

SELECT BOARD OPEN WORKSHOP MEETING

May 16, 2019 5:30PM

Quorum noted

1. 5:30 PM: Meeting called to order by Chairperson Murphy.

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

3. Public Comment:

5:31 PM Mr. (Justin) LaFrance, 34 Blueberry Lane, described the handout he gave to the SB. He said that Section 1 described the Town documentation that Blueberry Lane Subdivision is public water and public sewer, which includes the PB Notice of Decision (2002); that we have our own counsel and received a legal opinion and read a portion of that legal opinion (document available at Town Hall); that other documentation we have is the Permit Application (Jan/2003), in which the then current CEO inspected the system in March/2003; the Eliot Growth Permit Application, which was also signed by the CEO; Bill Cullen, President of KBM Builders, who built the subdivision and contains his general building specs and also denoted 'public sewer'; the real estate listing, as well. He added that Section 2 was basically historical information, which is all of the SB meeting minutes, Sewer Committee meeting minutes, things that he could find that referenced Blueberry Lane from when Mr. Marchese (former CEO) had brought this to the SB's attention (April/2011).

5:33 PM Mr. LaFrance discussed Mr. Marchese's letter to Bill Cullen, which purpose was to discover who was responsible for the sewer at Greenwood Street and Blueberry Lane; that Mr. Cullen believed Eliot took over the sewer when they took over the road; that Mr. Marchese stated that it would be in Eliot's best interest to take over the force main only, not the individual pumps owned by the residents. He further said that, since the time of the subdivision, the Town has allowed three other houses to be built on Greenwood Street and there were residences on Hamilton that had septic problems and they were allowed to tie in and, then, three more lots the Town was looking to approve, which the Town charged betterment fees for. He said that Mr. Cullen was there (April/2011 meeting) and said that the plans were designed by Mr. (Ken) Wood (Attar Engineering), tested and checked by the Town (Don LaGrange, CEO); that since then, other people have been allowed to tie in and betterment fees were taken. He explained that the CEO's question to the SB was what direction he should take because he had two other building applications he put on hold.

5:35 PM Mr. LaFrance discussed the next SB meeting of June 9, 2011, saying the Mr. Cullen's attorney, who sent a letter to the SB, believed the Town was responsible for the sewer line; that it was installed, tested, inspected and accepted by the Town, all the lots on Blueberry Lane were connected and others were allowed to tie in. He added that there was some discussion on whether it was an assumption

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of Finding of Fact and Ms. Place (SB member at the time) said that if it's in the PB's Findings of Fact then it's a fact, not really an assumption. He said that the attorney referenced a letter he wrote to the SB April 12, 2011 and that letter, along with all the CEO emails and documentation, was mysteriously wiped from the Town records in reference to a FOIA request he did with Mr. Lee. He added that the attorney, in the meeting, said that his client hadn't told any of the people who tied in that there was an issue and none of the people on Blueberry Lane were made aware that there was an issue; that if they would have known it was private, they would have made a homeowner's association for sewer upkeep and maintenance.

5:37 PM Mr. LaFrance discussed the SB meeting of June 23, 2011; that Mr. Moynahan said that there are seven houses built, the developer offered seven other connections, so the Town became half-owner in allowing those connections; that Mr. Murphy said that it was the CEO who approved those existing tie-ins. He said that Mr. Cullen actually became a member of the Sewer Committee in February/2002, two weeks before he came before the SB to enquire about connecting to the public sewer and the SB at the time unanimously voted to approve the concept of connecting to the public sewer and left it at that; that there was never a SB meeting after that that had to do with Blueberry Lane.

5:38 PM Mr. LaFrance said that on July 14, 2011, it was discussed that no final conclusion had been made after several meetings and the SB needed to make a decision; that at that point, Mr. Marchese (CEO) said that, based on the opinion from the last SB meeting, he issued building permits for those folks on Greenwood, letting them know that it was still unknown who owned that force main. He added that Mr. Fernald (SB) had said that many people didn't know that they had to pay a fee or form a homeowner's association and that was something the SB needed to address; that they never did. He said that the CEO asked permission to get a legal opinion to see if there was any legal implication made by the Town in allowing others to tie in to a private system without permission; that it was approved, but the letter sent didn't actually address the question. He said that we did get a legal opinion, which was clear in that when other residents sought to tie into the sewer line, the Town acted as owner of the line when they signed off on additional homes to be connected.

5:40 PM Mr. LaFrance, discussing November 10, 2011, he said that Mr. Blanchette (Administrator) said that.....Mr. (Terry) Thomas, who built his home and some others, requested to tie in to the Greenwood Street sewer line and they had a note from Mr. Cullen saying he was authorizing Mr. Thomas to tie into the line and, at that point, the SB approved, based on that note, other people to tie in to the line in Greenwood as long as betterment fees were paid to the Town. He clarified that, this whole time, nobody on Blueberry Lane had any knowledge that anything was going on. He added that, on March 22, 2012, Raines Excavation requested to tie

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into that line for a house that had some issues; that then there really wasn't anything until August/2015, when the Blueberry Lane residents contacted the Town concerning a damaged manhole; that that is when we spoke with Mr. Moulton and found out that the Town believed it was a private system. He added that the Town did repair the manhole August 27, 2015, which is another example of the Town exercising ownership of that line. He explained that on September 16, 2015, the Blueberry Lane residents got together and attended a Sewer Committee meeting where we read a statement outlining our concerns of the ownership issue and the history surrounding it and requesting that they bring this issue to the SB; that we learned a couple months later that the Sewer Committee was directed not to address the Blueberry Lane issue due to legal ramifications; that if you watch the video (1:24), that's where it was discussed but, now, that video and all the records of it have been removed from the Town website.

5:42 PM Mr. LaFrance, discussing February 2016, Ms. Davis (SB) asked about the FOIA request and Mr. Lee said that it had to do with the Blueberry Lane sewer explaining that there was no requirement to form a road association, no deed references in any resident's deeds, no realtor ever advised, and none of our documents showed that the Town took it over; that the Town has a legal opinion that it's not ours but the Town did accept the road as a public roadway; that included, he has an email from Mr. Lee saying that he was going to contact Mr. Cullen to meet with him concerning ownership of the sewer; that the residents have no documents that show they own the system and asking Mr. Cullen if he had any documents showing conveyance of the sewer; that he doesn't believe that conversation went anywhere because he really never heard anything back. He said that, on April 28, 2016, Mr. Lee said that the Blueberry Lane private sewer issue was progressing; that they were putting a memo together for the SB regarding the roads that have private residential sewer systems that we believe are still owned by the developer; that Mr. Lee said in the May meeting that there is no documentation that the residents own the private sewer systems, nor does the Town own the systems and that, apparently, the developer is still liable for them; that Mr. Lee spoke with one developer that was unwilling to take responsibility; that he assumed that was Mr. Cullen.

Mr. Lee said no.

5:43 PM Mr. LaFrance added that Mr. Lee raised the fact that the Town has been collecting all the maintenance and operation fees and allowed other folks to tie in; that Mr. Lee correctly said that the homeowners view it as we don't own it and somebody better tell us who owns it because we're not very happy that the Town continues to say that it's the homeowner's or the builder's responsibility; that there's no evidence of that and we're really concerned that, if there's a breakage or something happens, who is going to help us. He quoted Mr. Lee – if there was a breach of the septic the Town would probably have to subjugate the claim down

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to the developer, suggested sending out a letter to developers saying that we're going to hold you accountable if something goes wrong, you need to take care of this.

5:44 PM Mr. LaFrance said that that brings us to a couple months ago, in March, when he requested assistance with the Blueberry Lane sewerage issue. He said that he wanted to thank you all for your help, my family and I truly appreciate it. He asked if the SB got the letter he sent a couple weeks ago detailing the issues with Mr. Moulton and about Sturgeon Creek and how that all was executed.

Mr. Murphy said that he remembered getting a thank-you card from Mr. LaFrance but he doesn't remember a letter.

The rest of the SB members remembered the letter.

Mr. LaFrance said that, at the meeting, he gave a re-cap of the surrounding history, the ownership, why they believe the Town owns the force main. He added that he did appreciate that Mr. Lee said that it's not that we shouldn't take the sewer line, that we probably have a moral obligation to take all of them. He added that the residents of Blueberry Lane got a legal opinion; that the attorney believes ownership lies with the Town of Eliot, nothing seems to suggest this is a private line owned by the homeowners, so the Town has no rights to collect any monies in any amount above the general sewer fees.

5:45 PM Mr. LaFrance discussed Section 3 – Town Ownership by Accepting Blueberry Lane Roadway, saying that this is where our and our attorney's opinion differs from the Town attorney and MMA attorney. He added that, in this section, is a quitclaim deed, with covenant; that if you look at 33 M.R.S.A. 12 §765 (Quitclaim Deed with Covenant), that says it has the force and effect of a deed in fee simple; that fee simple interest is an absolute and unqualified interest in the land that extends infinitely both above and below the surface of the earth and includes mineral rights; that all roads taken or accepted by a municipality after December 31, 1976 are held in fee simple unless the deed says otherwise. He added that the next section is the MMA legal opinion regarding the question of who owns the sewer lines in the Town-accepted road; that the MMA attorney said that she would lean toward ownership, and put that in writing, but suggested the Town consult with the Town's attorney; that you may disagree with the thoughts and may want to contest ownership of the infrastructure. Discussing their attorney's legal opinion, their attorney wrote that, in reviewing the quitclaim deed to the Town of Eliot for the road, he believes there is a strong argument that the Town accepted this land by quitclaim and accepted the subsurface utilities; had the Town simply accepted an easement, this would not be the case; that as actual land was conveyed, the attorney believes that the Town took ownership of the utilities; that the attorney thinks this is the most important part of the issue and

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should be highlighted because there is a significant legal difference between the land and an easement. He said that Section 4 is the authorization documentation allowing the tie-ins; that Section 5 is Blueberry Lane's sewer plans and inspections. He said that he went to Attar Engineering, and he knows it's been said lots of times that nobody has any files or plans, and spoke with Mr. Wood and he gave me all the plans and that he had given them to the Town on three separate occasions; that L.W. Morgridge has them, as well. Mr. LaFrance added that those plans are included in the packets given to the SB. He said that the sewer was built to Town standards, reading the pertinent sewer ordinances in affect at that time; that Don LaGrange (CEO) signed the plumbing application for Blueberry Lane January 3, 2005, KBM Builders applied to connect to public sewer January 3, 2003, and Mr. LaGrange signed the document back in May, after the building was completed, certifying that he had conducted an inspection of the sewer line and connection.

5:51 PM Mr. LaFrance addressed comments made regarding the design and installation of the Blueberry Lane sewer: "not constructed deep enough or insulated well enough" – it was discovered during recent excavation that sewer lines were located nearly 5 feet deep and it was stated that the line was never frozen; that others have said that there are no plans, not installed or designed properly. He clarified that what froze was the top of the pump next to his home and he had never been told he could purchase an insulation disc to prevent this. It was also stated that he has had freezing events at his home for the last two years and that is not true; that the only recommendation he was given in 2016 (1st freezing event) was to put insulation in the cavity, which he did. He thanked the SB for their time, saying that he was here with some of the other Blueberry Lane residents and what we're asking for has been going on for years and we would really appreciate a determination be made in how to move forward and what's going to happen if there is a failure because, according to the documentation, it's clearly not the homeowners; that we would really appreciate your help in finally putting this issue to bed and getting some protection so we can be secure if something happens.

5:54 PM Mr. Lee spoke with Mr. (Bill) Cullen, asking him if he had any documents that would prove you conveyed this to the Town and Mr. Cullen said that he did not believe so, nor did he have any documents proving he conveyed it to the homeowners and that he could not argue against his own ownership of the system. He added that the reason we went out to fix the manhole on Blueberry Lane was primarily for child safety as it was cracked and wide open.

5:56 PM Mr. (Mike) Dupuis, (Sturgeon Creek Enterprises) Broadfields Road, clarified that it was the second time Mr. LaFrance had the freezing problem and had still not taken care of the problem; that Mr. LaFrance has a pump station just off his farmer's porch and the watershed that goes there collects on top of his system;

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that Mr. LaFrance bought a roll of insulation, put that inside a garbage bag, and put that inside the pump chamber and it was strongly suggested that he needed to alter the watershed of the property to pull the water away from the pump station. Additionally, Mr. LaFrance went into his house three times to turn the circuit breaker switch on and each time it was the wrong circuit breaker. He did agree that the sewer system out at the street is 5-6 feet deep; however, at the top of Mr. LaFrance's pump where the watershed occurs, with the winter we had, the frost and the ice is beat into the ground and he is not even at 30 inches at that point, and that's where it freezes. He added that it also froze for the previous homeowner twice and, whether they made him aware of the problem or not, the first time it happened to him he was advised to reform the watershed and insulate. He added that he was all for deciding the situation, public sewer or not, because it's not only Blueberry Lane but others, as well. He said that, in 2011, we were advised by the SB to obtain counsel to bring the situation before counsel – the situation that came back to us, that was given to Mr. Marchese, was that any time you have two or more force pumps on the same pipe, a homeowner's association must be formed and the warrant article to accept the road was strictly for the road and not for any of the utilities under that road. Additionally, he was the one who went to Mr. Wood's office to obtain the blueprints because we needed them and Mr. Morgridge is very, very good about keeping his prints; that he did not know why prints were missing at the Town Hall. He said that other issues of compliance are with Sawgrass Meadows and Blueberry Lane, in that they don't have generators, which is required in our ordinance.

4. Discussion on Resolving Ownership / Responsibility of Private

6:00 PM Mr. Lee commented that it was a good introduction from Mr. LaFrance on how complicated this can be; that we have specialists with us tonight – Attorney Saucier (Bernstein Shur) and Mr. Pratt (Underwood Engineering) – they were brought in to give their views, both legal opinions and possible solutions, and kick around how we might resolve this.

6:02 PM Mr. Pratt explained that we first got involved with the private sewer issue in 2014, developing a wastewater collection system and operations and maintenance plan, which located and tracked private sewer systems, of which there are approximately 10 in Town. He said that we were asked to help address this from an ordinance point of view, along with procedures and policies, and we submitted draft and suggested language to help handle this. He discussed the actions that would need to be taken to assess the current condition of the identified private sewer systems, as well as what was currently physically in place. He added that the sewer rate system that was set up did not include the private sewer systems and that structure would need to be set up to support those.

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6:09 PM Mr. Dupuis said that the Town owns 8-10 individual E1 Pumps that were established when the Town had to put in public sewer and we keep a backup inventory at the Town Garage for those stations. He added that, if we take over these private systems, such as Blueberry Lane, the ordinance requires a 500-gallon tank in addition to the pump station because the E1 pump differential is only 16 gallons, which would allow full operation while being repaired.

Mr. LaFrance asked if that code could be verified.

6:12 PM Attorney Saucier said that we have been asked questions regarding private systems over the years. He explained that our view of the law is that, when the Town accepts something, they need to be specific about what they are accepting. In the case of sewers, Maine law is very clear, at least on constructing sewers (MMA shares this opinion), with the sewer system you are also responsible for any appropriations as it relates to that; so, it's very important that any warrant article be clear on what you're accepting and you only accept what it says, and nothing else, because the Town needs to know what it's responsible for financially. In this case, the deed simply says it's the road; that it sounds like there may have been confusion at the PB level and the Sewer Committee had weighed in that, in their view, it is private; that before the Town were to accept the sewer, you would want the Town staff responsible to understand what it is, if it's up to the standards of the Town, and that it meets the regulations. Of course, you wouldn't want the Town to accept something that doesn't meet those standards because that would be an outlay for the future when you go fix it. He thinks that's the way the Town has always treated this and that other warrant articles he saw related to these streets did not include anything about sewers or the appropriations of funds, which Maine law says that, when you are constructing sewers, you have to actually appropriate funds at the same time. Going forward, the owners could propose that the Town accept and it's up to the Town Meeting to decide if they want to do that. You could work together on inspecting that system, if there are any improvements that need to be made, to make the Town feel comfortable accepting it; that that is the process the Town would have to go through before it's actually public, in his opinion.

6:15 PM Mr. Lee said that Mr. LaFrance had mentioned a law about 'all above-all below'; that he spoke with the insurance carrier who said that can't really be true, otherwise, you would own CMP poles, cable wires, etc. He asked what that law reference was.

Attorney Saucier said that that's the law of road acceptance in Maine; that there is a road acceptance statute that, if you accept a road today, the presumption is that you are accepting the 'fee', the whole thing but, it's always subject to other easements and other interest rates that are in there. As an example, if there is a new way out 'here' that you want to accept as a public way, you accept that 'in

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fee' but you would not have any rights to the easements that are underneath it, implied or otherwise.

6:16 PM Mr. Murphy asked if a private pipe that has been there a long time be an undeclared easement that has to be recognized even though no one knows who owns it or is using it.

Attorney Saucier said that that was right; that the best practice would be to identify all that before you accept something and then be clear in your acceptance documents, warrant article, that you are or are not accepting them, or a deed, if you get one, that references any easements that may exist – a best practice.

6:17 PM Mr. Lee said that part of what Mr. Pratt had written in his memo was the list of potential estimated costs that would fall to the homeowner in order to go through the necessary checks in each one of these private sewer situations, turn in the results of those things we want tested, corrected, etc., then, ask the Town if they would go to the voters to accept it. He asked if this would be the approach we need to take with the lack of clarity with the documents; that we would collectively work with these folks that live in these subdivisions with these presumed private systems, give them a scope of work that we would need to see in order to advance it to Town Meeting for request of the voters to accept it as a Town utility, asking if that is correct.

Both Mr. Pratt and Attorney Saucier said yes.

6:19 PM Attorney Saucier said that that is similar to situations he's seen on roads, for example, where roads may not be up to Town standards and you want to test the roads, working with residents to make sure they are up to Town standards before putting them before the voters – know what you're buying.

Mr. Lee said that that is exactly the approach the PB took with Meadow Lane, wanting borings done and, if the borings were acceptable, then we would consider going forward to Town Meeting. He added that, in the materials the SB has, is a proposed way forward, which is to work cooperatively with each of these 10, maybe 11, private sewer systems to see if we can get the scope of work down to something that's reasonably affordable yet is responsible to the other sewer users, who are going to take on new assets that probably will need new money; that he believes it's the best we've been able to come up with in the lack of being able to find out what was conveyed to whom, no homeowner associations were formed; that a lot of stuff didn't go right but, in order to clean it up, he thinks that is what both Mr. Pratt and Attorney Saucier have said, adding that we had identified around \$57,000 total in rough costs. To summarize, our recommendations are to identify each of the inspection-type needs we need out of each of these private sewer systems, and some will be different from others, to find out exactly what's

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there, to prove it's okay, to prove that we won't have a bunch of immediate expenses if we accept that sewer main, on a system-by-system basis. If we get 8 of the subdivisions to agree to do what is required and the other 2 can't get together and don't agree then the next piece would be what we would do if that happens. Attorney Saucier and Mr. Pratt have made a recommendation and he was asking if one, or more, of these subdivisions say no way, it's the Town's, and they will fight it, we do have a current ordinance that requires that, if it's your private system, 'this' is what you must do – an O&M manual, someone to check it, turn in reports - just as the Town has to do with public systems to DEP.

6:26 PM Mr. Pratt confirmed that it is our recommendation that you know what you're getting into, know what your liability is; that if that assessment is done, the intent would be to deliver the report that would identify the inventory, the condition, and any liability to bring it up to standards and, if it's not up to standard, an estimated cost/opinion of what it might be bring it up to standard. We also recommended that, jointly with that effort, there really needs to be an ordinance update and a rate review as part of it because, if the Town decides to take this on, there will be a financial impact. He discussed the financial impact of taking on, in addition to the three pump stations, these other E1 pumps that Mr. Dupuis discussed.

Mr. Donhauser asked if there was a portion of the monthly sewer user fee set aside for maintenance.

Mr. Pratt said yes; that it includes a maintenance fee that maintains the public infrastructure, as we understand it, adding that the rates we designed did not account for these private stations and private force mains but only includes the public infrastructure.

6:27 PM Mr. Donhauser asked how you mitigate the problem we have with betterment fees; that we've actually collected those from private sewers and how is that justified.

Mr. Pratt explained that system development charges (actual assets), betterment fees and connection fees (administrative cost) all mean something a little different. When we set up the system development charge, there is a basis for these, and we have been recommending in Eliot to reconfirm what the original betterment fee was based on and we think it was based on the assets of the Town's systems. The fee is different in every community, with a range of \$800 to \$4,000 per home, and is a one-time fee.

Mr. Donhauser asked if Mr. LaFrance paid betterment fees.

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6:29 PM Mr. LaFrance said that he did not personally pay one but, at the time the home was built, a betterment fee was paid; that all those folks on Greenwood that tied in paid those fees, as well.

Mr. Donhauser said that that confused him a bit, as that fee is for our (public) infrastructure, not theirs (private).

Mr. Pratt agreed that it can be confusing, explaining that they are typically not structured on the private side of the utility, they're structured on the public side.

Mr. Donhauser said that he understands that, even if you have a public sewer running right down the road, he's responsible for the connection from the sewer line to his home, asking if that was correct.

6:30 PM Mr. Dupuis said that, under State law, sewer lines are established from the homeowner's property to the center line of the existing public sewer line and water lines only start at the edge of the property.

Ms. Saurman asked if the other communities shown on this map shown as having private sewers are as confused as the people on Blueberry Lane about what they do and do not own.

Mr. Lee said yes; that the documents are vague, as well.

Ms. Saurman asked if the bill ever got paid the weekend that Mr. Dupuis and Mr. Moulton helped Mr. LaFrance out by the homeowner.

Mr. Lee said that, just this afternoon, Mr. LaFrance handed him a check for \$2,534; that the \$500 deductible was taken out of it in terms of our claim and Mr. LaFrance had to fight with the insurance to get it back.

6:32 PM Ms. Saurman said that you can now see how the Town is in a tough spot; for example, the fact that the Town went down and fixed a manhole so the children will be safe is now being used as a reason to say "See, you own all this. You came down and fixed that." She added that she didn't know what the Town was supposed to do in that case. I want to thank you for being responsible, in that case, in deciding we won't fight over this when we have safety issues at stake. This 6-page letter that's being referred to, that most of you know, was that detailing what Mr. Moulton and Mr. Dupuis did on Blueberry Lane property generally a complimentary thank-you very much letter or was that after-the-fact everything that went wrong; that the first that she heard of the Blueberry Lane issue, the resident was extraordinarily thankful and couldn't be more appreciative of what we did and, then in the 6-8-page follow-up letter, was the tone of that letter the same or had the tone changed.

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6:33 PM Mr. Lee said that he thinks the letter was reporting what had happened and how Mr. LaFrance felt, what different steps were taken and who said what; that it was more critical.

Mr. Orestis asked for clarification regarding private versus public betterment fees.

Mr. Pratt reiterated that he wasn't sure how Eliot's betterment fee was structured, initially; that typically, and he would guess it's the same for Eliot, when they are established, they are based on the assets that the Town owns. He clarified that you don't think wastewater flow, when you think betterment fees, you're thinking infrastructure assets and the value of the pipe, the station, etc. So, when they are established, they are typically established over the public portion of the sewer, not the private portion.

6:35 PM Mr. Orestis asked, if someone is tying into a private sewer, why would they pay a betterment fee.

Mr. Pratt said that was because they are benefiting from the use of the public sewer, even though there's a private section in-between.

Mr. Dupuis said that there are two additional stations, one on Hidden Meadows and one on Pickering Drive. He suggested that some of the problem with these things is the acceptance of the plans and getting a set of blueprints; that he thinks we need to clarify on the blueprints the criteria required (public versus private), such as the creation of a homeowner's association for public sewer. He thought a final review ought to be done by the PB in order for these things to get approved.

6:37 PM Mr. Lee agreed; that one of the things was that, when these people bought their homes, the realtor had listed it as public sewer and, sadly, what they mean by 'public sewer' is that you don't have a septic system, what it means is that you are pumping into a pipe, somewhere, that will get treated somewhere else; that the average person wouldn't know that.

Mr. LaFrance discussed PB documents regarding subdivision approvals, such as the one he lives in, that differentiated between private and public sewer and water, as well as the quitclaim deed that, in his attorney's opinion, conveyed whatever interest in the land was there at the time (water and sewer). He thinks the issue is that a lot of these processes in the Town are broken. He asked, when the Town made all those approvals and allowed other people to tie in, what liability did the Town take and what is your official stance on that.

6:40 PM Mr. Lytle asked if, with these subdivisions, are any of the stations in homeowner associations.

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Mr. Lee said that Sawgrass does but he doesn't know about the others; that we still have to look into that.

6:42 PM

Mr. Donhauser asked if Attorney Saucier could explain a right-of-way by prescription as opposed to a right-of-way by deed; in other words, is someone has been there for 10-15 years using that sewer, assuming it's public sewer, how is it not a right by prescription.

Attorney Saucier said that it can be; that it's much more difficult for a municipality to do that because the presumption is, again, we don't take things we specifically don't want. Prescriptive rights in the State take way longer than 15 years; that it's 30-40 years, at least, and uninterrupted – you know it's not yours but you are asserting control, anyway, and no one is stopping you. What would also defeat prescriptive rights is that you get permission, at some point, from someone, which starts the clock all over again because that recognizes that it is mine and I'm giving you permission to come on. Over the years, there clearly has been, in the correspondence, the Town taking the position that it's private, the Town getting permission from time to time, saying that it's private, not public. He added that this issue comes up from time to time and what the Maine Supreme Court has said is that periodic expenditure of Town funds on a road that's private, which you aren't supposed to do because it's unconstitutional, doesn't establish ownership in any way; that you'd still have to meet all the other indices of 'adverse possession' (prescriptive rights). He clarified that what's important is the warrant article, what is important is what do you want because we've actually seen this happen before where the warrant article said one thing but the deed says something completely different and we take the position, he thinks, that it doesn't matter what the deed says if you didn't accept that. Using the example of someone recording a deed to him but he never had any knowledge of it, it wouldn't be legal because there needs to be a 'meeting of the minds' in the contract; so, it's important to know what the Town accepted, what was presented to the voters, and did they know what they were accepting; that's what we look at. He added that, going forward, you need to be very clear what you are accepting in your warrant articles. Mr. Pratt has some good recommendations for your ordinance. He also sees this as something where there are some things you can do, assuming both parties want to, where you try to work collaboratively going forward, subject to Town Meeting vote, but there are also some things you can do in your zoning ordinance, subdivision ordinance, and sewer ordinance, so that this doesn't happen again. An example would be that, if you're going to have a new subdivision in Town with the same system, one of the conditions of approval is to see the homeowner's association documents; that it has to be in place so there's never a question out there. He's seen that in many other towns. If it's going to be up for public acceptance, than that's made clear in the documentation, then there's an actual vote at Town Meeting; that those documents could be written in such a way that, once the Town accepts, the homeowner association responsibility goes

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away; that he would make that very clear going forward. In this way, you have something in place from the minute of construction to possible acceptance.

There was discussion regarding the drafting of a letter to these communities, what the expectations would be if communities accepted and what consequences there would be to the communities if any declined.

6:53 PM Mr. (Dan) Shanahan, Blueberry Lane, asked if a community declined the assessment and something happened, what about the responsibility of the developer, who most likely is the actual owner.

Mr. Lee said that what would most likely happen is that it would most likely be a civil case where the Town would go after the people living there and they would have every right to subrogate that claim back to the developer.

Mr. Shanahan discussed his frustration regarding the lack of documentation for proof of private ownership and questioning if it wasn't the Town's responsibility when the subdivision was completed and occupancy permits issued.

6:54 PM Mr. Lee said that these were good questions and, again, something he thinks we're going to have to hammer out as to what is the right thing to do.

There was further discussion regarding review of current ordinances and ideas for improving compliance, as well as how this would be paid for, such as cost-sharing (residents and developers).

Ms. Saurman discussed her confusion regarding the whole Town being able to vote to accept these private sewers, and benefit from it, when only sewer users would pay for it.

Mr. Lee said that we have discussed this a little bit; that in order for sewer users to vote on these issues, we would have to form a sewer district; that after some research, we discovered we can't afford to be a district with the number of sewer users we currently have.

7:13 PM Mr. Lentz said that he assumed when Mr. Pratt did the assessments, he would have some sort of a checklist and asked if that was pretty much standard for any area Mr. Pratt went in to.

Mr. Pratt said yes.

Mr. Lentz asked if, when Mr. Pratt is done, if the PB could have a copy of that.

Mr. Pratt said yes; that he would get that to the PB.

SELECT BOARD OPEN WORKSHOP MEETING

May 16, 2019 5:30PM (continued)

Mr. Orestis asked that the warrant article be pulled so that the SB could read the actual language.

7:15 PM Mr. Lee explained that, when this issue first came up, he had asked staff about what had been going on and there was recollection that, at one time, there had been a warrant article written that had both the road and sewer and that Mr. Blanchette, the SB, and Sewer Committee specifically said to just accept the road; that they consciously removed the sewer and just kept the road language. He added that he would try to verify that.

5. Follow Up Action

The Town Manager, in consultation with the Town's attorney and Town engineer, will develop a specific plan and proposal for inviting the private sewer line users to see if they would like to enter into an agreement to update / repair their private sewer system - at their cost (we could help estimate those costs and what is required) - to an ordinance-acceptable standard and the Town would then agree to put the acceptance of that sewer line to the voters.

The Select Board agreed, by consensus, to the above plan.

6. Other Business

There was no other business.

7. Adjourn

There was a motion and second to adjourn the meeting at 7:18 PM.

VOTE

5-0

Motion approved

Respectfully submitted,

Ellen Lemire, Recording Secretary

S/ Mr. Richard Donhauser, Secretary

Date approved: 09/12/2019