

**SELECT BOARD MEETING**  
**August 22, 2019 5:30PM**

**Quorum noted**

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

**B. Roll Call:** Mr. Murphy, Mr. Lytle, Mr. Donhauser, Mr. Orestis.

**Absent:** Mr. McPherson (excused).

**C. Pledge of Allegiance recited**

**D. Moment of Silence observed**

**E. Public Comment:**

There was no public comment.

**F. Approval of Minutes of Previous Meeting(s)**

**5:31 PM Motion by Mr. Murphy, second by Mr. Lytle, to approve the minutes of August 8, 2019, as written.**

**Roll Call Vote:**

**Mr. Donhauser – Yes**

**Mr. Lytle – Yes**

**Mr. Murphy – Yes**

**Mr. Orestis – Abstained (was not present)**

**3-0-1 vote to approve motion.**

**G. Committee Resignations and Appointments**

There were no items.

**H. Department Head/Committee Reports**

**5:32 PM 1) Roadside Mower Attachment Bid Results**

Mr. Robinson said that only one of three vendors submitted a bid, Allied Equipment of Rockwood, Maine, and he requested that the bid be awarded to Allied Equipment.

Mr. Donhauser asked if there was a State site that you can request bids through.

**SELECT BOARD MEETING**  
**August 22, 2019 5:30PM (continued)**

Mr. Lee said that there is and we do that sometimes; that we didn't think to do that with a roadside mower but they do have a site where there are existing bids.

**5:35 PM      Mr. Orestis moved, second by Mr. Murphy, that the Select Board waive the three-bid policy.**

**Roll Call Vote:**

**Mr. Donhauser – Yes**

**Mr. Lytle – Yes**

**Mr. Murphy – Yes**

**Mr. Orestis – Yes**

**Unanimous vote to approve motion.**

**Mr. Murphy moved, second by Mr. Lytle, that the Select Board approve the purchase of this equipment from Allied Equipment of Rockwood, Maine in the amount of \$8,983.00.**

**Roll Call Vote:**

**Mr. Donhauser – Yes**

**Mr. Lytle – Yes**

**Mr. Murphy – Yes**

**Mr. Orestis – Yes**

**Unanimous vote to approve motion.**

**5:36 PM      2) Gazebo Rehab Bid**

Mr. Sylvester requested that the SB accept the bid from Terry Thomas of Eliot, Maine for the gazebo repair in Hammond Park for a total of \$9,600.00, to be completed by September 24<sup>th</sup>, in time for Eliot Festival Day.

Mr. Lee said that we tried to get several bids but the timeframe was difficult.

**Mr. Orestis moved, second by Mr. Murphy, that the Select Board waive the three-bid policy.**

**Roll Call Vote:**

**Mr. Donhauser – Yes**

**Mr. Lytle – Yes**

**Mr. Murphy – Yes**

**SELECT BOARD MEETING**  
**August 22, 2019 5:30PM (continued)**

**Mr. Orestis – Yes**

**Unanimous vote to approve motion.**

**Mr. Murphy moved, second by Mr. Lytle, that the Select Board approve the amount of \$9,600 to Terry Thomas of Eliot, Maine for the rehab of the gazebo.**

**Roll Call Vote:**

**Mr. Donhauser – Yes**

**Mr. Lytle – Yes**

**Mr. Murphy – Yes**

**Mr. Orestis – Yes**

**Unanimous vote to approve motion.**

**5:39 PM      3) Road Striping Bids**

Mr. Sylvester requested that the SB accept the bid of Atlantic Pavement Marking, Inc. from Prospect, CT for the road striping this season for a total of \$6,821.76. There were five bids.

**Mr. Murphy moved, second by Mr. Lytle, that the Select Board approve awarding this bid to Atlantic Pavement Marking, Inc. of Prospect, CT in the amount of \$6,821.76.**

**Roll Call Vote:**

**Mr. Donhauser – Yes**

**Mr. Lytle – Yes**

**Mr. Murphy – Yes**

**Mr. Orestis – Yes**

**Unanimous vote to approve motion.**

**5:40 PM      4) TAN Bid**

Mr. Lee said that this was for a Tax Anticipation Note that would give us access for up to \$2 million; that we bid it out to five vendors and only two responded – Kennebunk Savings (2.42%) and Key Bank (2.16%). He added that we are recommending that the SB approve the 2019/2020 TAN to Key Bank with an interest rate of 2.16%.

**SELECT BOARD MEETING**  
**August 22, 2019 5:30PM (continued)**

**5:42 PM**      **Mr. Orestis moved, second by Mr. Murphy, that the Select Board waive the three-bid policy.**

**Roll Call Vote:**

**Mr. Donhauser – Yes**  
**Mr. Lytle – Yes**  
**Mr. Murphy – Yes**  
**Mr. Orestis – Yes**

**Unanimous vote to approve motion.**

**Mr. Murphy moved, second by Mr. Lytle, that the Select Board approve awarding this amount to Key Bank in the amount of \$2 million, as recommended by the Town Manager, at an interest rate of 2.16%.**

**Roll Call Vote:**

**Mr. Donhauser – Yes**  
**Mr. Lytle – Yes**  
**Mr. Murphy – Yes**  
**Mr. Orestis – Yes**

**Unanimous vote to approve motion.**

**I.      Administrative Department**

**5:43 PM      1) Town Manager Report(s)**

There was no discussion.

**a. Financial Report**

Mr. Lee clarified that we are having trouble with TRIO in that it is not allowing us to enter in the certified budget; that they are working on it but, right now, he doesn't have starting balances.

**5:45 PM      b. Investment Report**

This was a summary of the annual review of the Town's investments with Key Bank.

**SELECT BOARD MEETING**  
**August 22, 2019 5:30PM (continued)**

**5:48 PM      c. Update: Mr. Staples' Fence**

Mr. Lee said that, just today, Attorney Brandwein got a notice from the Court that they want us to hold a telephone conference regarding Mr. Staples' fence on August 30<sup>th</sup>.

**5:49 PM      2) Official Approval of Clerk's Certification of Sufficiency of the Citizen's Petition: Agritourism Ordinance**

This is to certify that there are sufficient signatures on this petition to put it on the November ballot.

**Mr. Murphy moved, second by Mr. Orestis, that the Select Board accept this Citizen's Petition to be put on the ballot and the Certificate of Sufficiency by the Town Clerk.**

**Roll Call Vote:**

**Mr. Donhauser – Yes**

**Mr. Lytle – Yes**

**Mr. Murphy – Yes**

**Mr. Orestis – Yes**

**Unanimous vote to approve motion.**

**5:52 PM      3) Final Marijuana Establishments Ordinance/Amendments**

Mr. Lee said that the SB is certifying that this is the final form of the ordinance going before the Town by motion

**Mr. Donhauser moved, second by Mr. Orestis, that the Select Board certify the Chapter 11 Marijuana Establishments document, the Chapter 33 amendment, and Chapter 45 amendment related to the Marijuana Establishments Ordinance.**

**Roll Call Vote:**

**Mr. Donhauser – Yes**

**Mr. Lytle – Yes**

**Mr. Murphy – Yes**

**Mr. Orestis – Yes**

**Unanimous vote to approve motion.**

**SELECT BOARD MEETING**  
**August 22, 2019 5:30PM (continued)**

The pertinent documents were signed at this time.

**5:55 PM      4) Final Sewer Ordinance**

Mr. Lee said that we have had a workshop on all of these and it has been through legal review. He summarized the changes: new definition related to private wastewater systems, some existing definitions were updated, removed all references to 'sewer committee' and generally changed those to 'sewer superintendent', swapped 'betterment fee' with 'system development charge'. Which is more appropriate for what that money is for, require all users to have a Kittery water meter for sewer billing. He said that we need a vote to certify this ordinance to go to ballot.

**Mr. Donhauser moved, second by Mr. Orestis, that the Select Board certify the final sewer ordinance, as presented.**

**Roll Call Vote:**

**Mr. Donhauser – Yes**

**Mr. Lytle – Yes**

**Mr. Murphy – Yes**

**Mr. Orestis – Yes**

**Unanimous vote to approve motion.**

The pertinent documents were signed at this time.

Mr. Lee said that this was a significant amount of work and thanked Ms. Rawski and Ms. Albert for all that they did in putting this together.

**5:58 PM      5) Final Growth Permit Recommendation**

Mr. Lee explained that we don't have to certify this because it's an ordinance that exists already and that ordinance requires us to go to a vote; that what is needed is that a vote is made on whether you support this number of permits (24).

**Mr. Donhauser moved, second by Mr. Orestis, that the Select Board recommend 24 growth permits.**

**Roll Call Vote:**

**Mr. Donhauser – Yes**

**Mr. Lytle – Yes**

**Mr. Murphy – Yes**

**SELECT BOARD MEETING**  
**August 22, 2019 5:30PM (continued)**

**Mr. Orestis – Yes**

**Unanimous vote to approve motion.**

**6:00 PM      6) Certification of TIF Development Program Amendment**

This is to certify the findings to the second amendment to the TIF District and Development Program.

**Mr. Donhauser moved, second by Mr. Murphy, that the Select Board certify the Findings Related to the Second Amendment and Restated Town of Eliot Municipal Development and Tax increment Financing District and Development Program.**

**Roll Call Vote:**

**Mr. Donhauser – Yes**

**Mr. Lytle – Yes**

**Mr. Murphy – Yes**

**Mr. Orestis – Yes**

**Unanimous vote to approve motion.**

Ms. (Donna) Murphy, Hanscom Road, wanted to go back to the Agritourism Ordinance, saying that it looked more of a description than an ordinance. She asked if this had been vetted by the PB and if there are any conflicts with current ordinances.

**6:02 PM**      Mr. Lee said that it was his understanding that the PB abstained from making a recommendation; that he would encourage the SB to do the same. He added that it is a Citizen's Petition and we should leave it to the citizens; that it's not in the normal form of an ordinance, which is why the PB wanted to go into a more lengthy process of creating a farm overlay district, which would have been wholly consistent with the rest of our ordinances. He said that this may have some inconsistencies; that we ran it through legal review and the attorney said that we shall place it on the ballot if it's not illegal; that he thinks the PB's intent is to still work on a farm overlay at some point in the future but, in the meantime, Mr. Widi wanted to go forward with his idea.

Ms. (Donna) Murphy said that she was not opposed to this but was very concerned that it wasn't properly vetted and potential unintended consequences.

**6:05 PM**      Mr. Lentz said that the PB is not against any of the agritourism ideas and were for it. He added that the PB took two different approaches, starting off with a non-

**SELECT BOARD MEETING**  
**August 22, 2019 5:30PM (continued)**

binding question to go on the ballot asking if people would prefer some form of agritourism; that because of time constraints and the work involved, that would prevent a draft ordinance being ready for November; that we would move forward based on the citizen response. He said that that was fast enough, and he understands that, and the SB said that the petition was okay. He said that, at the end of this thing, he hopes we come together, as there is no real ordinance that ties its fingers into all of the things it has to tie in and, sooner or later, an ordinance will have to be written and the lawyer said that same thing. He discussed his concern for potential conflicts with other ordinances because there are no parameters and how this would be managed while the PB puts an ordinance together if the citizens want this.

**6:07 PM** Mr. (Bill) Widi said that he changed at least three things to address PB concerns; that it's nothing against the PB but just that balance with running a business, being profitable, and doing things in a timely manner; that he understands that government moves at a different pace than he does. He said that he got 450 signatures in 15 days so there is definitely an appetite for it. He added that he was asked by the Town Manager to work with the PB on a farm overlay and he would be happy to do that anytime and figure out what works for everybody. He discussed his concern for trying to save the last few farms.

**6:10 PM** Ms. (Donna) Murphy reiterated that she is not opposed to this but feels like it's rushed; that she is concerned for unintended consequences and even though she agrees with the idea she would have a hard time voting for it because it hasn't been vetted.

Mr. Lentz kindly reminded the SB that a few months ago the SB made the decision to work with a part-time planner, as opposed to full time, and it is affecting the PB's ability to write ordinances in a more timely fashion; that we have a plate-full right now that we are trying to balance.

**6:12 PM** Mr. Donhauser discussed a letter from the Town attorney that says that a petition, under Maine law and Town Charter the SB shall place articles submitted with a valid petition to the Town warrant but does allow the SB to refuse to put a petition on the warrant if that refusal is reasonable, such as the impact of potential inconsistencies with the Zoning Ordinances. He explained that he thinks it's incumbent upon the SB whether or not, according to our attorney's recommendations, the petition should be put on the ballot and let the voters decide, not us.

Mr. Widi clarified that farming, and all that stuff, is covered through the local food ordinance but the entertainment on a farm is not covered. And he wouldn't risk investing a lot of money for it to be shut down by one complaint; He added



**SELECT BOARD MEETING**  
**August 22, 2019 5:30PM (continued)**

that, as far as the formatting of this, it is from a bunch of different ordinances from all over the country.

Mr. Donhauser said that he was in favor of putting it on the warrant and letting the voters decide whether or not Mr. Widi can do what this petition says.

**6:16 PM** Mr. Murphy agreed he was in favor of proceeding.

Mr. Lytle and Mr. Orestis were also in favor of moving forward with this petition.

**Mr. Donhauser moved, second by Mr. Orestis, that the Select Board allow this petition to move forward without recommendation by the Select Board for or against and to be allowed to be on the warrant in the upcoming election.**

**Roll Call Vote:**

**Mr. Donhauser – Yes**

**Mr. Lytle – Yes**

**Mr. Murphy – Yes**

**Mr. Orestis – Yes**

**Unanimous vote to approve motion.**

NOTE: It was agreed to take up 8) while the SB waited for the Town Clerk to finalize the warrant for the Board's approval and signature.

**6:18 PM** **8) Request to Adjust Gate Due to Paving**

Mr. (Steve) Cultrera, Beech Road, said that Beech Road was raised 8 inches and is due to be raised another 2 inches in the spring; that the first time he tried to get out of his driveway with his rig, it hit so hard it lifted all three rear axles right off the ground, causing damage, which he is going to fix. He added that Mr. Sylvester has been very gracious in working with him to try to lengthen his driveway out so he can get his equipment in and out; that, in doing so, his gate pillars are now below level and only about 2 feet of them showing. He said that, originally, he was going to foot the bill for it but it's going to cost over \$3,600 to fix and, on top of the almost \$10,000 he has to put into that driveway on his own because of this, he thinks that's a little too much to be asking to be taking care of on his own.

**6:20 PM** Mr. Donhauser said that he looked at this and he concurred that we definitely raised the level of the road; that Mr. Cultrera has a commercial business there; that the Public Works Department made a grade so that Mr. Cultrera can at least

**SELECT BOARD MEETING**  
**August 22, 2019 5:30PM (continued)**

get in and out of his driveway; however, he needs gates for security for his business.

Mr. Cultrera agreed, saying that he had to tear down all the fencing, too, and he will take care of that on his own, but right now he is vulnerable to anyone who wants to come in at any time of day; that since this all started he put in a \$6,000 security system, out-of-pocket, to try to bridge the gap.

**6:21 PM** Mr. Donhauser asked Mr. Cultrera what specifically he wanted the Town to do in this.

Mr. Cultrera described what he would have to do with the gate situation and is asking for \$3,662. He explained the four quotes he received from various vendors to complete the work. He added that he's just looking for a little help.

**6:23 PM** Mr. Donhauser asked the Town Manager where we would get the money to do this.

Mr. Lee said that it would come from the paving budget.

Mr. Lytle said that he fully agreed with the estimates; that he went out and looked at Mr. Cultrera's situation; that we messed it up and we should repair it.

Ms. (Donna) Murphy asked if insurance (Town or paving company) wouldn't cover the full cost that Mr. Cultrera had to lay out; that as a citizen she would support full reimbursement to Mr. Cultrera outside the \$6,000.

**6:25 PM** Mr. Lee said that he wasn't sure; that the SB could approve this and he could submit a claim to see if they would honor it. He added that he would submit it.

**Mr. Donhauser moved, second by Mr. Murphy, that the Select Board approve the Town to take money from the Paving Budget as a result of damage done to the abutter of Beech Road, Mr. Cultrera, and allow \$3,662 be removed from the Paving Budget to remedy the damage the Town did to his driveway.**

**Roll Call Vote:**

**Mr. Donhauser – Yes**

**Mr. Lytle – Yes**

**Mr. Murphy – Yes**

**Mr. Orestis – Yes**

**Unanimous vote to approve motion.**

**SELECT BOARD MEETING**  
**August 22, 2019 5:30PM (continued)**

**6:28 PM            7) November Warrant Certifications/Signatures**

**Mr. Donhauser moved, second by Mr. Orestis, that the Select Board approve the Town Warrant for Tuesday November 5, 2019, as presented.**

**DISCUSSION**

**6:29 PM            Ms. (Donna) Murphy, Budget Committee Chair, said that this was never placed in front of the Budget Committee and she is looking at some that appear to have financial connections to it. She was questioning whether we should have had our recommendations, also; in particular Article 3 (TIF Amendment).**

Mr. Lee said that that had no financial impact.

Ms. Rawski, Town Clerk, said that that has never had a recommendation from the Budget Committee in the past.

Mr. Tessier said that he had the same concern; especially regarding Article 4 (Adult Use Ordinance), which certainly has potential for financial implications, referring to the Charter.

**6:30 PM            Ms. Rawski explained that there are rules in State law that state whether one needs recommendations from the Budget Committee, Select Board, and Planning Board; that land use ordinances do not require a recommendation of the Budget Committee. She added that we just finalized the warrant and it was never presented to the Budget Committee because there was nothing on there that required the Budget Committee to review and give a recommendation.**

Mr. Lee said that he was not asking to expend or accept money; that you are a Budget Committee, not a Finance Committee.

**6:33 PM            Mr. Donhauser read Section 6.3 of the Charter, which allows the Budget Committee to review and give recommendations regarding, and included in, each warrant article having a financial impact.**

Mr. Lee said that Mr. Tessier has attended the meetings, and he appreciates Mr. Tessier's attendance, and has brought up on a couple of occasions that this ordinance passage may require an additional police officer or another fire truck; that Mr. Lee felt strongly that this is not what was meant in the Charter but was intended for warrant articles that make appropriations, raise revenues, things like that. He added that everything we do has some sort of a financial implication, everything, asking where you draw the line.

**SELECT BOARD MEETING**  
**August 22, 2019 5:30PM (continued)**

**6:35 PM** Mr. Tessier said that he understands that everything you do affects financials but it's (§6.3) talking about warrant articles that the residents are voting on and it's indicating that we are providing a recommendation to the residents before they vote on any warrant article that has financial implications. He didn't realize it was going to be brought up at this meeting or he would have addressed this sooner.

Ms. Rawski said that she understood what Mr. Tessier was saying but she agreed with the Town Manager, as well, that any ordinance that we put forward could have a financial impact; that, as an example, the ordinance on Town Meetings and Referendums created more of a financial impact because it requires more work to get to that Town Meeting and more staffing at that Town Meeting/Election. She explained that her interpretation of the Charter and the requirement for Budget Committee recommendations is the Annual Town Meeting when we are creating the budget for the next fiscal period or, if there's a Special Town Meeting and there's a request for funds to be appropriated for something, that is clearly a financial impact to the Town, such as the purchase of a new truck, a building, etc., and is clear to her that the Budget Committee has the ability to make a recommendation on because that will certainly financially impact the taxpayers. She added that all the amendments to land use ordinances, sewer ordinances, can impact us financially in some way but it's unknown and not a definite impact.

**6:39 PM** There was discussion regarding when an impact is known that a Budget Committee recommendation will be requested and required; that the appropriate time to raise this issue would be at the public hearing for new or amended ordinances.

Mr. Tessier said that what he heard the Town Clerk say was logical and made sense and he agrees. His frustration was with this being passed, finding that we need more services, and not being able to undo the financial impact that we may not like.

DISCUSSION ENDED

**Roll Call Vote:**

**Mr. Donhauser – Yes**

**Mr. Lytle – Yes**

**Mr. Murphy – Yes**

**Mr. Orestis – Yes**

**Unanimous vote to approve motion.**

**SELECT BOARD MEETING**  
**August 22, 2019 5:30PM (continued)**

**6:43 PM      9) Approve Warrants**

**Mr. Donhauser moved, second by Mr. Orestis, that the Select Board approve A/P Warrant #44 in the amount of \$147,787.02, dated August 22, 2019; A/P Warrant #46 in the amount of \$881,512.69, dated August 22, 2019.**

**Roll Call Vote:**

**Mr. Donhauser – Yes**

**Mr. Lytle – Yes**

**Mr. Murphy – Yes**

**Mr. Orestis – Yes**

**Unanimous vote to approve motion.**

**J.      New Business:**

**6:44 PM**      Mr. Lentz asked, regarding the marijuana ordinances, that the SB be aware that there are quite a few people that believe that there's going to be a question where they opt in to recreational marijuana and that's not the case; that if they approve these ordinances that will be, by default, opting in.

Mr. Lee said that we will cover that at the informational public meeting.

**K.      Old Business:**

**6:45 PM**      Ms. (Diane) Holt said that last April we had the Department of Labor come and asked if we ever got a final resolution from the State.

Mr. Lee said yes, it has been resolved and we did end up with a small fine for that, which we paid.

**L.      Selectmen's Report:**

**6:47 PM**      Mr. Lytle asked when the pavilion roof was going to be done.

Mr. Lee said that that is scheduled after that facility closes for the season, most likely October/November.

**M.      Executive Session**

This was postponed until the full Board could be present.

**N.      Adjourn**

**SELECT BOARD MEETING**  
**August 22, 2019 5:30PM (continued)**

There was a motion and second to adjourn the meeting at 6:48PM.

**VOTE**

**5-0**

**Motion approved**

**Respectfully submitted,**

**Ellen Lemire, Recording Secretary**

**S/ Mr. John J. Murphy, Secretary**

**Date approved: September 26, 2019**