, you have a budget, stay in your budget and do the best you can.

Mr. Murphy asked how much is in the reserve that would allow you to purchase this.

8:21 PM Mr. Moulton said that he does believe the vehicle reserve is around \$105,000; that within that reserve, we are looking to replace a 2000 International Dump Truck that has been repaired because the cab had settled on the fuel tank, which means that it settled on the frame because of rust; that the problem with the dump trucks is that they rust out before they wear out; that municipal dump trucks are usually a 15- to 20-year cycle and this one is 15 or 16 by the time we get a new one and, with the issues with the cab, we should probably look to move forward with that sooner rather than later. He said that it was his intent to use FEMA-allocated money, which we get reimbursed from the federal government for use of a vehicle; that we have a sum of about \$16,000 in the account, now, and we are expecting another \$34,000 to come in from last year's winter event. He added that, as he stated in his memo, it would be a 'borrow' from the reserve for the balance of the pickup and, if it could happen, replenish the vehicle reserve with the FEMA-reimbursed money when it comes in.

Ms. Davis asked what our liquidity is in our investment account because, if we're thinking of taking a chunk out of that, we're not fully invested at this stage, are we.

8:22 PM Mr. Lee said no, that was a good question. He added that, when we discussed that with the Key Bank folks, we talked about keeping \$80,000 liquid at any one time for this very type of thing.

Ms. Davis said that she used the spreadsheet we got from the Finance Director and she has a lot of questions about the way the funding has worked on this; that

BOARD OF SELECTMEN'S MEETING
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she wants to sit down and talk about these numbers. She added that there's enough in there for the pickup truck that we set aside for the CIP but there's been a lot of jockeying going on and she would like to clarify that and get it lined out. She said that there was no reason, at this stage, to stop a bid for that truck. She said that she's assuming you need it for this winter and that's why you're moving on it right now.

Mr. Moulton said yes.

Mr. Beckert asked if he could get consensus from the Board to allow the Public Works Director to move forward with seeking the purchase of a brand new diesel pickup truck.

Ms. Davis had one last question. She said that Mr. Moulton is listing the price of the vehicle but she's sure he is setting this up for a plow, asking what all the expenses would be that you aren't listing here that would have to go onto this.

8:23 PM Mr. Moulton said that we already have the plow; that the truck will come plow-ready. He added that he will have to buy a push plate for the plow but that is all.

It was the **consensus of the BOS** that Mr. Moulton move forward with the purchase of a new pickup truck.

2) Over-the-Road Banner Policy - Revised

Mr. Lee said that all this is is a reflection of the current policy of how we manage Over-the-Road-Banners; that we've stripped it down to what we've always done and what we're always going to continue to do with regard to these over-the-road-banners.

Mr. Beckert asked if this was considered our first reading, our final reading, or what.

Mr. Lee said that he prayed it was your final reading.

Mr. Pomerleau moved, second by Mr. Murphy, that the Board of Selectmen approve the revised policy regarding over-the-road banners, dated 11/12/2015, item I-2.

8:24 PM DISCUSSION

Ms. Davis said that, looking back through all of these copies we've done, it all got started because the Congregational Church wanted to advertise blueberry pancakes. She added that, looking at this policy the way you've got it set up,

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November 12, 2015 5:30PM (continued)

you're listing, specifically, Town of Eliot Departments, Eliot Festival Day, and Eliot Garden Club. She said that in previous versions when it was really complex we were excluding people because they weren't Town committees or because they didn't have liability insurance, asking if they are excluded by this, or not. As an example, she asked if the Congregational Church came and wanted to put it up for blueberries...

Mr. Lee said that they would not be allowed to.

Ms. Davis confirmed that this is going to exclude people.

Mr. Lee said that, yes, it would. He added that he was asked to put together the policy that reflected what we do, current practice, and that's what he's done.

Mr. Fernald said that he had the same concerns, asking why the Garden Club was selected from all the other organizations in Town.

Mr. Lee suggested the Board just table this.

Mr. Pomerleau moved to amend his motion to strike the Eliot Garden Club and go forward with what is there.

8:25 PM Mr. Lee asked if we shouldn't wait to see what the Chief has to say; seriously, let's table it; that, maybe, they're the ones who bought the telephone pole on the other side of the road to which we attach.

Mr. Beckert said that that was put in free gratis; that they were put up specifically to put banners on umpteen hundred years ago.

Mr. Pomerleau withdrew his motion. Mr. Murphy withdrew his second. The motion is withdrawn and the item is tabled.

J. Selectmen's Report:

8:26 PM Committee Vacancy Reports

Mr. Murphy said that our page shows 15 and we filled one of them tonight.

Mr. Fernald said that, as a representative of the BOS to MSAD #35, he wanted to bring their attention to changes made regarding their policy on participation of the public in school board meetings. He read the changes for the benefit of the public. He said that, in addition to that, we had discussed the entrance to the school to exit from the high school parking lot down into Eliot, down to the southern part; that that is being used during the day but it is still not being used at night because

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November 12, 2015 5:30PM (continued)

there is no light there; that they are hoping that, by this Tuesday, CMP will have a light at that exit.

8:30 PM Ms. Davis said that a few weeks ago we had discussed moving Mr. Moulton's stuff up on the agenda so he doesn't have to wait all through the meetings.

Mr. Lee agreed.

K. Other Business as needed

There was no other business.

L. Executive Session

8:32 PM Mr. Fernald moved, second by Mr. Murphy, that the Board of Selectmen enter into executive session as allowed by M.R.S.A. § 405.D. Labor Negotiations.

VOTE

4-0

Chair concurs

9:08 PM Out of executive session.

There was no action by the Board.

M. Adjourn

There was a motion and second to adjourn the meeting at 9:10 PM.

VOTE

4-0

Chair concurs

DATE

Mr. John Murphy, Secretary