

SELECT BOARD MEETING

May 28, 2020 5:30PM

(Remote Meeting)

Quorum noted

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

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

C. Pledge of Allegiance recited - deferred

D. Moment of Silence observed - deferred

E. Public Comment:

5:34 PM Mr. (Larry) Gaudreau, Caslyn Drive, said that I believe that Ms. Painchaud made an administrative, or clerical, error when she prepared my taxes for the years 2017/2018 and 2018/2019. I don't know how she came up with the amount of \$145,300. It is certainly not in line with my neighbors in the amount of \$107,000, and others; that I am almost at 50% higher. You can see the numbers on Attachment 1 and I just wanted you to have the numbers in front of you to review. The two homes I refer to are roughly the same as mine. So, once again, I believe this was an administrative or clerical-type error where she inadvertently copied the wrong figure. We all make these kinds of mistakes. Attachment 2 details how I came up with the figure \$1,403 for a refund. It's simply a re-calculation of my taxes at the new evaluation that was done by Ms. Painchaud for 2019/2020. I'm not asking to have my evaluation changed. That's a very important point. Ms. Painchaud realized there was an error when she prepared the 2019/2020 tax bill and changed the evaluation herself to \$96,900, with no input from anyone else. I did not know that I was being overcharged until I received my 2019/2020 bill. This new evaluation puts me in line with my neighbors. In response to my communications, all the legal minds think that "municipal authorities have no authority to grant an abatement, to modify, or to adjust the evaluation of the property." under Title 36 M.R.S.A. §841. However, in my judgement, this is based on a request to change the evaluation. Again, I am not asking to change my evaluation. That has already been done. I believe the SB has the authority to grant me a refund if the error was administrative or clerical. I simply don't understand how a citizen can be punished if the Town made an error and now that citizen is forced to accept that financial error. If this was a commercial transaction, there would be no question but would simply refund me my money. I believe that if any of you were in this same situation, you would want your money back. I firmly believe that you have the authority to grant the refund for an administrative or clerical error. If you don't agree with that, then I'm asking you to grant my refund based strictly on humanitarian reasons. In summary, 'm not asking to change my evaluation. I'm simply asking to right a wrong, to correct an honest mistake that was made, and give me a refund. I'm retired, and like most retired folk, I'm on a

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fixed income and cannot afford this. This situation is just plain morally wrong!
Thank you for your time and consideration.

5:36 PM Mr. Lee said that, first, for Mr. Gaudreau I would be happy to submit to MMA's legal department and/or our Town attorney to confirm some ability to make a refund to him. But, based on the statutes that we've reviewed when we gave Mr. Gaudreau his answer, the real problem at the time is that he didn't formally fill out an abatement application and it went passed 185 days. What he is saying, and I am listening carefully, is that he didn't know that this was going on so how could he have filed for an abatement process. So, I understand exactly where he's coming from. I think, to be fair to Mr. Gaudreau, we should get a legal opinion to see if, under an administrative-type of situation like this we had no way of knowing that he hadn't filed a formal abatement to get that money back. I think that's the only fair thing we can do for him. Ms. Painchaud further pointed out that because of the 185-day appeal period he also really can't even go to the County Commissioner now. I think Mr. Gaudreau is coming to you as a last resort and, if the MMA attorneys or Attorney Saucier grants us the authority to make a refund, I don't think anyone at Town Office cares, we just don't want to violate any law. If it's the SB's wish, I will stay in contact with Mr. Gaudreau, and you, check with our attorney and get a formal response and share that with Mr. Gaudreau and the SB so we know we are on legal grounds to make this refund.

5:37 PM Mr. Donhauser asked Mr. Lee if he agreed that the Town made a mathematical error or computational error.

Mr. Lee said that I don't know that there was any computational error. One thing that people often get confused about is that there is a difference between mass appraisal and comps. What Mr. Gaudreau is doing is comps; so, if he was putting his house on the market, they would go to homes about the same size, same age, same relative condition, etc. and you do comps to find out how much that house is worth. In a mass appraisal system, you don't do that. We're arguably allowed to be +/- 10% because we take whole categories of houses and they go into a table. For example, if Mr. Gaudreau's house is brand new ('A' quality) and the houses next to him are 10 years old and would be a 'B' quality, then his house would be assessed for more money. I don't know anything about the actual assessment and I don't think that's important. What I think is important is that he is claiming it is an administrative error, that one of these things are not like the other, that this doesn't seem fair, and he wants to know legally if...he is saying that, morally, he should be getting his money back. Legally, can we do that. We don't want to set a precedent where this breaks the bank but this may be a unique case with Mr. Gaudreau and I'm certainly willing to look into it and spend a few dollars to give him a proper answer.

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5:39 PM Mr. Donhauser asked Mr. Gaudreau if that sounded like a solution to him.

Mr. Gaudreau reiterated that he is not questioning the original evaluation. It is obviously wrong because Ms. Painchaud went back in and changed it herself with no input from me or anyone else. She changed it to what I consider a fair, and even low, new evaluation for the last taxes. Obviously, the prior evaluation was wrong.

Mr. Lee said that it does make sense and I'm not trying to be difficult, here. When you get your tax bill each year, you should really look at it and, if it looks wrong...if you saw that valuation in 2018, the thing to have done is come in to let us know it seemed too high.

Mr. Gaudreau asked why he would do that. He had no basis for doing that. I mean, I got a bill and I paid it, plain and simple.

Mr. Lee said that I understand that and that is why we are looking at it potentially as you didn't even know that you had to abate. It didn't look out of line, it's a bill, you paid it, you don't really question it. I think if we check with the attorneys/MMA and get a good, solid answer, which I think would be the fairest to you.

Mr. Gaudreau said okay, adding that I just can't get beyond the fact that an error was made. And that I have to pay just does not make any sense whatsoever.

Mr. Lee said that we're not sure of that just yet. Let me check with the attorney because we may have some leeway to do something for you.

5:42 PM Mr. Gaudreau asked how you could not be sure. She already changed the evaluation. How can you not be sure that the previous evaluation was not in error.

Mr. Lee said that there may be lots of reasons why that may be and I don't know your property.

Mr. Gaudreau said that my home was brand new in 2016 just like the two that I quoted. They're all in the same bag of nuts. They're all the same. They aren't carbon copies but they are very closely similar. I'm sorry if I'm being a pain but I just feel really frustrated that a citizen has to eat an error that was made. It just doesn't make sense. It's morally wrong.

5:43 PM Mr. Orestis said that I think there is nothing more that this Board would like to do than to give you that refund tonight. We just don't know that we are legally able to do that without more research on our end. So, we aren't telling you no. We

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have to do the due diligence on our end so that we're not breaking any laws and I think that's important. I don't speak for this Board but, having been on this Board, I think we all feel for your situation and want to make sure we do whatever we can to make sure it's right. We just have to take the proper steps, allow Mr. Lee to reach out for legal advice, and have him come back to you with a solid answer rather than us doing something wrong that's against the law and have to be retracted down the road. I completely understand where you are coming from. Completely understand your frustration if there was an error made on our part. I'm sure that Mr. Lee will look into it. At the same time, we're going to do what's right by getting legal council to get an answer.

Mr. Gaudreau said that's alright, I guess. I don't know what else to say. I've presented the case as well as I possibly can and I firmly believe that an error was made in an administrative manner and the SB has the authority to refund. (Interference at this time.)

5:45 PM Mr. Donhauser said that, for clarification, the computation of the tax rate to the assessed value, whatever it was, was done correctly. It's just that the assessed value appears to have been incorrectly stated, perhaps.
Mr. Lee said perhaps.

Mr. Orestis confirmed that Mr. Lee said that there was a 10% window. With the difference in that neighborhood, you are looking at \$107,000, \$100,000, and \$145,000. Quite a bit more than the 10% difference.

Mr. Lee agreed and I think that's why it's worth asking the question, if all these houses are very, very similar, new and so forth. We enter that data and it could be that, for example, she gets 1.5 acres instead of .15 acres and that would change it dramatically. I don't know that and, maybe upon review, she looked at it and changed it down and now it comes out to \$107,000. As Mr. Gaudreau said, people make mistakes, if it was a mistake. Let's see if the attorney says that it's in the SB's power if you feel that is due back to that gentleman, then give it back. If they will do that, I couldn't get a check out to him fast enough.

Mr. Gaudreau offered his notes to Mr. Lee, if it would help.

Mr. Lee agreed that would be helpful in clarifying your position.

F. Approval of Minutes of Previous Meeting(s)

5:48 PM Motion by Mr. Donhauser, second by Mr. McPherson, to approve the special SB minutes of April 16, 2020, as written.

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Roll Call Vote:

Mr. Donhauser – Yes
Mr. Lytle – (Mr. Lytle was having technical difficulties.)
Mr. Orestis – Yes
Mr. McPherson - Yes

Vote 3-0-1 to approve motion.

Motion by Mr. Donhauser, second by Mr. McPherson, to approve the minutes of April 23, 2020, as written.

Roll Call Vote:

Mr. Donhauser – Yes
Mr. Lytle – (Technical difficulties)
Mr. Orestis – Yes
Mr. McPherson - Yes

Vote 3-0-1 to approve motion.

Motion by Mr. Donhauser second by Mr. McPherson, to approve the minutes of May 14, 2020, as written.

Roll Call Vote:

Mr. Donhauser – Yes
Mr. Lytle – (Technical difficulties)
Mr. Orestis – Yes
Mr. McPherson - Yes

Vote 3-0-1 to approve motion.

G. Department Head/Committee Reports

5:54 PM 1) PWD: Public Sale of (3) Pieces of Equipment.

This is informational to the SB. These items can be viewed on the Town website for anyone who wishes to bid on them.

5:56 PM 2) Capital Improvement and Energy Committee: Resignation of Jon Fiorella

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Mr. Donhauser moved, second by Mr. Orestis, that the Select Board accept the resignation of Mr. Jon Fiorelli, with regret.

Mr. Donhauser asked Mr. Lee to send Mr. Fiorelli a letter of thanks.

Roll Call Vote:

Mr. Donhauser – Yes
Mr. Lytle – (Technical difficulties)
Mr. Orestis – Yes
Mr. McPherson - Yes

Vote 3-0-1 to approve motion.

5:57 PM 3) Aging-in-Place Committee: Resignation of Jean Paulantonio

Mr. Donhauser moved, second by Mr. Orestis, that the Select Board accept the resignation of Ms. Jean Paulantonio, with regret.

Mr. Donhauser asked Mr. Lee to send her a letter of thanks.

Roll Call Vote:

Mr. Donhauser – Yes
Mr. Lytle – Yes
Mr. Orestis – Yes
Mr. McPherson - Yes

Unanimous vote to approve motion.

5:58 PM 4) CSD – Summer Program Memo

Mr. Donhauser said that it is unfortunate that it appears we are cancelling all our summer programs.

Mr. Lee agreed, especially as people start getting back to work. We just can't figure out a way to do it safely. Kittery is not having summer programs, either. Most towns are not doing summer camp programs as they don't have a facility big enough to social distance for 100 kids. It is impracticable to do. Monday we will be meeting about opening up the bathrooms at the Boat Basin, possibly on or about June 12th. We will continue with four 10-hour days at Town Hall probably through the end of the emergency declaration.

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H. Administrative Department

6:02 PM 1) Town Manager Report(s)

There was no comment.

a. COVID-19 Re-opening Plan

Mr. Donhauser said that I was quite impressed that our COVID-19 re-opening plan was actually addressed by the State and was published for other towns to use.

Mr. Lee said that town managers across the State of Maine are very close to one another and share all kinds of things with each other. As town managers, we are reaching out across the State asking for guidance. I have a tremendous staff. The Fire Chief and EMA Director were very helpful, as was the Police Chief and all my staff. We put together what we felt were guidelines that would make customers feel comfortable and us comfortable and still be open and still be able to meet their needs. We put it together and shared it with MMA and they recently put it out as a kind of prototype to towns that are thinking about trying to open up. Our plan had about 48 of the State re-opening list, out of 50, and the others were non-applicable. So, we thought we did a pretty good job given that we were shooting in the dark. It felt kind of good to see that. We've also had some pretty nice compliments from customers coming in.

6:05 PM b. Financial Reports

Mr. Lee said that our revenues are predictably down somewhat. The excise tax is going to come back in June and July. It's already picked up dramatically since we opened the doors back up. All the excise money we lost in April and May is coming back in pretty steady. Revenues are going to be down a little bit but, on the other hand, the furloughed CSD folks and not hiring summer help is an offset to CSD revenue. Speaking to the Treasurer today, it's looking pretty good. The only place we're actually over is on our legal budget, and we have a legal reserve for that very reason. The legal budget is mainly attributable to the formation of a new union, with attorney and negotiation fees. We are going to be doing some carry-forwards of some unspent money into the next year, which we will be talking with you about in the next 2-4 weeks. Other than that, we are doing very well departmentally. Budget to budget we've gotten the spending down, anticipating that revenues may not all be there.

Mr. Donhauser said that, looking at the expense report from a 30,000-foot level, our total budget was stated at \$17,900,488 and change and we have spent 14

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million of that budget; so we have under-expended our expenditures by over 3 million.

6:07 PM Mr. Lee said that that also includes the schools; that schools are part of the overall tax commitment. So, just for the Town itself we are under-spending for this year. That is true and I believe you are seeing that with schools, as well.

Mr. Donhauser said that the 3 million under-spending is not directly related to the schools. We pay the schools what they budgeted. Also, our budget revenue equals the \$17,900,488 and we've collected year-to-date through May 21st \$17,444,082. That report is showing us we are only \$44,000 under our expected revenue.

Mr. Lee added that the Governor's order speaks to auditors that even the money you take in in July is actually attributable to the previous fiscal year budget. So, I'm still pretty sure that we are in pretty good shape, so far, hoping we don't see another rise in infections and shutdown. That would really hurt.

6:10 PM **2) Town Meeting Public Hearing Notice**

This year, the public hearing for the warrant will probably be remote but we have scheduled the Marshwood Middle School gymnasium on June 25th at 7PM, if all goes well, taking precautions. The ballot material is up on the Town website. There will be a newsletter sent out to all residents probably within the next couple of weeks.

Mr. Donhauser moved, second by Mr. Orestis, that the Select Board is giving notice that the Select Board will hold a Public Hearing on Thursday June 25th at the Marshwood Middle School at 7PM.

DISCUSSION

Mr. Lee said that there is a possibility that we may have to move it back online. At this point, we believe we'll be okay, with social distancing, and potentially groups of over 50 people. The Superintendent has been pretty good about it and thinks we can do it, also.

DISCUSSION ENDED

Roll Call Vote:

Mr. Donhauser – Yes

Mr. Lytle – Yes

Mr. Orestis – Yes

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Mr. McPherson - Yes

Unanimous vote to approve motion.

6:14 PM 3) TIF Engineering Update/Schedule

Mr. Lee said that we had a big kick-off meeting with Underwood Engineering, with all the items we discussed included in the SB packets. There is an update scheduled for June 18, a joint TIF/SB meeting July 9, then a final SB/TIF workshop on August 6 regarding the project's final scope. The timeline requires that everything be turned in to the Clerk by August 20. A map of the current and proposed properties is included in the SB packets, as well as a map of the proposed sewer main extensions. Additionally, Underwood Engineering has set up a portal for the Town of Eliot that has all the engineering work they are doing and I can give you access to that portal. The TIF Committee has been very busy and they are doing a very nice job.

6:18 PM 4) Update: Sidewalk Grant Meeting

Mr. Lee said that this is informational and very preliminary regarding MDOT grant money available to build sidewalks or for planning a sidewalk. Route 103 and State Road are being looked at for a planning grant to study feasibility of a sidewalk for one of these State roads, explaining the many issues that would have to be resolved in order to build a sidewalk on either road, but especially Route 103. I am looking at Route 103, first, as I think that makes sense and asked for input from the SB.

Mr. Orestis agreed Route 103 made sense to look at first but I'm a little biased on that one. From the conversations I've had, what would make the most sense would be to try to get to the Boat Basin or doing a run on State Road regarding usage.

Mr. Lee said that he could put both in the application. I do want to get working on a grant because it is part of the Aging-in-Place plan and part of having a nice, walkable Town.

Mr. Donhauser asked if there is ever any pushback by a property owner.

Mr. Lee said that the Town does have a right to do this with the ROW on the road but as you get into South Eliot, especially, those homes sit pretty close out by the road and some may not like walkers closer to their homes or a big tree removed that has been there for a long time, etc. That is part of the reason you need a feasibility study.

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Mr. McPherson talked about the battle to get the sidewalk in going past his house (across from Town Hall). It went through, was built, and is used all the time, especially now, and Main Street would probably be the same way. It's a battle but I think once it's completed people will really enjoy it.

6:26 PM 5) Frost Tufts Lighting RFP

Mr. Lee gave an update on the status of the RFP that the Capital Improvement and Energy Commission is working on, which will be sent out soon for electrical work/CMP for new poles. Also, we spoke about the Skate Park because, after July 1, we have some money to remedy the Skate Park situation. I'm hoping the three parks will come in around \$15,000 and we will have \$9,000 for the Skate Park.

6:29 PM 6) Approve Warrants

Mr. Mr. Donhauser moved, second by Mr. Orestis, to approve A/P Warrant #130 in the amount of \$909,356.30, dated May 13, 2020; A/P Warrant #132 in the amount of \$121,934.57, dated May 20, 2020.

Roll Call Vote:

Mr. Donhauser – Yes

Mr. Lytle – Yes

Mr. Orestis – Yes

Mr. McPherson – Yes

Unanimous vote to approve motion.

I. New Business:

There was no new business.

J. Old Business:

6:31 PM 1) William Fogg Library MOU Proposal

Mr. Lee said that one of the discussion points that has been up repeatedly over the past couple of years is, if the Town got more involved in funding the operational side of the Library, some SB members and Budget Committee have issued concerns that, if we are going to be funding, might we not want to have voting representation. Otherwise, we would just be a source of money and they could increase staffing and hours and drive up the operating costs without us having any say-so. In order to round out this Memorandum of Understanding (MOU)

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question is, I think, is that the Library Trustees would essentially like to see what we're thinking in terms of what does that representation look like. There is another big issue for them, of course. The Dr. William Fogg Trust was formed out of Massachusetts through probate, as I understand and it calls for three trustees, period. If we tried to amend the number of trustees, they would have to go back to probate; that they are checking with their attorney even now and asked us to postpone this. They've also asked the Budget Committee and/or the Select Board to think about and to draft, specifically, what a voting representation might look like and, for the Library, can we do that legally. They are encouraging us, as we go through the summer, to think about what exactly that would look like so that when we put that question on in November, which I think the SB has already committed to doing, that it's full and complete. I could draft something for the SB to tweak and ask the Budget Committee to do the same.

6:34 PM Mr. Orestis asked if we are familiar with any scenarios that exist in the State where something similar has happened. I'm guessing you have done a preliminary search.

Mr. Lee said that there are all kinds of templates and protocols all across the State, with lots of examples of how to have participation on a utility board, a library board, etc. It isn't hard to find one and work on it but I would also like to see if the Budget Committee would also like to do it because they were fairly concerned.

Mr. Orestis was very supportive of having both write something up that they think is fair and then maybe combine the two, and the library, and what makes sense for all parties.

6:36 PM Mr. (Jim) Tessier, Johnson Lane, said that I sent an email to the Town Manager today concerning the Library MOU, which he read. It discussed concerns about the lack of discussion by the SB and the huge \$72,000 budget increase from this year's budget and a \$52,000 increase in next year's budget amount. I was wondering what your thoughts are and when you want to discuss the MOU/budget increase because I think it's really, really important to figure out where the Town stands.

Mr. Donhauser said that my understanding of the process we are attempting to do is to get a question before the Town to see if they are in favor of some type of arrangement where we, as a Town, support that Library financially. I'm sure that each Board member has their own feeling about this. It provides services to many people in our community so I'm not sure that any individual on our Board should make that decision independently. In moving forward, we asked the Library Director to give us information on what that would look like. We're trying to get

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it into a referendum question before the Town to see if there is much support for it. The lack of discussion by the SB is not because we're not concerned about it, it's that we don't want to make the decision for the Town. We want the Town to make its own decision.

6:39 PM Mr. Orestis said that he agreed with Mr. Donhauser. We're at the point where we asked for a proposal and said that we would get something on the ballot so that the voters could make that decision. That's the point that we are at.

Mr. Tessier said that I agree, wholeheartedly, that you want the Town to make the decision and that the Library is a very, very valuable asset to the Town. However, everything I've heard from the Library Director is just stating how it would be split but I haven't heard any discussion about how we would actually control the costs. If the Town says yes, we're going to pay 'this' piece without any particular control, it kind of opens up our pocketbook to who knows how much it would increase. I do think it's important to have more discussion before something goes to residents on the ballot so they could understand how this could potentially get controlled.

6:41 PM Mr. McPherson asked Mr. Tessier if part of his concern was with salaries and benefits.

Mr. Tessier said that, for example, if you say to the Town that they are going to pay for all the salaries and benefits, then that's an open-ended amount unless there are some sort of controls in place. I'm not trying to tell you what the answer is, but that it seems to me that there should be some discussion about how that piece would be controlled.

6:42 PM Mr. Lee said that the discussion we just had basically, I think, fits what you're expecting or hoping to see and that is before the SB or Budget Committee, for that matter, takes a position on this, they are giving us an opportunity to say "At what price would this \$72,000 come. Do you require a voting seat on the board?" And, if that's the case, they may say forget it, they don't want us involved at all or, alternatively, if they don't want us involved then we may say we're against doing this. They are offering us an opportunity to describe how we would have a seat at the table to make sure that the budget stays reasonably well-controlled, as you have with the municipal budget.

Mr. Orestis said that I don't want to come across as rude but I don't know if, Mr. Tessier, you heard that discussion where I think it's an open invitation for us and the Budget Committee to put together a proposal on what controls, exactly, would be in place. I think Mr. Lee suggested potentially having seats but I think we can be as creative as we want to be with controls. It sounds like there's an open

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invitation. One would be seats at the table or we could come up with something else. So, I think, as a Board and then as a Committee, it would be on us to get creative and figure out what controls we do want. Either they may tell us they don't want anything to do with us and, if they don't meet our demands, we could say we will continue as we have been.

6:44 PM Mr. Tessier said to Mr. Orestis that I agree with all of that. I just feel that the discussion piece needs to start so that we a plan in place from the Town side of things and reach some agreement. It is a big issue and, yes, we have time but the virus thing makes meetings more difficult and challenging. I think if we start working together, we can come up with a solution.

Mr. Lee said that that is definitely on our radar. I'm going to put together a couple different proposals like 'increases of such-and-such a percentage' or 'the annual consumer price index', or 'as a cap, otherwise, it requires a special override'; something like that. I'm going to be working to come up with a solution and I think it would be very prudent for the Budget Committee to think about what it would take for you to feel comfortable to be involved in the Library any greater than we are. I think it's an open-door invitation for you to do that, as a Budget Committee, and come to us with a couple of ideas on how you would feel comfortable. Maybe it's an LD1 number. I know that's a number that we'll get closely with my budget. So, if we were to look to the Library to hold to a LD1 number, however you might define that, otherwise requires a certain extra approval, or something like that. That's what they're saying. How would this work and I think we're trying to work on how would it work, what would motivate us to know that we have some control over the spending. I think we have started that conversation tonight. I hope the Budget Committee will continue with that conversation and forward to us any ideas you might have about the best way to govern the Library if we're going to be as heavily involved as they are suggesting.

6:46 PM Mr. Tessier said that I think Mr. Lee has offered some very good, strong suggestions right there. I don't hold a lot of faith in that we would be welcome to add board members. The Library has been pretty adamant that they didn't want that in the past. I think the part you are talking about, the financial controls, is a prudent way to at least start the discussion and start thinking. Thank you for your time.

K. Selectmen's Report:

6:47 PM 1) Seeking Committee Members

Mr. Donhauser said that we are seeking Building Committee members.

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Mr. Lee said that we are also going to be looking at a resignation from the Planning Board on the next agenda so we could really use another Planning Board member. We are also looking for a member for the Capital Improvement and Energy Committee. So, if anyone has a background in any of those types of things or a citizen who wants to get involved and lend some wisdom, we're always looking for new people. We have three applicants for the Building Committee, right now, so get your names in, please.

L. Executive Session

There was no executive session.

M. Adjourn

There was a motion and second to adjourn the meeting at 6:49 PM.

VOTE

4-0

Motion approved

Respectfully submitted,

Ellen Lemire, Recording Secretary

S/ Mr. Richard Donhauser, Chair

Date approved: June 11, 2020