

SELECT BOARD MEETING

March 14, 2019 5:30PM

Quorum noted

A. 5:30 PM: Meeting called to order by Chairperson Murphy.

B. Roll Call: Mr. Murphy, Mr. Lytle, Mr. Donhauser, Mr. Orestis and Mr. McPherson.

C. Pledge of Allegiance recited

D. Moment of Silence observed

Mr. Murphy read: "As we engage in a moment of silence, we would like to ask you to keep in your hearts the public safety officials that face injury and death while protecting the general public. In particular today, let us pause to remember Captain Joel Barnes of the Berwick Fire Department who recently made the ultimate sacrifice. Let us also remember Chief Gary Sacco of the Oxford Fire Department, who tragically passed while at the memorial for Captain Barnes." He added that he would also like to add a local man, Richard Mills Beckert – "Ricky" Beckert, who was a personal friend and lived with us when he was a boy, when his parents died.

E. Public Comment:

5:32 PM Mr. Lentz said that he noticed in the paper about the ambulance changing and he was wondering if there is an impact on Eliot.

Mr. Lee said that that doesn't have any practical affect on the Town of Eliot; that it's a transfer from American Ambulance Company to Stewart's Ambulance and is still at no cost to the Town. He added that they will be operating out of the same station; that, in fact, the General Manager of Stewart's used to be the General Manager of American Ambulance; that there was a change in leadership and he guessed that American Ambulance didn't want this contract so Stewart's has picked it up. He said that there's no monetary impact to us and, hopefully, no service impact; if nothing, maybe better service.

5:35 PM Mr. (Brian) Holt, former resident and Town of Eliot employee, said that he used to work for the Highway Department and recently left and, in the letter you guys got two weeks ago, there's details in that letter that he hopes the general public will know the real reason the bureau of labor showed up to the Town. He added that that's pretty much all that he's got, really, because he doesn't want things to be covered up; that things got covered up and that's why he left the Town, because it just didn't feel right anymore. He reiterated that that's all he's got and just wanted to let them know.

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5:36 PM Mr. Murphy said that he thinks we may still be thinking about things. He also said that he believes we have an issue and today Mr. (Justin) LaFrance is going to speak.

Mr. Lee said yes, that Mr. LaFrance is here.

Mr. LaFrance introduced himself, saying that he and his family live at 34 Blueberry Lane. He explained that 13 days ago we got back from a vacation and our sewer main (system) wasn't working; that we had a private contractor come out and they unfroze the line past about 75 feet to 80 feet into the street and past our property line; that we were unable to get the system working because there's still a blockage underneath the road to where it meets the manhole at the end of the street. He added that we are going on 13 days not being able to use any water or sewerage; that, basically, our home is uninhabitable; so, we came here tonight to ask for the SB's help in getting the Town to use some resources so we can get back into our home because it's had a significant impact on him and his family.

Mr. Murphy asked Mr. LaFrance if others on Blueberry Lane have the same problem.

Mr. LaFrance said no; that it seems to be isolated to his home. He explained that we moved here in October 2014 and we noticed, in 2015, that the sewer manhole was damaged at the end of the street, so he called the Town and spoke with Mr. Moulton, who then informed him that he believed it was a private sewer system. He added that that was a surprise to him because all the documents from the realtor, and everything, said public water and public sewer. He said that, in that process and getting together with his neighbors and doing an extensive FOAA request, he pulled a lot of documentation – all the permits, the Planning Board Findings of Fact, all the information from the Town; that all the permits, approvals from the Town all say public sewer. He added that, at that point, we came to a Sewer Committee meeting, he and his neighbors, and they read a statement basically saying how the documentation shows that this is public and, if anything happens, we are basically requesting that the issue be taken up and solved because we foresaw that, eventually, there could be an issue and we didn't want to have problems. He said that, in doing that research, he found that back in 2011, when they were building all those homes on Greenwood, the CEO (Mr. Marchese) had realized that there was possibly a question of the ownership; that the Town had already allowed multiple homes to tie into the line and Mr. Marchese said that he was holding up 'these' permits until the Selectmen make a decision on who owns the line; that, in reviewing the meeting minutes, the Selectmen decided that this shouldn't hold up the builders from building the homes, let them build the homes, and we will figure out the ownership piece later. He added that, once everyone got what they wanted, nobody ever brought the question of ownership up again. He said that we are here with an issue and he

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went to Mr. Lee and he's tried everything that he can do but, really, the Town's position is that Mr. (Bill) Cullen, the original developer, owns the line. He added that there is also some question about the fact that the Town took over the road and when they took over the road, according to Maine State statutes, that should include everything above and below it. He said that we believe it is a public sewer system and that is why we are here today to ask for your help, specifically under the Charter 2-12, where there is a safety and welfare issue – emergency; that he would say that, for him and his family, this has definitely reached an emergency situation with 2 weeks without water or sewer. He asked that the SB authorize Mr. Lee to send some people out and fix the problem so that we can get back into our home.

5:39 PM Mr. Lee said that he has been working with Mr. LaFrance and our Town attorney and he sent over that extensive FOAA; that Mr. LaFrance provided him (Mr. Lee) all of his information – permits, Marchese, the minutes, the warrant article where the road was accepted by the Town, etc. – and he sent it all over to Attorney Saucier basically asking him if there is any way we could do something, legally, based on what he is seeing in these documents. He added that he thinks Mr. LaFrance believes Attorney Saucier was maybe being selective in what he was looking at; that, as he told Mr. LaFrance, he submitted everything to the attorney and our position has been made clear, time and time again, and Attorney Saucier just said it, again, that we don't claim ownership to it. He said that he remembers calling Mr. Cullen, the developer, asking him if he had any evidence of him conveying it either to the individual lots or to the Town and Mr. Cullen said that he didn't think he did; that Mr. Lee said that Mr. Cullen may well be the owner and Mr. Cullen said that he didn't necessarily think he could dispute that. He added that that's not going to help Mr. LaFrance try to find Mr. Cullen down in Florida and get him to foot the bill for this; that Mr. LaFrance is in a tough spot. He added that he's even contacted our insurance company to see if Mr. LaFrance should submit a claim against the Town that we have wrongfully denied him service repair and, then, let our insurance company and their lawyers look it over to see if, indeed, Attorney Saucier is misinterpreting, or we are misinterpreting, or that law that Mr. LaFrance mentioned about after 1976, when you accept a road, you accept that which is under and that which is over it. He said that he's even advised Mr. LaFrance to file a claim against the Town, if that is the best way to go, but that would take a long time to figure out and won't help for tomorrow, the 14th day; that said, in speaking to the owner of Sturgeon Creek Enterprise, he thinks that prior to the LaFrance's owning it, there was another lady who owned it and he had been out there twice to that same home; so this is now four times on that one property and we have to believe that that sewer was probably not installed deep enough or insulated well enough and that's why it keeps freezing up. He explained that there may be two ways, if we were to out there; that the LaFrance's have put in an irrigation system on their front lawn and they don't want that disturbed but that might be one of the places we might go in to find out

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what's wrong; that Mr. Dupuis (Sturgeon Creek) was describing how he would put in this split-y thing so it couldn't happen again and he could thaw it out; but, apparently, that's not really an option for the LaFrance's because they don't really want anyone digging up their front lawn and messing up their new irrigation system; that they would like us to find it out in the roadway or cul-de-sac. He explained that we don't even have plans as to where this sewer is, there are no plans, even Attar doesn't seem to have plans and they designed it. He added that we would be doing hunting out there, he thinks, if we were to try to dig up a portion of the road.

5:43 PM Mr. Murphy asked if we had no as-built plans.

Mr. Lee said the sewer; that nobody does and maybe that's why these things are freezing. because they weren't put in terribly well or supervised terribly well. He added that he had gone to the Sewer Committee saying that he was very concerned, here, because we've got six roads, here, with private sewers that nobody seems to know who owns them; that it's not us and, if anything happens on one of these six roads, what are we going to do; that we kicked it around but, again, it really never got resolved. He said that he doesn't know what the SB's pleasure is but he is concerned about precedent but, on the other hand, he's concerned about this family.

5:44 PM Mr. Murphy clarified that §2.12 regarded placing articles on the warrant related to safety and welfare and he didn't think Mr. LaFrance wanted to wait until June. He added that the idea of the health, welfare, and safety of the municipality, which is still part of the Selectmen's – overseers of the poor and all that – responsibility to see that our citizens aren't preyed upon or led into a situation that they cannot resolve on their own and under the impression that the Town was in charge; that we've had this before – does the Town own it, or not. He said that he feels that we ought to, at least, allow our Department of Public Works, who know the situation and have been there before to once again correct this, for now, just so that people can continue living there. He added that Mr. LaFrance pays taxes, and so forth, and came here under the aegis of this being a public system and, suddenly, it is not.

5:46 PM Mr. Lytle said that it appears that the line is not on his property where it is blocked.

Mr. LaFrance said yes, that it is into the roadway.

Mr. Lytle said that, with that, he would think we need to do something to get it open and, then, take a look at it this summer to find out what we're going to do so it doesn't happen again.

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5:47 PM Mr. Orestis said that there are several issues, here; that, one, this problem has happened before and it's going to happen again so the issue of sewer ownership is something we need to figure out; that we need to figure out who owns them and make a determination, it's not something we just continue to kick down the road and wait for a different Town Manager or Board to determine. He added that, second, that's awful; that he's been without running water for a day or two with little children and that's not fun. He added that his question is, he hasn't seen the response from our attorney but, in light that that is a Town-owned road and based on State statute, everything above and under that road is owned by the Town, asking what the response was from the attorney to that.

Mr. Lee said that he thought that was what Mr. LaFrance was referring to when he said that it seemed like Attorney Saucier might be being selective about his opinion to us; that he could go get the attorney's opinion and read it to the SB.

5:48 PM Mr. Murphy said that that might be good to verify; that the SB would take a brief recess.

5:50 PM The SB meeting resumed at this time.

Mr. Lee said that he actually had two legal opinions from the attorney as Mr. LaFrance was in this afternoon and he had sent a follow-up based on one of the statutes he had provided. He read the original opinion: "I have had a chance to review the material forwarded to me and I did not see anything that would suggest the Town voted to accept the sewer lines within Blueberry Lane. The Town could, of course, decide to accept the lines through an article at Town Meeting. A review of the minutes and correspondence in the attachments suggest that approach has been previously discussed. I could not find an email in my files from Sue Pilgrim related to Blueberry Lane, as you requested. I did find an email from her in 2014, in which she refers to the statute I cited in my email yesterday, which provides that "neither the municipal officers nor such a committee may construct any public sewer, sewer system, or sewage disposal system in the municipality until that sewer is authorized by vote of the municipal legislative body and appropriation made for that purpose." (And he cites 1 M.R.S.A. 30-A §3402(1)) "Although this sewer has been constructed, the statute intends that the voters know when they are authorizing a public sewer and that they are prepared to fund it. In this case, it appears that she was writing to me regarding the status of Sawgrass Lane sewer but she notes that the statute recognizes that there are special, ongoing obligations and responsibilities associated with the sewer system, which the municipal legislative body should specifically agree to accept. I previously forwarded that email to you as part of the discussion about Sawgrass Lane. Please let me know if you need any further assistance."

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5:52 PM Mr. Lee reiterated that he and Mr. LaFrance sent another email this afternoon regarding 1 M.R.S.A. 30-A §3425 and Attorney Saucier writes: “30-A §3425 outlines a process for distributing the costs for repairs for a private drain, presumably by any of the users or the developer of that drain. It gives the municipal officers a role in that process through the authority to “give written permission to proceed” and to direct the notice, objections, and determination of the amount each person should pay and to whom. As I previously noted, the next statute, §3426, is a statute that gives the Town the authority, after notice from the road commissioners, to repair a private drain and recover repairs against one or more of the persons using the drain. Similar to the above statute, the Town would then prorate the expenses to each user and, if they do not pay, could bring civil action. Hope this is helpful.”

5:53 PM Mr. Murphy said that those, in a sense, are complicated actions and they take time. He added that it may be that we want to go in that direction but we may also want to adopt or consider an emergency ordinance, Charter §2.14, but that is also rather complicated and requires the public to be involved, ultimately.

Mr. Donhauser said that Mr. LaFrance mentioned to him on the telephone yesterday that there was an MMA opinion and asked Mr. LaFrance to tell him about that.

Mr. LaFrance said that, through the FOAA request, he has the internal notes from Sue Pilgrim; that the question Mr. Lee asked was, “The Town accepted the subdivision road. Who owns the sewer lines in the road?” He said that Ms. Pilgrim’s response was to advise ‘I would lean towards Town ownership of items, and why, but should check with Town attorney and the drafted deed to find out more of the intent of the parties.’; that then she emailed Mr. Lee and said, “I’m happy to put my opinion in writing but I think it might be better to consult with the Town attorney first and let him determine if that would be helpful to the Town’s position.” He said that she didn’t want to put it in writing since it disagreed with, he guessed, with what the Town’s trying to ascertain that they didn’t own it.

5:55 PM Mr. Donhauser said that it would appear to him that the blockage is not on the property but in the roadway, as he understands it, or the cul-de-sac area; but, to repair it, or isolate the blockage, it would be most expedient to go on Mr. LaFrance’s property, which he doesn’t want us to do.

Mr. LaFrance said that he did get a second opinion from a second company and they did say that they could access the line from anywhere in the line, the manhole to his home; that the manhole is at the end of the street, so, there is the cul-de-sac and then the end of the street and it’s right there (corner of Greenwood and Blueberry).

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Mr. Donhauser said going from the manhole back toward his home.

5:56 PM Mr. LaFrance said that he would prefer that but, if it was determined that you needed to go on the property at this point, we could entertain that.

Mr. Donhauser said that it appears to him, from what he just heard from the reading, that the SB can authorize it to be repaired in some manner, either going back towards his home or away from his home, but the cost to be borne by the people who use it; that that's what he understands, asking if Mr. LaFrance would agree to that.

Mr. LaFrance said that he would prefer that that didn't happen because he believes we have a lot of information that shows it is not our responsibility due to the fact that the Town allowed all those homes on Greenwood to tie into the line and took betterment fees for that; that all the documents we have say public sewer. He added that he knows we get confused a lot with the others, like Sawgrass, and he pulled the documents for Sawgrass Lane, and their documentation from the Planning Board says public water, private sewer; that there is a difference between when that subdivision was put up and ours; that everything that we have says public and everything that they had says private. He said that they all get kind of lumped in because the Town didn't have the proper processes in place when they approved subdivisions back in 2003; that that has kind of put us in the position, now, where everybody is saying 'it's not ours, let's go after Bill Cullen' but, like Mr. Lee said, he's (Mr. Cullen) in Florida and he has no idea who that is; that he just moved here four years ago.

5:58 PM Mr. Murphy asked if Mr. LaFrance is sure that the line between his house and the connection to the street main is not frozen or is only the section of it that's in the road.

Mr. LaFrance said that the folks we had come out did at least 75 ft of clearing and, so, that takes it well beyond the front of his property.

Mr. Murphy clarified that from his house out 75 feet is not frozen.

Mr. LaFrance agreed; that Mr. Lee has emails confirming that.

Mr. Murphy said that yours is the only house that has this section of the road; that there must be a line that satisfies the whole cul-de-sac, and you are going into that, and that goes back out to the main out near Greenwood Street. He added that Mr. LaFrance's is the only one that freezes, asking why the others aren't frozen.

5:59 PM Mr. LaFrance said that the others have had problems with the freezing but it just hasn't been to the extent of what we are experiencing today.

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Mr. Donhauser said that he thinks the conundrum that Mr. LaFrance, as a resident, and us, as a Board, is precedence that we may be setting because there's so many sewers that haven't been addressed properly, or they have been addressed properly, whichever. He added that he's not opposed to it but the problem is that, if we do something specific for Mr. LaFrance's sewer then the very next person, when something happens to their sewer in a private road, then we're right back up against the same issue. He said that he personally feels that we, as a Board, should do something because we can't prevent a resident of our Town from living in their home by actions of our Board; that if we do nothing, Mr. LaFrance can't live in his home, and that doesn't make any sense to him. He added that he thinks we, as a Board, have a responsibility to residents and we should be doing something tonight so that he can move back into his home with his children immediately and then, if necessary, we make some arrangement where we ferret out exactly who pays for that later. He said that, obviously, the Town will be paying for it, up front, apparently.

6:00 PM Mr. Lee said that one of the ideas that he floated is that we ended up in this situation, he said that one of the things that we would probably end up doing is to go in on an emergency basis, fix whatever's wrong, then we'd have to subrogate the claim against Mr. Cullen.

Mr. Murphy said that that may be pointing in the right direction.

Mr. Donhauser asked if he (Mr. Cullen) was a property owner in the Town of Eliot.

Mr. Lee said that Mr. Cullen didn't know if he owned a home in Eliot but he winters in Florida. He added that his (Mr. Lee) son worked for him for a while so he has Mr. Cullen's phone number; that he doesn't know if it's still active, or not, as he hasn't called Mr. Cullen since he had talked with him about his possible ownership of this sewer.

6:02 PM Mr. McPherson asked Mr. Moulton if he thought this just needed to be thawed or does this need to be dug up and repaired this time.

Mr. Moulton said that he has spoken with Mr. LaFrance and gotten some information all around. He explained that his line is thawed to within probably 10 feet of the edge of the pavement so, if anyone looks to do any action, you really want to start where it's unthawed and try to thaw it from that point forward. He said that some of the concern is getting into the roadway from the house because we don't have the 'as-built' and we don't know where the main is; that they don't know to what extent they would be digging up the road to find his main to essentially thaw the line. He added that he thinks thawing the line is the answer but it's a matter of finding the spot or finding the main to do it and where to dig;

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that if we dig in the road, then it becomes a repair of the road and, again, we are talking about costs. He reiterated that he thinks it's more a thawing of it, at this point, and doesn't think it's a repair unless it's found to be broken; that if you thaw the line, you can run a camera in there to investigate that section of the line. He said that some of the information we want to be cautious of is that Mr. LaFrance's property has what they call an 'E1 pump station', which pumps the sewerage up to the main, then the main goes, he is assuming, gravity over to the pump station, then from the pump station to the main on Greenwood Street, then up Greenwood Street by gravity. He added that, if you're going to do anything, you really should find that vacant spot closer to Mr. LaFrance's property and try to thaw the line, but you'd also have to talk to all the neighbors in the area and basically limit, or stop, the use for a short period of time to prevent sewerage from coming out; that it's a bit of coordination to do anything. He added that we'd probably have to get someone in to dig through the 2 feet of frost in the ground and, then, coordinate steaming, or jetting, the line to clear it. He said that that would be his thought at this time, reminding them that all the neighbors would have to be notified; that it would probably take a couple of days to coordinate this, contact Dig Safe, but it might take until the first of the week. He added that, personally, he sides with what the attorney has said that the sewer is still private and under a public roadway, but that is just his opinion; that it's the responsibility of the homeowners, in his opinion, and that's based on what the attorneys have said. He said that that's how he would look to approach it if the SB wishes to move forward – find that vacant point, access his line where it ties into the main, contact the neighbors, and try to thaw it out from that point; that that would probably put you at the edge of the road, which would probably require a road repair, a paving after the line is open, possibly another couple of months.

6:05 PM Mr. Donhauser asked how many residents there were.

Mr. LaFrance said seven, total, on Blueberry Lane and we have a Facebook group, so the neighbors are aware and are willing to assist in any way they can to get us back in our home.

Mr. Lee asked if Mr. LaFrance thought we could get notification to the other families rather quickly.

Mr. LaFrance said yes. He added that Dig Safe has already come out so it is marked.

6:06 PM Mr. Murphy said that it seemed to him that some of this responsibility has to go back to the builder, ultimately; that this is very wrong.

Mr. LaFrance said that we have the building specs; that four of the seven are original owners that bought in 2003 and the building specs say public sewer,

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public water; that everything that was advertised for us...if he had known about the issue, he wouldn't have bought the home.

6:07 PM Mr. Lytle asked if the water was frozen, too.

Mr. LaFrance said that the water is still working but we just can't use it because it would back up; that there's nowhere for it to go.

Mr. Donhauser said that his position is that we need to do something immediately; that he thinks it's incumbent upon us, as trustees of the Town, to take care of the situation and, then, unfortunately, have to deal with it later. He added that he certainly agreed that Mr. Cullen is a target, in his view, but, we have the means to do it, he believes, and presumably the money.

6:08 PM Mr. Lee said that he believes that, if the LaFrance family can help us get notification to the other six families tonight, and maybe repeat it again in the morning; that it is all marked up.

Mr. Moulton said that we have to do our own Dig Safe ticket to be legal; that we can't dig on anybody else's ticket. He added that an emergency Dig Safe usually takes a couple of hours. He added that he would probably need tomorrow to set something up with a contractor to do the digging; that it may take as long as Monday to get things set up, dig it, and fix it.

6:09 PM Mr. McPherson agreed with Mr. Donhauser; that he thinks we need to do something to help this situation and, then, unfortunately we are going to have to bring it back up at some point to hold somebody responsible for it.

Mr. Lee said that it sounds to him, to keep the meeting moving along since this is really a public comment thing and we have a lot to do, if he is hearing that the SB has consensus that he can work with Public Works and that family and get this going as quickly as possible, with notifications, and so forth, including even, perhaps, trying to get something done very soon, depending on the availability of the necessary contractor and whether they can be there on Friday afternoon, Saturday, Sunday, as soon as we can get to it. He added that his biggest concern is, if we do mess up the irrigation system, he did hear that it's not terribly expensive to repair.

6:10 PM Mr. Donhauser asked if it was possible to hook into Mr. LaFrance's pump (E1) and bring the sewer onto the surface in some type of a flexible pipe, take it to a place where it can actually be dropped into a gravity feed or is that too far to do.

Mr. Moulton said that he thought you were looking at too large of a pump to get it to where it needs to be; that based on what he knows of the sewer system in

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Blueberry the only place it discharges is in the pump station up closest to Greenwood.

There was **consensus of the Select Board** to move forward with the Town Manager's plan to resolve this immediate issue.

6:12 PM Mr. Orestis said that we do need to figure out what's going on with these private sewers; that we need to get it on the agenda, put our heads together, and figure out, because this is not going to happen every time this comes up.

Mr. Lee said that, unfortunately, what you're going to see with these private lines is that they were installed at the least expense, they didn't quite get them deep enough, they didn't do the engineering, or they put in a 90-degree bend (which Mr. LaFrance has in one of his pipes). He added that they are really inferior systems and it's not that we shouldn't take them; that we probably have a moral obligation to take all of them; that we're also going to be financially committed to a lot of repairs.

6:14 PM Ms. (Donna) Murphy said that she heard the gentleman say that they paid betterment fees for the sewer and, yet, there's no vote on record that the Town accepted that, asking how the Town accepted betterment fees from these people.

Mr. Lee said yes; that this is another element of this big mess. He added that if he told her how this might have worked in the real world, we would have identified right off the bat and told Mr. Cullen he still owns it and he gets to collect the fees on your private sewer system, that you get to put those into a reserve and, when this kind of things happens, you use the money you have collected; that he would then have a pool of money to do these repairs. He added that part of the discussion with Mr. LaFrance is that we still have to unscramble that we've been collecting betterment fees on a private line and, maybe, those are due back to Mr. Cullen concurrent with his bill, as well; that it's very, very tricky.

6:15 PM Mr. Murphy said that he agrees with Mr. Orestis that this Board should look at all those private systems and bring Eliot together in a sensible way.

6:16 PM **a) Introduction: Officer Timothy Niehoff**

Chief Moya said that he was here to introduce our newest officer, Mr. (Tim) Niehoff, who comes to us with 15 years of police experience from North Berwick; that, also, he believes 18 years of dispatching service. He added that he's used to small town policing and has a keen interest in computers, which is very good, and computer crimes. He added that we are really happy to have him and thinks that he is a tremendous addition to our team.

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Mr. Lee expressed his personal appreciation for joining our force; that he does have a lot of experience and, as we're going to be discussing, dispatching is an issue that we are working out with Kittery and he thinks Officer Niehoff's experience on that will be very, very helpful. He added that we have another officer (Officer Watson) who has dispatching experience so we are going to be able to, hopefully, help Kittery in their efforts to improve their dispatching services.

6:17 PM Chief Moya said that Officer Niehoff is going to help us a lot with our records management inside and just our networking stuff but it goes hand-in-hand with dispatching. He added that Officer Watson has been doing a truly tremendous job with helping Kittery get some policies going and just, hopefully fingers crossed, get that moving in a positive direction. He said that we've made some pretty decent additions, here, recently that have been pretty spectacular for the department.

Mr. Murphy welcomed Officer Niehoff to Eliot.

Mr. Lee asked to take I.2) Donation: Fuel Fund – Christian Life Church out of order; that we have a couple of ladies here that are waiting to tell us what they did for the Town and the Fuel Fund and he would like to see if we could let them get on their way.

The SB agreed.

6:19 PM **2) Donation: Fuel Fund – Christian Life Church**

Mr. Murphy read: "Pastor Denise Pastrape joins us from the Christian Life Church on Route 236. The Town Manager, Dana Lee, informs us that the church recently held a fund-raising dance/party to supplement the Town's Emergency Fuel Fund. The amount raised was around \$1,500 and we are very grateful for your efforts to help the needy here in Eliot."

Pastor Pastrape said that we raised \$1,600; that, throughout the year, we try to do different fund-raising for different community endeavors, like the food pantry or the End 68. She added that, as we were preparing for this year, we asked ourselves what we could do in our small Town that we can make a difference; that every year we always get a letter about donating to this Fuel Fund so they decided to hold a free dance party with a DJ and some good family music and ask people to bring a donation for the Fuel Fund; that not only did we have a great night of fun but people were very generous and, so, we want to present that to the Town

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and say that we really love our Town and love the opportunity to help make a difference.

6:20 PM Mr. Murphy said that that was wonderful. (Audience clapped in thanks.) He added that we are very grateful for the efforts to help our needy in Eliot.

F. Approval of Minutes of Previous Meeting(s)

6:21 PM Motion by Mr. McPherson, second by Mr. Lytle, to approve the Select Board Budget Workshop minutes of February 21, 2019, as amended.

Roll Call Vote:

Mr. Donhauser – Yes

Mr. Lytle – Yes

Mr. Murphy – Yes

Mr. Orestis – Yes

Mr. McPherson - Yes

Unanimous vote to approve motion.

G. Committee Resignations and Appointments

There was no action.

H. Department Head/Committee Reports

6:23 PM 1) Public Works Garage Exhaust Bids

Mr. Lee said that the Capital Improvements & Energy Commission (CIEC), working with him and Public Works, had long identified and expressed, along with MMA, about air quality at the Garage. He added that we wrote some specs and sent them to a number of firms (11); that he believes we got only two back and both of them are over the money we have currently allocated for this project, which is about \$8,400, and the lowest submitted bid was \$12,390; so, we're about \$4,000 short. He added that, today, we received a check from Efficiency Maine, who has a rebate program for putting in energy-efficient heating systems, for \$3,750, which is very close to the amount we need to complete the project. He added that Mr. Moulton feels he could find the remaining amount needed in his budget. He said that we called the lowest bidder to ask if they would hold their bid price, if the SB didn't want to use the \$3,750, and they said that they would hold the bid price until late May/early June when we can't get a look at what's left in the Public Works budget, if the SB wants to do it that way. He said that we

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could do it either way but, essentially, the \$3,750 is a rebate on an energy project and this is another energy project, we just underestimated the cost.

6:26 PM Mr. Murphy said that we didn't receive copies of the bids this time.

Mr. Lee said that he didn't know why they didn't get in the SB packages. He made copies.

Mr. McPherson asked if this system was similar to the one at the Fire Station – a vent system that hooks to the exhaust system of the truck.

Mr. Moulton said it would be similar but would be in the mechanic's bay, not individual trucks; that it would be an external exhaust for the whole bay during the season when all the trucks are starting up inside. He added that to do a similar system as the Fire Station would be a lot more money.

6:28 PM Mr. Orestis said that, regarding the rebate check, he thought that, in past conversations, we've discussed in gross budgeting that any income coming into the Town has to go to the general fund.

Mr. Lee said that, generally speaking, that's correct.

Mr. Orestis asked how this would be different than what would typically happen.

Mr. Lee said that one of the things that make it a little different is that we had the HVAC system replacement in as a capital improvement item; that, for example, when we get an insurance check back or anything like that, it goes back into a capital reserve account; that the thought was putting this back into the Energy Reserve from which we've been doing the energy project because it is a rebate on an energy project. He added that he can see how those two go together but, generally speaking, what Mr. Orestis said is exactly right, which is why he gave the SB the second option of waiting until the end of the fiscal year to see if there's enough money left in the Public Works budget.

6:29 PM Mr. Orestis said that he would be of the opinion to wait and do it through the Public Works budget at the end of the year.

There was further clarifying discussion of the two options and their impacts.

6:34 PM Mr. Donhauser asked if the money needed to be appropriated to take it out of the reserve.

Mr. Lee said that Mr. Donhauser was right so waiting until the end of the fiscal year is our only option. He added that he thinks his question is answered and he

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didn't think we could award this until we get closer to the end of the fiscal year, as we may not have the money to do this and he doesn't want them going out to buy the system in anticipation of us finding the money and, then, not finding it. He suggested we put this on for another agenda knowing that they will hold that price.

The Select Board agreed **by consensus** to follow the Town Manager's suggestion.

6:35 PM Ms. (Donna) Murphy asked if we know this is an issue and we need more money why would this not have been added as a late addition to put in for next year's budget.

Mr. Lee said that the bids came in just last Wednesday; that we are far into budget deliberations and thought that would be unfair to spring on everybody.

6:36 PM 2) Stormwater Engineering RFQ/RFP

This was regarding getting RFQ's (Request for Qualifications) for enough vendors to meet our purchasing policy in the future.

Mr. Moulton said that we sent out to eight and five responded, with only two submitting for the RFP (Request for Proposal) portion. He added that, ultimately tonight, we are looking to see if the SB would approve consulting services for the next drainage project for stormwater for the next budget. He clarified that having three pre-approved drainage project consultants would reduce the amount of paperwork, speeds it up because they are pre-qualified, and we would have three bidders to bid on projects. He said that the low bidder for the next engineering project is Sebago Technics of South Portland, which project is Spinney Creek and Hobbs Circle. He added that our MS4 Stormwater consultant (Kristie Rabasca) has worked with Sebago Technics.

Mr. Murphy asked when this work would begin.

6:39 PM Mr. Moulton said that it would start after budgets start on July 1st.

Mr. Murphy asked if they would be able to make any use out of the old sewer system down there.

Mr. Moulton said that the old sewer system, as we've found on many occasions, is falling apart and is unusable.

Mr. Donhauser said that this is one element of the stormwater reconstruction and asked how this project fits into the bigger picture regarding the stormwater budget.

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6:43 PM Mr. Moulton said that this is an engineering year for design of the system and preparing to go out to bid later in this next budget year, then construct the project the following year; that we would start the design in July, having it predesigned for the latter half of next budget to go out to bid and have an actual construction project number. He clarified that all you would be looking at expending out of the upcoming budget is the \$19,520 for the design project and the MS4 permitting, which is around \$20,000 to \$25,000.

6:46 PM Mr. Orestis said that, based on this ‘work to be completed’ sheet, Mr. Moulton has \$49,000 under ‘surveying, investigation, design, easements, permitting budget’, asking if any of that came into play with the funds for the 2020/2021 construction.

Mr. Moulton explained that, when we did the Staples/Wood/Leach Drainage Project, we did some of the surveying for the Hobbs/Spinney so there’s a balance of a little bit of surveying to be done in this quote and, then, the design will happen from there.

6:47 PM Mr. Orestis said that, with a partial survey done, some of that \$49,000 anticipated to be spent has already been spent, so that number will come down, plus you will have whatever’s remaining from the 19/20 year and have more money going forward to get these projects complete.

Mr. Moulton said that that was correct.

Mr. Donhauser moved, second by Mr. Lytle, that the Select Board award the bid to Sebago Technics for a total of \$19,520 for the 2019/2020 engineering services for Stormwater improvements.

DISCUSSION

6:48 PM Mr. (Jim) Tessier, Johnson Lane, asked if this list is new or were the projects listed here already on there.

Mr. Lee said that they were already on it.

Mr. Moulton clarified that, based on that last discussion, the next priority was actually Riverview Estates but given the condition of the sewer system, things got reprioritized.

DISCUSSION ENDED

Roll Call Vote:

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Mr. Donhauser – Yes

Mr. Lytle – Yes

Mr. Murphy – Yes

Mr. Orestis – Yes

Mr. McPherson - Yes

Unanimous vote to approve motion.

6:50 PM 3) Sewer Inspection of Force Main – Underwood ESR (#28) – Sole Source

Mr. Murphy read a memo from Mr. Moulton regarding the first phase, requested by the Town of Kittery Wastewater Superintendent, in evaluating the force main between the King's Highway Pump Station and the connection to Kittery's force main into Kittery's pump station #7; funding source from the balance of the SRF loan approved by the MeDEP.

Mr. Moulton said that we were looking for approval to continue with Underwood Engineers for this ESR #28, which would inspect all the incoming lines to the Kittery Wastewater Plant; that this is Phase I, requested by the State, but in time we would like to move forward with inspecting the rest of the Town's sewer force mains, too. He added that this is part of an ongoing operations and maintenance procedure for the sewer system. He said that he was looking for permission to move forward with Underwood Engineers for the Desktop Evaluation of the force main for \$6,600 to be funded either from the SRF Funds or reserves. He added that there are adequate funds in the reserve but he isn't sure what the number is.

6:54 PM Mr. Lee asked if Mr. Moulton reached out and made sure we can use the SRF Funds for this purpose.

Mr. Moulton said that he did.

Mr. Orestis asked if there were funds available.

6:55 PM Mr. Moulton said that we are going to have a balance of approximately \$45,000 from the SRF Loan; that the project came in under budget and the only change order we had was positive for the Town.

Mr. Donhauser asked what a Desktop Evaluation was.

Mr. Moulton explained that an evaluation was done on-site and evaluated the manholes, inspect roadways for settlement, elevation changes in the lines; that with a force main it is difficult because it's continuously pumping sewerage. He said that we try to do the least invasive inspection to determine if there are any

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issues; that if they don't find any issues, they won't have to go any further and, if issues are found, they might have to do an ultrasound or camera work.

6:57 PM Mr. Orestis asked if, when we get to the end of the project and there is money left over on the loan, can that loan be paid back early. He explained he was asking because it would make more sense to pay something out of the reserve if there's no interest and, with a loan, you're obviously taking that money out with interest.

Mr. Lee said that he didn't immediately remember whether you could pre-pay this, or not; that Maine Municipal Bond Bank (MMFB) you cannot. He added that this is funded through the MMFB; that they are the keepers, if you will, of the State Revolving Loan Fund; that they administer it but he doesn't know off the top of his head and it's a great question. He said that one of the things they could do tonight is, in an effort to resolve this, he could reach out to the SRF people and find out if we can pre-pay; that, if we can pre-pay, then the action (motion) of this Board might be you want to use the reserve and pre-pay any SRF remainder; that, if we can't pre-pay, then we might as well use the money for something other...we're just beginning to build up some sewer reserves.

6:58 PM Mr. Donhauser said that the question isn't whether we're going to spend the \$6,000 but it is really the source of the funds that we are going to spend, either from the loan fund or the reserve.

Mr. Lee clarified that the SB could theoretically say that this is a silly use of money and you don't want us spending \$6,600 at all.

Mr. Donhauser said that he assumed the SB would think it's good.

Mr. Lee said that we came to the SB assuming it was a good idea, as the State and Kittery are asking us to do it, but it's really just the source of the money – can we proceed with Underwood, at \$6,600, and if so, can we use the SRF money if we cannot pre-pay our loan or we will then use sewer reserves to fund the \$6,600 to do this work.

Mr. Donhauser said that any motion should allow for that flexibility.

Mr. Lee agreed.

7:00 PM Ms. (Donna) Murphy, resident, said that the Town provided some labor for the sewer, which the sewer account was to have reimbursed, asking if that had been done and is there enough money in there to reimburse the Town.

Mr. Lee asked Mr. Moulton, out of the \$45,000, how much of that was supposed to come back to the Town.

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Mr. Moulton said, off the top of his head, roughly \$30,000.

Mr. Lee asked Mr. Moulton to get those numbers just so that we are sure.

7:01 PM Mr. Moulton said yes.

Mr. Lee asked Mr. Moulton if he believed, out of that \$45,000, we could fully re-pay ourselves and do \$6,600.

Mr. Moulton said yes.

Mr. Tessier said that you said we came in under budget so, if we cannot re-pay the loan, does that excess go into the Sewer Reserve.

Mr. Lee said that he would think it would; that the debt payment comes out of the sewer fund so it would only make sense that any leftover would go into our reserves to then pay next year's debt service.

Mr. Lytle moved, second by Mr. Donhauser, that the Select Board award ESR #28 for \$6,600 to Underwood Engineers to do a Desktop Evaluation of the force main between King's Highway Pump Station and the discharge manhole, subject to the ability to pre-pay our SRF Loan and, if able to pre-pay the loan, then do so and fund this through Sewer Reserves.

Roll Call Vote:

Mr. Donhauser – Yes

Mr. Lytle – Yes

Mr. Murphy – Yes

Mr. Orestis – Yes

Mr. McPherson - Yes

Unanimous vote to approve motion.

7:05 PM 4) MS4 Permit Comments from Maine DEP

This is regarding the fiscal year 2017/2018 MS4 Stormwater Permit annual report and that the Town is in compliance; that the Town did a good job developing the annual report, which means we are doing a good job for the right reasons.

Mr. Lee said that the MeDEP had virtually no comments. He added that Christie Rabasca has said that Eliot has been kind of on the forefront of this and he remembered, during budget deliberations, the question was asked if we should be

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on the forefront but this is when you get your rewards, he guessed, when they say great job.

7:08 PM Mr. Murphy said that that's easy for them to say but asked if we could relax or is there even more coming at us.

Mr. Lee said that he thinks there was a good meeting of the minds between the Budget Committee and the Select Board during his tenure that we're going to stay around the \$200,000 mark, we're going to fund the permitting piece of \$22,000 to \$24,000, we have roughly \$175,000 for construction; that one year will be engineering and the second year, money permitting, will be construction. He added that he thinks we have a good rhythm, now, that will keep us in good graces with the DEP.

Mr. Murphy asked, after we get the work done connected to the Piscataqua River, if we foresaw that the York River and that eastern side of Eliot then becomes the point of contention, or development, for MS4.

Mr. Lee said that we're really not sure at this point.

7:10 PM Mr. Moulton said that the York River essentially will not be included in the MS4 portion but the York River does lead in to, and contributes, stormwater into the MS4 organized area of the Town so it all will be affected and all things that the Town will have to be aware of and continue to do maintenance on. He added that, once these capital projects are completed, it will just be a matter of maintaining them and staying in compliance with the MS4 Permit.

7:14 PM **5) Update: Maine DOL Citations**

Mr. Lee said that he just wanted to make the SB aware that we did complete and fix all the things that were noted when the Department of Labor (DOL) came in; that we got the report back to them that everything was repaired as of the date we were ordered to have everything repaired. He added that we have still not heard back from them about the penalty reduction meeting that we're supposed to be having; that we are going to be asking the DOL to be allowed to use whatever they were going to have penalized us for further safety improvements, instead of paying just a fine to them, and generally they are willing to do that.

J. Administrative Department

7:19 PM **1) Town Manager Report(s)**

Mr. Donhauser asked about **Line 35** regarding the expense of being a State-licensed day care.

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Mr. Lee said that he thinks that in the next couple of weeks he and the ECSD Director will be approaching the SB to request that we be allowed not to meet State licensing requirements, as many of these rec programs are not required to be State licensed. He added that we have always gone to that higher level of licensing but we are finding it increasingly expensive and we're not required to do it.

7:20 PM Mr. Donhauser asked about **Line 56** regarding 2020 election dates with the Regatta and whether this was to hold the actual election there.

Mr. Lee said yes; that we checked with them to see if we could hold the June and November elections there, annually, each year. He added that, as it stands, he doesn't think they can work it out because they have Liberty Mutual in every year the same week we have our municipal election; that they could probably accommodate the November election but not the June election. He said that we are waiting to here back to see if Liberty Mutual would be wiling to move their annual event to some other week other than the week we do June voting.

7:21 PM Mr. Donhauser asked about **Line 66** regarding a discussion to resolve an ongoing personal property software issue.

Mr. Lee said that that has been resolved.

Mr. Murphy asked if we had anything more on the gun club.

Mr. Lee said no, not at this point.

7:22 PM Mr. Lytle asked if the Police went out.

Mr. Lee said yes; that the Police were very happy to be involved and go out to check on this and thanked Chief Moya for being so receptive in helping with that.

Ms. (Donna) Murphy asked what the cost would be for the Regatta versus the school for elections.

Mr. Lee said that he believes they were going to let us have it at no cost

7:24 PM **3) Job Description Reviews/Approval**

Mr. Lee said that the SB has had these job descriptions for a couple of weeks and he's looking for any feedback or changes to any of them.

Mr. Murphy said that he had some comments that he would give to Mr. Lee.

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7:25 PM 4) Spirit of America Recognition

Mr. Lee said that Ms. (Megan) Weeks-Zotara (Librarian) was selected to receive the Spirit of America Recognition, and there will be a ceremony put on by the Spirit of America group she will be invited to, but he was wondering if we wanted to do something locally, such as inviting her to the Citizen's Option meeting to recognize her receiving the Spirit of America Recognition.

Mr. Murphy said that that sounded like a good idea and he would favor that.

The SB agreed to add this to the Citizen's Option agenda.

7:26 PM 5) Kittery Dispatch Contract Reply

Mr. Lee said that he met with the Fire Chief and Police Chief on a couple of occasions, discussing the draft contract sent to us, a copy of which is in your packets. He read his letter to the Town Manager Kendra Amaral regarding main points of concern/ideas with the contract moving forward. He added that what he is looking for from the SB this evening is your approval for him to send that letter, or something very similar to that letter, back to them and ask to amend the contract one more time for your consideration once we get it back from the Town of Kittery. He clarified that our concerns are largely on the police-side because fire is largely independent once the 911 call goes out. He said that, concurrent with this, it was felt we may want to investigate what other options may be available to us if there are no improvements in year one; that, in speaking with Ms. Amaral, she has assured him that there will be improvements, so he thinks we'll be okay; that like anything, it's always good to have a Plan B.

7:29 PM Mr. Murphy said that page 2 and page 4 of the draft contract was missing.

Mr. Lee said that he would get the full draft to the SB for their review. He added that this letter reflects staff concerns and he would hope that the SB would trust the staff that this is what we need to do to get through in that we need some more policies and consistency in the way that dispatching is done.

7:31 PM Mr. McPherson asked if the Fire and Police Chiefs are actually in agreement with this.

Mr. Lee said yes.

The SB agreed that the Town Manager should send the letter.

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7:32 PM 6) Form of and Recommendations for Town Mtg. Warrant Questions

7) Citizen's Option Warrant

Both of these were discussed together.

Mr. Lee said that this is mostly informational; that what you'll note is that up on the dais you had a most up-to-date copy of both Citizen's Option Agenda and the Town Meeting Warrant; that he is providing that because on Monday we're having a special meeting where we are going to vote on each of the budget articles and he wanted to give the Board the weekend to look over the form of both. He added that if they have any grammatical issues, formatting issues, if some numbers are wrong, then he would like to know in advance to avoid making last-minute changes.

7:33 PM 8) Approve Warrant(s)

Mr. Murphy moved, second by Mr. Lytle, that the Select Board approve A/P Warrant #79 in the amount of \$88,572.38, dated February 22, 2019; A/P Warrant #81 in the amount of \$94,457.77, dated February 22, 2019.

Roll Call Vote:

Mr. Donhauser – Yes

Mr. Lytle – Yes

Mr. Murphy – Yes

Mr. Orestis – Yes

Mr. McPherson - Yes

Unanimous vote to approve motion.

J. New Business:

There was no new business.

K. Old Business:

7:35 PM Mr. Orestis said that it seemed to him that there's a generator over in the corner.

Mr. Lee clarified that that is an automatic transfer switch for a generator; that it is currently mounted there but he doesn't think it's wired in, yet; that they should be doing the wiring this weekend and will come on when the power goes out.

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7:36 PM Mr. McPherson asked, regarding the repair to the truck, what Mr. Lee had found out about the block.

Mr. Moulton said that the block was only going to get replaced if we went with a new engine from International; that if we did a rebuild, everything was going to be new except for the block, crankshaft, and camshaft.

Mr. Lee agreed, saying that we had a rebuild done.

Mr. McPherson said that, in reviewing the documents, we voted on January 10th for a rebuild and, then, on the 11th a new parts list showed up; that the parts list we paid matches the parts list for a new motor. He added that he was confused.

Mr. Lee asked if Mr. Moulton knew what he was talking about.

Mr. Moulton said no; that the only thing he can think Mr. McPherson may be talking about was that there was some money, up front, to order the parts since there would be a delayed time in payment, so there was a request for partial payment before starting the job to pay for the parts.

7:38 PM Mr. McPherson said that the parts list matches the estimate for a new motor, not the rebuilt motor that was approved.

Mr. Moulton said that he would have to look into it further.

Mr. Lee suggested to Mr. McPherson, just for the future, if he wants something on the agenda, he should probably speak to the Chairman and, then, we could get materials ready for you; that he doesn't know, without the documents, what he is referring to.

Mr. McPherson said that he thought we ought to find out why we paid the parts list for the new motor and not the rebuilt motor.

Mr. Lee agreed. He said that he would look into it and get back to the SB.

L. Selectmen's Report: Seeking Committee Members

7:40 PM There were no Selectmen's reports tonight.

Mr. Murphy said that we are seeking committee members for several committees.

Mr. Lentz said that the PB operates most efficiently and makes the best decisions with five, regular, voting, seasoned members; that he has four and he's about to lose another one who is with child; that we have one alternate where it works best when there's two. He added that all these folks have families, they have kids, they

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all work and one of them is getting some further education; that they continue to, every now and then, have to take a night off. He explained that, when he gets down to four, if he loses one – the construction season is coming, the applications are coming in; that depending on the difficulty of the application, he'll close that meeting down without hearing it even if there's a quorum of three because it's too difficult a subject for three people to deliberate. He said that he appoints his alternate as a regular member at every meeting but, if he loses another regular member, which he's going to a few weeks from now, we're in trouble. He said that he doesn't know what the SB is doing about the lack of committee people but we need to do something.

7:42 PM Mr. Lee said that he recently spoke with Mr. Lentz about this and he could feel the concern and he shares it; that he has been trying to think of people to reach out to because people aren't necessarily going to come forward, asking people in Town to reach out to friends and neighbors they think might want to be on the PB.

Mr. Lentz said that it's not easy; that it takes a year for an average person to be on that board to understand what's going on.

Mr. Murphy said that it's a very valuable thing for a citizen to do; that if you are interested in the Town, at all, it's a wonderful way to get to know the Town and how it works.

M. Executive Session

7:44 PM Mr. McPherson asked who will be attending the executive session.

Mr. Lee said that it would be the SB, himself, and the object of the complaint (Mr. Moulton).

Mr. McPherson said that he has an issue with that; that his issue is, if you are the Personnel Director, you've denied one person the right to speak in executive session and given permission for another person to speak in executive session, and he doesn't believe that's fair. He added that he thinks both people, Mr. Moulton and Mr. Holt, have the right to speak in executive session and voice their complaints and concerns.

7:45 PM Mr. Lee said that he doesn't know if that's legal or illegal and he doesn't mind if he attends.

Mr. McPherson clarified that he didn't mean together but was just saying that they both have the right.

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Mr. Lee said that he had a right to an exit interview that he waived by going public.

Mr. McPherson said that even if he did it right or did it wrong, if Mr. Moulton has the right to state his case, then Mr. Holt has the right to state his case; it's only fair.

Mr. Lee said that we will leave it up to the Chairman.

7:46 PM Mr. Murphy said that he thinks he agrees with the Member; that he doesn't think it does wrong to hear someone's issues in a formal way.

Mr. Lytle said that for as many years as he has been a Selectman, he has never seen it where the complainant could not attend the meeting if he wanted to.

Mr. Lee said whatever your will might be; that he doesn't mind, either way. He added that he had thought it was just to take up the complaint against Mr. Moulton, which was put in writing.

Mr. Murphy said that it is on the same subject and there are two parties to that subject and they have a right, he thinks, to hear what each other says; that he would say that our meeting should include both of them.

7:47 PM Mr. Donhauser moved, second by Mr. Orestis, that the Select Board enter into executive session as allowed by 1 M.R.S.A §405(A) Personnel Matters.

Roll Call Vote:

Mr. Donhauser – Yes

Mr. Lytle – Yes

Mr. Murphy – Yes

Mr. Orestis – Yes

Mr. McPherson - Yes

Unanimous vote to approve motion.

9:15 PM Out of executive session.

There was no action.

N. Adjourn

There was a motion and second to adjourn the meeting at 9:16 PM.

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VOTE
5-0
Motion approved

Respectfully submitted,

Ellen Lemire, Recording Secretary

S/ Richard Donhauser, Secretary

Date approved: June 27, 2019