

**BOARD OF SELECTMEN'S MEETING**  
**January 14, 2016 5:30PM**

**Quorum noted**

**A. 5:30 PM:** Meeting called to order by Chairman Beckert.

**B. Roll Call:** Mr. Beckert, Mr. Fernald, Mr. Murphy, Ms. Davis and Mr. Pomerleau.

**C. Pledge of Allegiance recited**

**D. Moment of Silence observed**

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

Approval of minutes was postponed.

**F. Public Comment:**

**5:32 PM** Ms. (Nancy) Shapleigh said she was wondering if the Board had any thoughts on the fact that our school was on Fox News recently over sending out emails to recruit for Hillary Clinton and, if so, she would like to know why one party and not the others; that she thought that was not appropriate behavior for the schools; that she wondered if it was worthwhile sending a letter with some thoughts because it's all the taxpayers' dollars going into that.

Ms. Davis said that she believes the superintendent has sent out a letter regarding that; that she thinks there was a misunderstanding and some slight misrepresentation of what occurred so she probably, Ms. Davis didn't know for certain, published her letter on the school's website, that she doesn't have a copy of that with her right now but the superintendent did straighten that out and it's a little different than what initial impressions would give.

Ms. Shapleigh said a little like Benghazi.

Ms. Davis said a little.

Mr. Murphy agreed with Ms. Davis; that there was a notice in the Portsmouth Herald that covered it sufficiently in response; that the response has been blown up rather than the actual action; that he didn't think there was anything this Board could do.

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**G1. Department Head/Committee Reports**

**5:34 PM 1) Eliot Energy Committee: Apply for Grant: LED Message Sign**

Mr. Beckert said that there is a letter in our packet from Ed Henningsen, Co-Chair of the Energy Committee (EC) basically applying for a grant.

Mr. Lee said that we just wanted to make sure that we had permission from the Board to pursue funds to possibly purchase and erect a message sign, here, on Route 236 or potentially up here between our public safety buildings. He added that it is a 100% grant to get it so there is no local cash involved; that we would probably be looking at \$20,000 to \$25,000 with installation, and so forth; that it would be one of those signs that you can program remotely to change messages periodically; that we'd primarily use it for some EMA (emergency management) type stuff but, also, to give other types of messages for the Town – Town Meeting, voting, papers available. He said that the EC ran into it because we were looking for grants for something else and they thought that if we had for the primary purpose we could also use it to advocate, like showing what we have for solar savings and that type of thing.

Mr. Beckert asked if there was any issue from the Board with them pursuing that.

**5:35 PM Mr. Murphy said that he would be in favor of it.**

It was the **consensus of the Board** for the EC to pursue this.

Ms. Davis said that she thought there was a **member of the public here for public comment** but missed it because we skipped over the minutes on the agenda.

**5:36 PM Ms. (Janice) Bakula said that she was at the last meeting and she was a few minutes late because she had pulled in and realized that she had left something at home and had to go back home or she would have been here for the Public Comment. She said that she approached the Board at the last meeting about the waterfront issue in front of her house, the fact that they rebuilt the boat ramp, etc., and excavated a good portion of her property and left, what she finds, a less than favorable mess of rip-rap there. She added that she brought photographs of an individual who decided to pull his boat out and his compatriot who decided to block the road with their vehicle, an empty vehicle they just left parked in the middle of the road; that she realizes that she's been told that she just needs to call the police when this happens.**

Mr. Beckert said that that is correct.

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Ms. Bakula said that that's only part of the problem; that first of all, she has to be home to call the police and that does not negate the fact that it makes it very dangerous on that sharp corner; that it is a blind corner and asked what happens, come summertime, when the kids are out there. She added that, second of all, the only thing she asked...she asked two things – she asked that you possibly put a handrail down the middle of it for safety; that you guys mentioned, last time, that it was a public access, it is a public access but public access does not denote a public boat launch; that there is a difference, she has done the research on both of them. She said that it would still be public access; that public access can be by foot, carrying your canoe down, walking your dog down, or whatever. She added that she doesn't like the way her property was left.

**5:38 PM** Mr. Beckert said that, as far as the public access and the boat launch, the Board made a decision that the Board was not going to limit that to just a walking situation, that was a Board decision, the Board voted.

Ms. Bakula asked when the vote was taken; that it was not at the last meeting because she was there.

Mr. Beckert said that it was at the last meeting we discussed it.

Ms. Davis said that the issue came up, again, at our last meeting, and Ms. Bakula was not here.

Ms. Bakula asked if it was a public meeting.

Ms. Davis said that it was; that it was the next meeting after the meeting that Ms. Bakula was at, probably in December.

Ms. Bakula said that, somehow, she missed that meeting, even having been on the calendar. She said that she is asking for a reconsideration of that.

Mr. Murphy asked if it was that part of the embankment that is still under reclamation and repair by the Public Works Department.

Mr. Beckert said that it was his understanding that the Public Works Director has been out and discussed this again.

Ms. Bakula said that she and Mr. Moulton have talked about it and, yes, we are still in conversation about it; that she would like to address the fact that it's a safety issue having that as a ramp there. She asked him if he would like to see the pictures that she has.

Mr. Beckert said that he was quite familiar with the area.

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Ms. Bakula agreed he was familiar with the area but said he was not familiar with the way the out-of-staters utilized that less than safe environment and that's what her pictures show.

Mr. Beckert said that the Board has seen the pictures that she sent and the Board has addressed how the issue needs to be addressed.

Ms. Bakula said that it's okay for these...she's supposed to police.

**5:39 PM** Mr. Beckert said that he didn't say it was okay; that she is putting words in the Board's mouth.

Ms. Bakula said that she was trying to clarify the Board's mouth; that she is supposed to police it and keep people safe on that corner; to allow people to continue to launch or take out a boat when we have a public boat launch a mile away. She added that the pictures that she has are very clearly an out-of-stater because that boater had no license plate on the front; so that's going to denote Massachusetts because Maine and New Hampshire requires a front license plate. She said that this was just a few scant weeks after it was finished and, already, they found their way here. She added that this is a two-fold issue; that, #1, they are taking money out of the Town coffers because they're too cheap to drive a mile away.

Mr. Fernald asked Mr. Lee if there was a No Parking sign in that area.

Mr. Lee said that there was; that they put up arrows to depict that they are coming into a sharp corner, chevrons he thinks they call them; that we put those up, too, to try to improve safety; that the parking situation, as we've all told Ms. Bakula, is a police thing and Ms. Bakula shouldn't be the only one doing it; that if anyone on that road sees somebody blocking the road they would be well-advised to call the police.

**5:41 PM** Ms. Bakula said that she understood that; that when they bought the property 20 years ago we had hawthorn hedges that ran all the way around that corner; that we took those down because we felt it was very unsafe because people could not see coming around that corner; that we keep them down and, if you know anything about hawthorn, they're insidious; they start and come up wherever they want, reiterating that we continue to keep those down because we feel it's a very dangerous corner. She said that the fact that people are either backing down or pulling out or blocking...these pictures that she has show vehicles passing this parked car on this corner on Saturday morning at 10:30. She asked what happens when it's June or July; this was October when it happened. Ms. Bakula reiterated that she is not against public access, and her deed states public access, but there is

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a world of difference between public access and public boat launch, especially when there's a boat launch a mile away.

**5:42 PM** Mr. Murphy asked if that wasn't historically a boat launch.

Mr. Beckert agreed that it was, as was explained to her before.

Mr. Murphy said that small boats can still be launched there.

Ms. Bakula said that she could show Mr. Murphy a copy of her deed that says public access; that it does not say public boat launch.

Mr. Murphy said that the history of the Town is well-known.

Ms. Bakula said yes, long before Dead Duck existed.

Mr. Murphy said that he didn't know about that; that he thinks Dead Duck has existed a long time.

**5:43 PM** Mr. Pomerleau said that you will recall that the meeting where he took this up he had researched State statutes; that public access is not language that exists, as it appears to be public way or public easement; that either way, State law requires that it be accessible by automobile, particularly if there has been a history of such access. He added that the issues of safety, the issues of out-of-state residents using it are totally irrelevant; that public is public, there's a better way to live. He said that he's certainly amenable to the DPW Director working with Ms. Bakula to resolve issues with her property, whatever may need to be done; that he has no interest in pursuing this any further; that he thinks it's a settled issue; that it's a public way and thinks it should remain that way, it has to be by State law.

Ms. Bakula said that her other argument about this was that, on April 27<sup>th</sup>, a letter she got from the Town says, "*However, following two neighborhood meetings to discuss potential access improvements to the boat ramp and subsequent surveys sent to residents to gauge their interest in it, the project lacked the necessary support and was ultimately abandoned.*", and then they carved her property up.

Mr. Beckert said that the Town did not abandon the public access and will not abandon it.

**5:44 PM** Ms. Bakula said that she understood that; that that's not what she said and that's not what she read; that she read, per the Town letter, that the project was abandoned. She added that it wasn't and moved forward anyway; that even though the letter from the Town, dated April 27 of last year, said that they had abandoned it because the neighborhood did not want it.

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Ms. Pelletier said that the survey was in reference to the grant project; that that was what she was talking about in that letter.

Mr. Lee said that it was just the grant element that was abandoned.

**5:45 PM** Ms. Bakula quoted the letter, again, and said that it didn't say grant, or otherwise.

Ms. Pelletier said that the only project on the table, at the time, was that grant; that we did not move forward with any "improvements", we just simply resurfaced.

Ms. Bakula said that she could understand that; that that ramp certainly wasn't just resurfaced, as it was totally excavated out. She added that she would grant that it was in pretty poor shape; but the other point of this is that she received this letter of April 27<sup>th</sup> and they found her address to send her that letter but they didn't find her address to send her another letter saying that the Town was moving forward with something else, even though they knew the neighborhood, not just herself, was not for it.

**5:46 PM** Ms. Pelletier said that we did send out letters saying when we were going to start this project; that she thought it was in October.

Mr. Lee said that letters did go out.

Ms. Bakula said that she did not get that letter. She discussed the map that the Town sent that showed that the culvert was going to run down the right side of the ramp and, instead, it ran down the left side. She added that, if it had run down the right side, as it indicated, they wouldn't have carved out all her property that they did; that she has that map if you would like to see it.

Mr. Beckert said that we didn't need to see it.

Ms. Bakula asked if she was just wasting her breath and wasting her evening.

Mr. Beckert said that this Board made a decision that the boat ramp was the way it is; that we were not going to limit it by putting a handrail down it; that if you and the DWP Director can come to an agreement on the reclamation of Ms. Bakula's property.

**5:47 PM** Mr. Lee said that he doesn't know that a lot of the issues were directly on her property, per se.

Mr. Beckert said that he wasn't sure that they were, either.

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Ms. Bakula said that she and Mr. Moulton have been discussing this and we are working on something. She added that she came here tonight to specifically talk about the safety of that public boat launch, as you guys denoted public access, as her deed denotes it; that as she wrote to Mr. Lee, if somebody slips and falls and they hurt themselves, it's on you because you can't claim you didn't know about it, and that's all she is going to say about it.

**5:49 PM** Mr. Beckert said that nobody is claiming they didn't know about anything so let's not make an issue out of something that hasn't happened; that we can all say that, if something happens on any situation...but this Board has made a decision that the boat ramp is the way it is; that, unfortunately, she doesn't agree with it.

### **5:50 PM 2) TIF Alternatives Committee: Resignation, Bob Pomerleau**

Mr. Lee said that there is a letter in your packet regarding his belief that there is a sharp conflict between his role as Selectman and his work as a committee member and, therefore, he's going to step down; that he said that the committee is doing an excellent job and he is confident of their eventual success.

Mr. Beckert thanked Mr. Pomerleau for his service.

Mr. Murphy moved, second by Mr. Fernald, that the Board of Selectmen accept the resignation of Robert Pomerleau from the TIF Alternatives Committee.

**VOTE**

**3-1 (Mr. Pomerleau abstained)**

**Chair concurs**

### **3) TIF Alternatives Committee: Consultant Bid Approval**

**5:51 PM** Mr. Lee said that, initially, the TIF Committee wanted to do a market and economic analysis for the Town of Eliot to see where we fit in the bigger economic picture, what types of economic development activities might be interested in a town with Eliot's characteristics, and so forth, so that we can best use any TIF funds in a way that will be most likely to be successful. He said that we went out to five different firms and only two responded; of the two, the Committee preferred Planning Decisions out of Portland; that their principal lives in York and that was part of their thinking, although both proposals were very strong; that both proposals were over the amount of money we had and, going back over the total amount that was allocated for TIF spending, there was \$12,000 for salary supplanting, instead of paying some of our staff costs through regular taxpayer money, some of it comes from the TIF fund for managing that project, those funds, etc.. He added that, after the \$12,000 was reduced, there was \$20,000 for consulting and \$20,000 for legal and, of that, he was asked to develop how much we thought we might need for legal toward the end of the project; that he

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came up with a number of about \$7,000, potentially, to do all the consulting that needs to happen, submissions to DECD, etc., leaving us about \$24,000. He said that the Committee asked him to go back and try negotiating with Planning Decisions to see if we could get them down from \$30,000 to something we could afford; that he went back and negotiated to \$23,000; that Chuck Lawton, the Ph. D. fellow who is the principal of Planning Decisions, came in and explained how he reduced it by \$7,000, gave us a break-down, which is in your packet. He added that, because of the size of the amount of the bid, to be on the safe side, although the Committee was given some latitude to award that money using TIF money for the TIF Committee, they thought it was safer to come back and ask if the Board would approve the proposal for 'not to exceed' \$23,000.

**5:53 PM** Ms. Davis said that they only received back two proposals but it looks as though one has already been eliminated. She asked if there was some particular reason why you negotiated with only one and not provide an opportunity to speak with the second one.

Mr. Lee said yes; that the Committee preferred the first proposal over the second one; so, when the first proposal could get to the target number, then you don't usually go to the second one; that we tried to get the preferred one first and they were able to do it; that if they hadn't we would have gone to the second one and said that they are just not affordable and won't change their number; that when they do you usually stay with that first one.

**5:54 PM** Ms. Davis asked why the first one was preferred; that she read through both of the RFP's that we received and they both looked good.

Mr. Lee said that that was the opinion of the Committee.

Mr. Pomerleau said that he thinks, procedurally, we have to kind of iron out how it got to this point; that this is something that he and the Town Manager have disagreed on. He added that Mr. Lee is under the impression that the Committee had some authority to proceed with these bids without any input from this Board, which he thinks is a violation of our purchasing policy; that less than three bids is something only this Board can waive and the amount is in the excess of \$5,000, to start with. He said that the selection of the bidder is another item that is limited to the action of this Board and whether, or not, the Board would endorse negotiating the price with the vendors, logical enough as that is; but he thinks that where we are, at this point, is it totally by-passed our Town's purchasing policy in the involvement of this Board. He added that following through with the merits of this is a discussion yet to have and he thinks we should resolve the issue of whether or not what we have before us is here properly; that there were less than three bids, a vendor has been selected and negotiated with, and this Board has had no input into that; so, he thinks we need to resolve where the authority lies here.



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**5:57 PM** Mr. Murphy asked how much of what this company would do, or any other company selected at this time, would simply duplicate what Eaton Peabody did for us for almost \$10,000 just a year and a half ago, or two years ago. He also asked if the times have changed so much that that planning for a town is no longer valid.

Mr. Lee said that he thought the principal difference was that this market and economic analysis consulting project follows the public opinion surveys that we did; that we had a very good response with the public opinion surveys and, so, one of the things we asked them to do was to fit in what the Town of Eliot would accept for economic development based on that survey; not only what the market wants us to accept but what we will accept. He added that we waited until that survey was done so that we could give them that information and ask what the company was finding out there that we would accept that would pass a vote here in Eliot if we tried to do something, giving a smokestack industry as an example of what wouldn't be acceptable here. He said that he thought the Eaton Peabody was done before he came here.

**5:59 PM** Ms. Davis said that it was March 25, 2013.

Mr. Pomerleau said that, for the sake of comparison, this is vastly different than what Eaton Peabody did as far as what they're composing and what we were asking them to do; like night and day as far as he is concerned but he thinks we're getting ahead of ourselves and suggested we resolve the issue. He added that he has no problem with this Board waiving the fact that there were less than three bids; that they sent out five and, again, if it was him, he thinks we need to take that one step at a time. He said that, when it comes down to the selection process between the two, then you're splitting hairs between the two of them, and there was a consensus from the TIF Committee.

**6:00 PM** Mr. Beckert said that we should have gotten something from the TIF Committee letting us know they sent out five and got two...

Mr. Pomerleau agreed, adding the TIF Committee would like to proceed, here's the one we prefer and we'd like to negotiate with them; that, then, this Board would say okay and okay; that we approve their choice, we approve the waiver, continue to negotiate. He said that he wants to speak to the merits of spending this kind of money because he has grave concerns about that but let's take it a step at a time. He added that, first of all, are we satisfied that there were only two bids.

Mr. Beckert said that, not having a formal request or letter from the TIF Committee but hearing that they did solicit five and only got two back, he doesn't have a problem with waiving the fact we only got two.

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Mr. Pomerleau said that he is okay with that, as well.

**6:01 PM** Mr. Fernald said that he didn't have a problem with that but he does have a problem with the way the bid was selected; that it is our Board that is supposed to be doing the selection, per our policy.

Mr. Beckert said that we have a new TIF Committee, too.

Mr. Fernald said that he understood that; that they need to understand what the procedures are, also.

Ms. (Janet) Saurman, speaking for herself and not the TIF Committee, said that she thought it was important to mention that the objections by a certain member of our Board tonight were given an opportunity to be discussed the night before his resignation at the end of the meeting. She added that all of the discussion we had about this, that the Selectmen are questioning now, was in favor and never mentioned any of these things, never gave us a reason to question anything; that, now, tonight, after the end of that meeting that it was determined that his resignation might be the best thing for the Board, we didn't do anything right that night. She said that she was curious why that Selectman didn't give us that information when we were in the process of doing it rather than now; that she would suggest further that, following his resignation, means that he has no more to say about what that Committee decides; that this is a way to make sure he still has some sort of power with what the TIF Committee decides to do. She added that it is very disheartening to think we sat through two hours of a meeting, with him, and asked him directly if we needed to go to the Board or need approval or any of those kinds of things and not once was that suggestion made to us. She said that the idea that we started doing things wrong, as a Committee, were brought to this Board's attention after members of this Committee suggested we could no longer figure out how Mr. Pomerleau could serve on both committees; that, then he agreed, after some discussion, to resign. She added that that is curious and she would like the Board members to have that in their minds while they are discussing this.

**6:06 PM** Mr. Fernald asked Mr. Lee if he attended that meeting.

Mr. Lee said yes.

Mr. Fernald asked if he did not express to the TIF Committee how the procedure was supposed to be.

Mr. Lee said that, actually, he was the one who brought it up; that he thought, by rule, we really have to have the Selectmen approve this; that he was the first one to mention that the Selectmen ought to be the ones to approve the \$23,000.

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Mr. Fernald asked if the TIF Committee understood that.

Mr. Lee said that we didn't really know what authority we had to use those TIF funds; that we had been talking about the survey and that ended up costing \$6,000, or so, and we spent that without issue; that he thought those funds were for us to use consultants; that, in fact, part of the demise of Route 236 was the fact that we didn't do a study, we didn't explain ourselves and there was no study to back it up. He added that he thought, going into this project, the one thing we really needed to do was to make sure we have a study of what the proper use of these funds were but he mentioned that it would probably need to come here before we could award it. He said that, momentarily, they toyed with awarding it, then and there, but he said that, with the way things are with bidding around here, we probably better go back to the Board and make sure they are okay with that. He added that he really thought that the TIF Committee had some level of authority that they were given when they were created; that he didn't realize that there was no authority at all.

**6:08 PM** Mr. Pomerleau said that the comments made were totally inaccurate; that he would welcome any of the Board to go to the video-streaming; that he has it identified as to the specific timeframe when this discussion took place. He added that the Town Manager actually addressed him as a Selectman on this issue of whether we had the authority to do this and he (Mr. Pomerleau) said no; that no committee has the authority to spend this kind of money.

Mr. Lee said that he did; that he asked Mr. Pomerleau for his opinion.

Mr. Pomerleau said that he didn't know how we (TIF Committee) managed to spend the \$6,000 for the survey without Board approval.

Mr. Lee disagreed.

Mr. Pomerleau said that he assured him it was on tape.

Mr. Lee said that there are a number of people here who were there.

**6:10 PM** Mr. Pomerleau said that they proceeded from there, with that having been said, and the Town Manager said that he felt that the Committee had been empowered to spend this money and it wasn't necessary for them to go through this process before the Board; that he said it twice. He said that that is part of his conflict between his role as a Selectman and his role as a Committee member that came to a head that night; that the issue was brought up, Mr. Lee stated the Town's policy; which is that anything over a certain amount had to come to this Board for approval, first, then proceeded to repeat that, however, he thought, the Committee had that authority.

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Mr. Lee agreed that he did think they had that authority.

Mr. Pomerleau said that the only point he's trying to make is that this Committee did not have this authority, he said so, and we proceeded with the selection process. He added that he has no problem with what we did, as far as what we did, presuming that was going to come to this Board first; that he raised those points that night and the Committee proceeded otherwise.

**6:12 PM** Mr. Beckert said that we are at this point now where, right, wrong, or indifferent, we have a proposal in front of us, five RFP's were sent out and we received two back; that he is hearing from the majority of the Board that they had no problem waiving the requirement for three bids.

It was the **consensus of the Board** to waive the three bid requirement.

Mr. Beckert said that we have two bids; that it is being inferred or implied that the TIF Committee would request the Selectmen award the bid to the first company; that that's where he is hearing they are at.

Mr. Lee said that was correct.

**6:13 PM** Mr. Murphy said that he was trying to remember the source of these funds, asking if the TIF Committee was given a budget.

Mr. Lee said no.

Mr. Murphy asked if this money was going to come from TIF funds.

Mr. Lee said yes; that \$20,000 was appropriated for consulting, then, we appointed a TIF Committee and the TIF Committee decided that they did need a consultant; that we probably should have reported back to the Board that we had decided that we wanted to use a consultant.

**6:14 PM** Mr. Murphy asked if this money was approved by the Town.

Mr. Lee said that it was approved by the Town for use of consulting and legal.

Ms. Shapleigh said that it doesn't say what kind of consulting, either. She said that the Town didn't approve the study that was almost \$10,000 and those people told us we should put the sewer in and couldn't understand why we didn't; that a certain element didn't want to do that in this community. She added that that would be the best thing, probably, to develop out there. She said that she doesn't think the Town owns enough land that they should be spending that kind of money. She asked why the Town should be telling private property owners what

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they can do with their land out there beyond the zoning that we all know we have to live with. She added that she thinks that's a lot of money to spend only to have the Town not like that either. She suggested they research on their own, not spend \$20,000+ on it.

**6:15 PM** Ms. Saurman said that she would like to state that the TIF Committee way of reaching decisions was always by consensus; that in the meetings we've had in the past, when we didn't reach consensus when someone said no, we went around the room and found out what it was we needed to fix, how we could have it said, how it could be phrased, so we could reach consensus; that for the suggestion to be that there was not consensus that night is surprising to her because all the other times we worked out our differences until we could reach consensus She added that she doesn't want any misunderstanding by the public, explaining that the reason the Committee brought up the issue of Mr. Pomerleau's resignation had nothing to do with this particular issue; so she doesn't want there to be the perception that he said to us that we shouldn't go ahead and do it and we went ahead and did it and that's why he's bringing the point – the two had nothing to do with each other.

**6:16 PM** Mr. Beckert said that we have consensus to waive the three bid requirement; that now we have before us an informal recommendation from the TIF Committee that they want to go with 'this' consultant – Planning Decisions – for the price that is listed for this proposal. He added that, with that being said, he asked for discussion on the proposal.

Mr. Murphy asked if there was a schedule of performance, if this is awarded.

Mr. Lee said yes.

Mr. Murphy asked if there was a promise of what was going to be delivered.

**6:17 PM** Mr. Lee said yes; that he sent the two proposals via email but he may not have printed these binders for you.

Mr. Murphy said that he had not seen them.

Mr. Lee apologized. He said that he really thought that the Board, as they often do, will defer to the committee; that you asked a committee to do some work and to make recommendations and this feels very strange.

Ms. Davis said that, when Mr. Moulton comes in with three vehicles he wants to purchase, we are usually given information on all three vehicles and we discuss the merits of all three before making a decision, largely based on his recommendation, which weighs heavily; that that would be the same case here.

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She added that what concerns her about these two RFP's is the second one, who you haven't spoken with, says the consultant has had 30 years of experience working with communities in Maine and an intimate knowledge of Maine's economy; that if she was looking at these bids that came in she guessed her first thought would be why the second company, under our bid process, was not allowed to speak; that they were, in fact, a lower cost than the other company, not by much but they were lower and they're not being given this opportunity. She added that when she looked through the bid, although it's somewhat informational, she wanted to know if there's a sample of what the Committee is seeking from each of these s that we could physically see what they're offering as a result of a \$23,000 study. She said that they gave references and they must have some electronic copies of studies they've done so that we know, somewhat, what they will produce so that we would have some idea of whether this was worthwhile, or not. She said that if you're going to only choose one company over another it would be nice to know if you had some real reason for disregarding the second company.

**6:19 PM** Mr. Pomerleau suggested he could help the Board out, as he has a lot of information. He said that he's leaning towards the preference, as approved by the Committee, for the two vendors. He added that there's a \$150 difference between the two and the Board members can go through the quite thick proposals; that they're both excellent companies, they pretty much do the same thing, they both pretty much presented proposals to do the same kind of research; that, if you could draw a huge difference between them, you're a better person than he is; that the Committee spent a lot of time discussing this between the two companies. He said that the preference came down to that the one selected had a lot more local involvement and had done projects in the area; that they all felt that, splitting hairs, that was not a bad way to go. He said that the bigger issues is that these bids were around \$30,000, with the question being did they want to spend that kind of money, and to what result - would it advance this whole TIF plan, would it contribute to it with the result of a better product, is it worth that kind of money. He said that he did look these over thoroughly and then got proposals that the companies listed as references of areas they had worked in; that the hard part was understanding was, with what we were going to buy, what are we going to do with it, how is it going to help make decisions on this TIF proposal; that that wasn't real clear to him because some of the information they're proposing to do, when he looked at the survey results, told him that that information isn't going to be of an extreme value and we're paying a lot of money for it. He said that, looking at the samples of their work helps to bring some clarity as to what the output is.

**6:21 PM** Mr. Murphy asked if Mr. Pomerleau could leave those with Mr. Lee so we could all look at them.

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**January 14, 2016 5:30PM (continued)**

Mr. Pomerleau said yes; that he also has them electronically. He said that the one that gave him the best insight, as far as the data produced, didn't come from the selected vendor but from the other one; that they actually show the kind of data generation; that it was valuable to see the kind of information we would have and, then, try to put that together with how we would use it. He added that his own personal conclusion is just his because he's read all this and none of you have had the advantage of that. He said that some of it would be helpful and some of it he didn't think would be of benefit; however, they came back in here the following meeting and he had a concern about one of their reference proposals that was very similar to ours that they had done up in Gorham – they had an abandoned school and the town wanted to convert it to a town center and bring sewer up to it; that they did this research project, went to a town vote, and the town voted it down, 2 to 1; that there were following newspaper articles that said the reason it was voted down was because the Selectmen and officials weren't listening to their citizens. He added that that, for him, stresses the value and importance of the survey we did; that that's why we did the survey, so we could find out from the Town what they would likely support so that we could put together a plan that was likely to succeed so we don't spend all this money and, then, come up with a another rejected TIF plan. He said that stressing the importance of the survey wasn't something he was sure that initial vendor was clear on; that the follow-up meeting he had, the Committee addressed that very well with him; that they emphasized the importance of the survey. He added that, in the vendor's follow-up memo (G1-3), the vendor kind of addressed the fact that he caught on to the fact that that survey was going to shape the work he was going to do and, as long as he realized that that was critically important and that they were going to involve this Board and other members of the community for feedback; that the original proposal needs to be shaped somewhat differently than we put it out in the RFP; that he thinks both the Committee and the preferred vendor acknowledged that, so he is optimistic. He reiterated that it still comes down to whether this amount of money is going to substantially change what that Committee might have gone forward with; that he's not sure that it will but he can't rule it out, either.

**6:24 PM**

Mr. Beckert said that there is a lot of stuff here that not every member has seen, at this point, asking if the Committee is under the gun, at this point, to get this out.

Mr. Lee said that there is a timeframe that was included in the RFP; that there is a timeframe we have developed to get it to the public and this will slow it down and probably stop it in its tracks.

Mr. Beckert said that he is not suggesting we stop it in its tracks but was wondering if it was advantageous, in two weeks, to request the TIF Alternatives Committee come before us; that he would personally like to hear from them what they feel this is going to do for them because we charged them with going out and coming back to this Board with alternatives.

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**January 14, 2016 5:30PM (continued)**

**6:26 PM** Ms. Saurman suggested that, possibly, the Board could view the meeting that we had; that you would find that information on there. She said that one of the reasons for their choice was that the other company was out of New York and, in their proposal expenses, if we needed their consultant from New York, it would cost us a lot of money to fly him in to attend meetings with us, so, that was a factor.

Ms. Davis said that she watched the meeting with the Planning Decisions representative and he did sound open-minded and like he was really trying to talk to everybody to find out exactly what they are searching for; that some of the information was fundamental in describing what a TIF was, etc. She added that when it comes right down to it, she thinks we need to get more concrete information from them, not generic studies; that, to some degree, it helps to know what businesses want and what the aging population is going to be ten years from now but those won't provide us with any concrete steps of how to develop and what project to choose for development in the very near future. She said that it would be helpful, if we decide to choose this one, to have a meeting with them and express some very realistic goals of what will help us take steps for the future.

**6:28 PM** Mr. Lentz said that the Board appoint committees and people to those committees; that, obviously, when they are appointed they believe they have some kind of authority over things; that it's unknown; these are volunteers and they don't know the rules like the Board does; that maybe it would be worthwhile to make a simple list of do's and don'ts that you could give these committees when they walk away from here. He added that, when you sit here and think about it, he hopes there aren't a lot of people watching because that certainly isn't going to help bring more people onto committees.

Mr. Beckert said that one thought he has had listening to all of this, in going back to why we formed the TIF Alternatives Committee, it was very clear that we were asked to form a committee that the Selectmen would have little influence over until they brought their recommendations to us, once their work was done; that he would caution this Board that we need to be careful how much influence we try to put on the Committee. He added that we were tasked by the Town to go ahead and set up this Committee; that, yes, we have approval authority to approve how we spend the \$23,000; that he could go watch the video but he likes face time with the people involved and he doesn't have any problem putting the confidence in those members of that TIF Committee, if we do decide to hire this consultant, to work with that consultant to get what they feel we need to take to the Town for a proposal and what they want to move forward with for possible projects. He reiterated his caution to not have this Board have too much influence on how that Committee proceeds, until we get their recommendations when they are done with their work. He added that we will hear that the Selectmen influenced the



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**January 14, 2016 5:30PM (continued)**

Committee so the people don't have anything else before us except what the Selectmen wanted; that that's just a caution.

**6:31 PM**

Mr. Lee said that he wrote the RFP and ran it by the Committee before it went out and, by all accounts, he thought everybody thought it was spot-on and really covered it well; that in the information that Planning Decisions submitted, page 3 of their revised proposal, you'll see three circles with an inner portion called TIF Plan and that is kind of what we've been talking about all along. He added that, in answer to what the \$23,000 buys us, our hope is that the will of the Town, through the public opinion survey, is now known; that there are two things we don't know and one is what are the regional needs for economic development and, secondly, what are other communities, other developers, looking for, what incentives are they being given, how is this money being used to attract jobs, etc.; that what you have to find is that sweet spot in the middle that fits what we will accept, what the market is looking for, and what developers look for, and he believes there are going to be very limited numbers of those things. He said that, if we were here in a few months and said we, the Committee, believe One, Two, and Three, he guaranteed the next thing would be "How do you know that? Where's the study? How can you prove that?", yet, we try to do the study and it's, "What value will it be?"; so, he's really lost and confused as to what we are doing on the TIF Committee, he guesses; that he doesn't know how others feel, that he sees Ms. Lentz nodding, but he.....

Mr. Beckert said that that is why he cautioned this Board; that we need to back off on how much influence we put on the Committee.

**6:33 PM**

Ms. Saurman said that she would say that, if this discussion were to end right now, she would not know what we were supposed to do, as a TIF Committee, the next time we met; that she wouldn't have a clue, so, either you folks want us to go ahead and do some of this work so it is off your shoulders and, then, we'll share with you in really valid and thoughtful ways the work that we do and the decisions we come to; that, then, it is up to the Board; or, you want us to come and work every two weeks but, then, you want to micromanage – not the funding – but we reviewed the bids, we discussed that we didn't get three, we gave you the reason why we made the choice we did, and now there still seems to be some confusion as to what they're going to deliver. She added that they (Committee) felt we might get somewhere with this information, as opposed to just nothing, which is what we had to start with; so, if it ends right here, she won't know what to do at our next meeting, she can guarantee it.

**6:34 PM**

Mr. Fernald said that procedure for the majority of departments is that we give them a task to do and they do the task; that, then, when they need to make a choice, as we're trying to do tonight, of spending a certain amount of money, only the Selectmen can approve that money to be spent; even TIF money that was

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**January 14, 2016 5:30PM (continued)**

voted on by the Town says that the Selectmen will spend that money. He added that our task to the TIF Committee is to come up with the information you have tonight but that TIF Committee needs to come to the Selectmen to request this money so that we can ask questions to them, if need be, and approve or disapprove those funds; that he believes that is what the procedure should be.

**6:36 PM**

Mr. Beckert asked the Board where they were at right now.

Mr. Fernald said that he would think that the next step would be to have the TIF Committee come to the BOS to request this so that we can ask questions, if need be, just like we do with every other committee and every department.

Mr. Pomerleau said that he understands what the Committee's dilemma is about not knowing what to do next; that if he could help here, somewhat, is that they gave you specific items that they were going to do and a cost for each one of them – data-gathering, etc.; particularly in the data-gathering piece, if you look at some of the data that they were going to gather and, then, compare that with the survey and say of what value will that data be or will it only make things more complicated. As an example, he said to use the regional demands for what's out there, if they come up with some criteria that these are the hot items in the region but the Town survey says that the Town hasn't the slightest interest in that, of what value would it have been to have them spend thousands of dollars gathering that data if it's going to conflict with what the Townspeople have already told us they have no interest in; so it's kind of doing that kind a matching thing. He said that he thinks they're very capable of coming up with a consultant in modified version of what the original RFP was that of some of this stuff we don't need and a lot more focus on this if you can answer when you look at those things. He added that, as a Committee, when he has given us this information what are we going to do with it, how will it help us form our recommendations to this TIF plan; that that is what confused him when he went through some of this data – how are we going to use this. He said that the consultant might be able to sit down with the Committee to discuss the survey, the data available, and how he sees it; that now that he's looked at their survey, he agrees with the Committee that some of this data isn't worthwhile gathering, regardless, because the Town doesn't support it. He added that he has no problems with this vendor; that the amount of money, to him, is still a question in whether it would really be worth it and would it really change what you are going to end up with for a final product. He said that his view was, in the long run, he would be putting this kind of money forward to a permanent planner, which is something that the Town is going to need moving forward; that whether we get a TIF plan, we need to move forward with some logical approaches, zoning changes, all kinds of things that need to be done to accommodate whatever the new plans are going to be. He said that we need somebody in-house and he would rather see a permanent position with TIF money

## **BOARD OF SELECTMEN'S MEETING**

**January 14, 2016 5:30PM (continued)**

than this; but this can still end up being of some serious value but he's just not sure of it.

**6:40 PM** Ms. Lentz, TIF Committee member, said that the consultant is working hand-in-hand with the survey; that she agreed that we would eventually need a planner. She added that you have put basic citizens on a committee and we don't know how to put together the construction of a building or a sewer or anything else and that's where a planner would come in. She reiterated that the consultant is working with the survey; that he would not come back and say that CMP wanted to build a power station on Route 236 because he knows the Town won't accept it.

**6:41 PM** Mr. Murphy said that he tended to be in agreement with going ahead with planning decisions and improving this but he thinks we need to hear from the TIF Committee.

Ms. Davis said that she would like to hear some really concrete ideas of how this is going to help us move forward.

Mr. Beckert asked Mr. Lee if we could set it up to have the Committee come in in two weeks; that he's hearing that he's not going to get this to go any further forward unless we do something like that.

Mr. Lee said that he doesn't want to speak for the Committee; that he has a feeling that, when we meet next Tuesday, there may be a whole different plan; that he's wondering how frustrated this Committee is going to be.

Mr. Bradstreet suggested that the Board meet with the Committee and come to our meeting.

**6:42 PM** Mr. Pomerleau said that he doesn't see a whole lot of value in us meeting with them; that it ought to be left to the Committee to develop; that he's fully behind the Committee doing this, with your (Committee) recommendations but just coming up with some clarity that they are convinced that the money we're going to spend for each of these items is going to be a valuable tool for you when you go through each one.

Mr. Bradstreet said that we are convinced.

Mr. Lee said that that is why we are here.

Mr. Bradstreet said that that was why the BOS appointed us; that we've done the research and Mr. Pomerleau has sat in with us; that we are kicking the can down the street and Mr. Pomerleau knows the value of this; that this is what we're

## **BOARD OF SELECTMEN'S MEETING**

**January 14, 2016 5:30PM (continued)**

asking for. He said that the BOS appropriate, either up or down; that if it goes down, we're just going to pick something out of the hat to go with, he guessed. He added that he has given up his summer nights and his winter nights and, if you are going to stonewall like this, then this is BS.

**6:44 PM** Mr. Beckert said that he would ask the Board, again, if they are really committed to having to meet with the TIF Alternatives Committee or can he get a motion to let them move forward with this consultant, as requested.

Mr. Murphy said that he thinks we must have a consultant rather than just have this group of citizens decide everything for the Town.

Mr. Murphy moved, second by Mr. Fernald, that the Board of Selectmen approve the plan with Planning Decisions, as presented, not to exceed \$23,000 as listed in Tasks #1 through #7 dated December 22, 2015.

### **DISCUSSION**

Mr. Pomerleau said that he still has reservations about the value of this but he would support this as long as the Committee holds the consultant's feet to the fire, as he wrote up with the most recent follow-up on adhering to the survey and giving that serious weight.

Ms. Davis said that she thought a study was probably important; that the initial project workshop, which includes many of the prime stakeholders, would be very significant; that any doubts that she might raise could be brought up at that time and probably laid to rest.

Mr. Fernald said that, from now on, we need to follow our policy when it comes to approving funds; that that means that the Chair, or whoever, needs to come to this Board to request it so that we can ask questions about the article.

**6:46 PM** Mr. Lee said that we ultimately did the right thing; that after discussion we did decide this has to go to the BOS and we are here tonight asking for that funding. He added that it isn't that we awarded it and now we're going, oops, we need to come to the BOS and back it up; that we did end up making the right decision and ended up before you today; that he has all but one or two members of the Committee here. He said that he understands that and he will take that to heart; that he still doesn't understand when you solicit for five things and you get two that, somehow, you've not done policy, but we'll cross that bridge at another time.

Mr. Beckert said that it was just semantics that the Board either needs to come to consensus or move that, in fact, we only got two.

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**January 14, 2016 5:30PM (continued)**

DISCUSSION ENDED

**VOTE**

**4-0**

**Chair concurs**

**G2. Public Works**

**6:48 PM 1) Sewer Rate Increase (25%) – Second Consideration**

Mr. Lee said that it's the same discussion we've had before; that he thought people wanted a couple of weeks to really think about it; that we're back with the same recommendations for the same reasons.

Mr. Pomerleau said that we got a response from the attorney; that, as far as he is concerned, it totally clarifies this Board's authority and he would recommend that we proceed with this rate increase, as recommended.

Ms. Davis asked if we were going to reference what increase we are referring to; that we had an earlier report from Underwood Engineering dated 12/9/2015; that we also have, from Mr. Moulton, a letter dated 12/2/2015.

Mr. Lee said that the item he would refer to is the one last presented by Underwood Engineering by Keith Pratt; that that is the document that would be the back-up to why and what we're doing.

**6:49 PM** Mr. Bradstreet said that the letter from legal appears to have a few flaws, or, perhaps our ordinance has them. He said that the most important thing is where he references in the second paragraph 38 M.R.S.A. §1202, which indicates we go by the sanitary district rules and regulations on rate increases. He said that it boils down to, "Prior to adoption of a new rate schedule the trustees shall hold a public hearing regarding the proposed rate schedule, trustees shall publish proposed rates, notice the hearing not less than once in the newspaper, general circulation seven days prior to the hearing, a mailer that goes to the users.", and this is part of our legal request that we've done. He added that there are also some things that reference, in this letter, the appendix of the rate, asking if that was available because he would like to view that; that it was Appendix 1 of our ordinance that establishes what you can charge for rates.

**6:50 PM** Mr. Lee said that that is not available yet; that it has been assigned to a staffer to start working on.

Mr. Bradstreet asked how you can charge us on something that doesn't exist; how do you make this thing legal.

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**January 14, 2016 5:30PM (continued)**

Mr. Lee said that he thinks Mr. Bradstreet is right in some ways; that he thinks what we have to do is get those appendices approved by the Selectmen, probably, and the things Mr. Bradstreet noted on how a rate increase occurs is legitimate; that he apologized for that as it was not brought to his attention. He added that he thought we ought to hold off on this until we do the appendices; that he knows we have sewer billing waiting to happen, hoping that this would go through, but he thinks that Mr. Bradstreet is making a very legitimate claim that our ordinance requires that type of notice, etc., reiterating his recommendation.

**6:52 PM** Mr. Pomerleau said that the attorney told us we can move forward; that we should move forward and, if that requires putting out notice, then we'll put out notice; that we need to vote tonight to move forward with these rate increases. He added that we've delayed it long enough.

Mr. Lee clarified to move forward with the notice to go to hearing to enact a rate increase.

Mr. Pomerleau said whatever our proper ordinance calls for.

Mr. Bradstreet said that, according to this schedule, he's projecting that the South Eliot sewer users are going to fund this \$1.5 million and he's raising the rates; that these are all technical things in the rate raises that should be questioned. He added that, according to this statute, you can't do that type of proposal; that it's the actual cost of the existing system, as it stands; that that is in that same §1202 and, according to that statute, you could not schedule that; that it has to be what's existing cost. He said that you can't project that we're going to be stuck with a \$1.5 million fee down there and start building a reserve account for that. He said that you need to look at this before taking an action that he would hate to have the Board vote it back, again, next week. He added that he's be more than happy to sit down and talk with you folks; that he has a lot of literature, here; that he's done his homework. He suggested they not go forward with this; that he and Mr. Lee started this process a long time ago; that he told Mr. Lee that he didn't want to do a class action suit against the Town; that he's willing to work with you folks; so, he's just asking the Board that, before you go out there taking money from people in South Eliot, projecting revenues, expenditures, or whatever; that he would also like to ask, regarding maintenance, what maintenance is; that it's called an MRO, which explains what we're responsible for. He said that he knows two new wells were put in at the pump station and he agrees with it; that we could probably count that as an upgrade to the system for emergency situations. He asked why did we, when we had the excavator in place, repair that suction line on that second pump in that well station; that we're only working on one pump, which means you're going to have an imminent failure with just one pump. He asked what it would cost to repair that, build a structure and bring those electrical panels up for

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**January 14, 2016 5:30PM (continued)**

the existing system, as the lawyer says; that he would then say you could project that out as a revenue source in the reserve.

**6:55 PM** Ms. Davis read the first paragraph of the Bernstein Shur letter of January 7, 2016: *"You have asked whether the sewer user charges collected by the Town of Eliot from users of the public sewer system can be used for certain capital improvements or capital reserves for repairs and upgrades to the existing system. Under a reading of both Maine law and the Town's Sewer Systems Ordinance, it is reasonable to conclude that the Board of Selectmen has the discretion to use those funds for the operation and maintenance of the system – including for replacement, repairs, improvements, and reserves."*

Mr. Bradstreet said that's right; that the operative word is 'existing'.

Ms. Davis said 'existing' and 'improvements'. She said that, in the letter from Underwood Engineering (12/8/2015), "In an October 21, 2015 memo it was further recommended by Underwood Engineers to raise the rates to support the anticipated debt service per year to complete pumping station improvements. A rate increase was recommended regardless of whether the bond passed since emergency repair costs of the existing stations have been very high and are expected to remain high until the project is complete." She said that whether this bond passes, or it doesn't, we have emergency repairs anticipated; that they may or may not happen but we need to be prepared and that is what is being recommended, both by the attorney and by the engineers.

**6:57 PM** Mr. Bradstreet said that you have to bring it back into the scope; that we have a definition for operation, maintenance, preventive, emergency, etc. He added that we have a 10-year old pump system, those are brand new and no one can say that they weren't. He added that we have one suction line working, asking why that second suction line (alternate pump) is not being taken care of; that you are putting all that stress on one pump. He also asked, if you have a code issue, why that wasn't being addressed by putting a structure right above the foundation that's already in place; that that's the repair for the existing system.

**6:58 PM** Mr. Moulton said that there is information out there that indicates the pumps were purchased; that you have to note that, whether they're 10 years old, 20 years old, or 30 years old, they're not efficient enough to meet the capacity of what's needed for the Town. He added that the issues are within the pump station, itself; that there are two pumps, one suction line; that the deep excavation, and things like that, to repair that suction line is upwards of close to six figures (\$100,000). He added that, as you know through many discussions, the electrical portion of each pump station is the bigger cost – to meet life safety codes and electrical codes. He said that that's why the buildings need to be expanded. He said that this has been hashed out, laid out, a number of times how it is and what needs to be done; that

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**January 14, 2016 5:30PM (continued)**

putting a building over a life safety issue was one thing that was being addressed at Pump Station #2. He reiterated that they are inefficient, not meeting the needs of the Town, and there have been other issues that have occurred through other parts of the sewer system that we have looked to rectify; that we've done a lot of extra work, such as I&I, which we hope to alleviate some of these issues and take care of many issues that have caused damage to the pumping system, as it is. He said that he thought Ms. Davis stated it best; that Underwood, regardless of the improvements or going forward with the project, they recommend the increase because of the cost of repairs that are looked to be going forward. He added that we put in the pump by-pass system and that's a good thing, a safety factor; so, you have kind of alleviated some safety concerns but you haven't taken care of the problem. He said that bit and pieces have been addressed and things have been discussed many, many, many times; that he thinks the attorney has addressed many of the concerns in his letter; that this is the Board's decision.

**7:00 PM** Mr. Beckert said that he would pull it back to the Board and the Chair would accept a motion from the Board to move forward, as necessary, per statute and Town ordinance, to raise the rates on the sewer 25%; that that means follow the procedures, as necessary, by statute and Town ordinance.

Mr. Pomerleau moved, second by Mr. Murphy, that the Board of Selectmen move forward, as necessary, per statute and Town ordinance, to raise the rates on the sewer 25%; to follow the procedures, as necessary, by statute and Town ordinance.

**VOTE**

**4-0**

**Chair concurs**

**G3. Administrative Department**

**7:02 PM 1) Town Manager Activities Report**

Mr. Lee said that he wanted to thank all the staff for their work in putting together their budgets; that he especially wanted to thank the Finance Director and Administrative Secretary for all their work on both crunching numbers and putting together these well-received budget books. He added that he bolded some items in the report that he wanted to draw your attention to: the broken pump shaft at PS #2 on lines 92 & 93, several large FOAA requests that have been very time-consuming and that they have to bring in IT people to look at very old emails, etc.; that they are \$99/hour and we can only charge \$15/hour; that we don't have the technical capacity to go back and fulfill FOAA requirements; that before we have a planner we might want an IT person the way this is going.

**7:04 PM** Mr. Pomerleau asked if FOAA didn't have reasonable standards by which the Town can comply; that you don't have to go to extraordinary measures.



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**January 14, 2016 5:30PM (continued)**

Mr. Lee said that the Maine Deputy A. G. thinks you have to go to extraordinary measures.

Mr. Beckert said that may be a discussion we need to have with the attorney general's office because he isn't sure they know what they are doing.

**7:06 PM** Ms. Davis, referring to Line 83, said that she was disappointed and sad last year about the paving bids; that she has five companies listed here and asked if we could, perhaps, widen the net a little this year to include some of these companies in our paving bids.

Mr. Lee said yes, if they will respond.

Ms. Davis said okay.

Mr. Murphy commented on the great number of days in which work on the budget proceeded, often on the weekend, and he wanted to thank Mr. Lee for putting in all that work.

Mr. Lee said that that includes the Finance Director and Administrative Secretary coming in on Sundays.

Ms. Davis, referring to Line 88 (solar vendor), asked if that was something we were going to discuss in more depth during budget discussions for CIP.

Mr. Lee said yes.

**7:09 PM**      **2) Ms. Donovan; Foreclosed Land Sale – Requests Reconsideration**

Mr. Beckert asked if Ms. Donovan was present.

Mr. Lee said no; that he previously advised her to be here. He said that he would give an update because, maybe, the reason she's not here is that there is a man named Thomas Burns who does our GIS parcel mapping and, when we got looking at this particular sliver of property, there was some question in the Assessor's mind as to whether those lines were really accurate; that when Mr. Burns did his annual update, we had him look at that and it had been shifted over on the spatial map; that, now, neither her driveway or outbuilding are on this piece of foreclosed property; so, there is no driving reason why she would still be interested. He added that this whole thing may have gone away with regard to Ms. Donovan but we still have this little sliver of land that may be useful in a very modest way.

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**January 14, 2016 5:30PM (continued)**

Mr. Beckert said that, in any case, it may not be as important but it still may be advantageous for Ms. Donovan to purchase that piece of property to add it to hers.

**7:10 PM**

Mr. Lee agreed. He said that his intent would be to move forward with a public sale of that property for \$1,680 plus recording fees, etc.; that if he's interested, at that point, then she can bid on it and, if she's not, he understands.

There was some discussion of the merits of keeping this property and possibly using for a future pump station; that the lot size may not support that; that they would move forward with the public sale.

**3) Legal Review of Sewer Ordinance**

Mr. Lee said that the attorney did say we should put in those appendices, your rates, what you're charging, and for what reasons; that that is a local decision by the BOS and was written that way on purpose that you could change them from time-to-time using the proper notifications Mr. Bradstreet mentioned. He added that he has asked staff to put Appendix A and Appendix B back together with current rates and proposed rates, etc. He said that the letter does say the ordinance allows you to charge sewer users for future capital improvements if you decide to; some or all, even; so, the policy decision for what's in that Appendix A & B is still back with the BOS, in terms of what you're going to charge and how you want to handle capital improvements. He added that you have that legal opinion, now, and he thinks that's the basis on which we need to act, whatever we do, going forward.

**7:13 PM**

**4) Police Chief Hiring Update (60/40 and Shared)**

Mr. Lee said that the Kittery Town Manager, Council Chair and Vice Chair met with Eliot's Chair and Vice Chair in mid-December to put together qualitative and quantitative pros and cons of having another shared chief and the Board has that document before them. He added that the long and short was that, while Kittery may expend more than \$49,000 more to engage its own chief, Eliot may actually save close to the same amount through restructuring of its department; namely, hiring the next chief from within our department, he believes we have a well-qualified person, and not replacing that other command position (lieutenant). He said that, in speaking with that person, if that person was selected that was the game plan and we even discussed what the money might look like so that we could put together some sort of financial estimate of what this is. He added that the Town of Eliot is in quite a different position, in terms of the benefits of a shared chief, than Kittery is. He also added that Mr. Pomerleau presented some data that started us talking about why we have a 60/40 sharing; that the calls to service seemed to indicate more of a 75/25 or 70/30; that Chief Short was asked jointly by the two towns to go into the actual calls, themselves, and report back

**BOARD OF SELECTMEN'S MEETING**  
**January 14, 2016 5:30PM (continued)**

out and, based on that, there is data on that document that indicates the 60/40 was probably founded in the number of calls from our specific data, not online. He said that Kittery said it is still going to be 60/40 if Eliot wants to go with them; that he's also looking at how he could restructure the department and save \$50,000. Mr. Lee said that he is not going to recommend going out to try to find a shared chief; that he doesn't think it serves us at both levels.

**7:16 PM** Mr. Pomerleau said that the reflection on the calls as the basis for the split is about the weakest data that he found, in terms of number of staff, crime rate, arrests; that those are all action items and calls are calls; that he favors going the other way, anyway. He added that he didn't really see if we saved any money when we went that way, to start with.

Mr. Lee said that he believes the answer is no, in a way, and that's because, ultimately, we decided that we needed another command position in the lieutenant.

Mr. Pomerleau said that whatever we would have saved, it got watered down substantially with follow-on actions.

Mr. Lee said that Kittery is looking for us to take a position; that they wanted to make sure that the Eliot Town Manager was really speaking on behalf of the whole Board on whether to go forward with this; that he thought part of tonight's discussion needs to be for the Town of Eliot to take a position that we are not interested in sharing a chief, if that is your wish; that if you would like to, then take that position but he thinks it's time to tell Kittery where we stand.

**7:18 PM** Ms. Davis said that when this issue initially came up, we had discussed a workshop to talk to the Chief about his recommendations, pros and cons, and it sounds like you've covered a lot of that, but the Selectmen aren't privy to a lot of what Mr. Lee knows; that it's a little difficult to make a decision based on no information.

Mr. Lee said that part of it, too, and this is part of the difficulty having a shared chief, is if the Town Council in Kittery wants to pursue this in a certain avenue and we want to pursue a different avenue, we can't even agree on necessarily how we go to get together to talk about what we're going to do; that that is why you have town managers, he thinks largely, to try to go and reflect what you hear from your board, not town manager opinions; that, informally, this has been beat around a little bit with some of you. He added that there are a number of issues like that, from a managerial standpoint, it is just very hard to fathom.

Ms. Davis said that, if we said tonight that nobody is in favor of going with a shared chief, do we have a definite outline of where we would go from here.

## **BOARD OF SELECTMEN'S MEETING**

**January 14, 2016 5:30PM (continued)**

**7:19 PM** Mr. Lee said that he has a strong outline but he has not dared to present it to anyone; therefore, he will have jumped the gun and, if he doesn't present it, it's hard to make a decision.

Mr. Pomerleau said that, to further justify his position, he looks at the pros and cons; that one of them seems to be to one day combine departments and he has no interest in going there, not plausible at all.

Mr. Lee said that that was reiterated when he, Mr. Fernald, and Mr. Beckert went to meet with them; that that is the long-term plan for them, he believes, and that was one more reason, to him, that it was just not where Eliot wanted to go; that he didn't think that being part of a greater Kittery police force would sell in Eliot.

**7:21 PM** Mr. Murphy said that he agreed with Mr. Pomerleau that the calls shouldn't be the basis for the 60/40; that there are other things we need to talk about; that we need to talk about what we would do and with whom and what the alternatives are; that we may not want to talk about that in public but he didn't know; how much of it is public and how much not, asking if we should have an executive session to talk about this.

Mr. Lee said that he didn't think it warranted an executive session; that it's just from a policy standpoint, he doesn't think there's much in the way of savings for us, in terms of money and having a Police Chief dedicated to our Town and our officers and answering their questions and training them; that that is where he would like all his Chief's time to go, not doing the same for two towns because it waters everything down.

Mr. Murphy said that that's a statement that he has not heard before and he thinks he has the same statement.

**7:23 PM** Ms. (Donna) Murphy said that Mr. Lee talked about restructuring if the current employee is moved to Chief, asking if he has a plan in place because she assumes he is going to advertise this position; that if it was to be an outside person that was chosen is there also a restructuring plan.

Mr. Lee said that he is not that far along; that, as he just said, this just came out today, he doesn't even have a formal position from the Board yet; that in his head he has a very-well detailed outline of what he would be recommending for restructuring the department.

Ms. (Donna) Murphy asked if there would be any issues with the union.

Mr. Lee said no; that it's a command position so doesn't affect the union.

## **BOARD OF SELECTMEN'S MEETING**

**January 14, 2016 5:30PM (continued)**

**7:24 PM** Mr. Fernald said that when he looked at this he found shared chiefs very complicated and very involved, especially the cost and who is paying for what, when; that he really does believe that this Town should have its own Chief as a supervisor for our patrolmen.

Mr. Pomerleau said that, to give you some clarity, as far as he is concerned here, with this Board and where we move forward, if Kittery is posing the condition that, in order for us to have this shared chief, they want to stick with the 60/40 split, then he is totally against the shared chief. He added that if that moves us to having our own Chief, then that remains discussion for the Board regarding what that's going to look like; that the Town Manager would have to come back to us with a formal proposal.

Mr. Lee said that, if there's a vote tonight, he would probably move rather quickly on what that proposal looks like with the Finance Director because we are also in the middle of doing budget deliberations; that if there are savings that are yet to be realized only because there's no decision, yet, maybe he could come back at one of those meetings to discuss restructuring the police budget rather significantly, doing 'this', 'this', and 'this and some of the savings you might be looking for, for the taxpayers, may be located there.

**7:26 PM** Mr. Murphy said that it is more important to him to meet the Town's needs in a responsible way, even if it costs us a little bit more than what we've been paying; that if it's better for the Town, then that's what we should do.

Mr. Lee agreed, saying that he thinks this does both things; that he thinks it's more quality at a lesser price.

Mr. Beckert said that since the initial onset of this discussion when it came to us that he (Police Chief) was retiring, he thought that it was not favorable by the Town Manager to have a continued situation of a shared chief; that with that being said we hired the Town Manager for a reason; to do our business, to make recommendations, and to be the day-to-day administrator/manager of the Town's affairs. He added that he thinks that if the Town Manager is recommending we go with our own Chief for the benefit of the Town, not only financially but for the department, more facetime in the Town with the officers, then that's what he will support. He said that, if the Board is inclined to move forward in a direction that is definitive tonight, the Chair would entertain a motion.

**7:29 PM** Mr. Pomerleau moved, second by Mr. Fernald, that the Board of Selectmen proceed with hiring our own independent Police Chief and we cease our arrangement with Kittery for a shared chief, proceeding immediately, effective June 30, 2016.

**BOARD OF SELECTMEN'S MEETING**  
**January 14, 2016 5:30PM (continued)**

**DISCUSSION**

Ms. Davis asked if this was going to give offense to Kittery in any way.

Mr. Lee said that he knows that the Kittery Town Manager knows the handwriting is on the wall; that he doesn't know if the Chair and Vice Chair are prepared to hear this but that will be for them to work out.

Mr. Beckert said that hopefully it doesn't mean that it would strain relations between Kittery and Eliot on other issues; that we have other issues of combined services that we could explore.

**7:30 PM** Mr. Lee said that there have been some gains made; that he doesn't want Chief Short to feel bad in any of this; that this isn't about Chief Short, not about a person but about a structure. He added that when you study organizational dynamics and structures and how things are laid out, this is just a convoluted type of a thing; that this has no bearing on an individual; that this is just his belief that a shared supervisor is no supervisor.

Ms. (Donna) Murphy said that she hoped this Board was going to make a decision on what's best for Eliot and not whether we're going to hurt someone's feelings in Kittery. She added that she has been a supporter of keeping one Chief for Eliot to serve the citizens of Eliot and she can't see or imagine how difficult that must be; to have a manager in Kittery who has a very different interest than the manager in Eliot on how to serve the citizens and have the Chief take directions from two different entities that have different interests.

**DISCUSSION ENDED**

**VOTE**

**4-0**

**Chair concurs**

**7:31 PM**      **5) Financial Guarantee, Joseph Falzone, \$434,085 as a Letter of Credit**

Mr. Lee said that both of those things would need to be in any motion that you will accept a letter of credit in the amount of \$434,085 as the estimated financial guarantee needed for his project; that Ms. Pelletier is here to answer any other questions.

Ms. Pelletier said yes; that we have a memo from Mr. Mouton confirming that amount looked good to him.

Ms. Davis asked Ms. Pelletier if this was standard operating procedure and this is the instrument whereby he guarantees this and we're good on everything.

**BOARD OF SELECTMEN'S MEETING**  
**January 14, 2016 5:30PM (continued)**

Ms. Pelletier said yes; that if anything happened and he can't complete that road for some reason the Town would have access to those funds to complete it.

**7:32 PM** Mr. Fernald moved, second by Mr. Murphy, that the Board of Selectmen accept the Line of Credit from Mr. Joseph Falzone for financial guarantee on the Libbey parcel project in the amount of \$434,085, PB15-05.

**VOTE**

**4-0**

**Chair concurs**

**6) Xfinity Price Changes**

This is informational.

At this time, Mr. Lee said that he and the Chair had talked about another point regarding whether you wanted to bring something up this evening regarding the **Falzone subdivision** with regard to having an attorney at the meeting.

Mr. Beckert said that we should do that while it's fresh in our minds.

Mr. Lee asked Ms. Pelletier if she could give a little briefing about what took place, and who is coming, etc.

Ms. Pelletier said that she thinks this case has a fairly high potential to go on to court no matter what the outcome is at the BOA meeting next Thursday; that we thought it might be appropriate to have our Town attorney there to answer questions; that he would not be there to be a referee but just to be a resource for the BOA to ask legal questions, whether it be about procedure or something else. She added that she thought it was a good idea, and Mr. Lee thought it was a good idea, but we thought the Board should make that decision.

**7:34 PM** Mr. Lee said that he thought that the BOA, maybe, was concerned that we would like to send in the attorney thinking that they don't know what they're doing, or something like that, and that's not the case; that it's just that it has a high likelihood of litigation and we probably ought to have our attorney in on the ground floor; that he thinks there's going to be another attorney there.

Ms. Pelletier said that their attorney will be there and Durwood Parkinson will be there representing Falzone.

Mr. Lee said that, as he said to the BOA Chair, this attorney may say nothing the whole meeting; that you may need him for nothing at all but he thinks it's important, probably, in case there's both a process-type question or some other

**BOARD OF SELECTMEN'S MEETING**  
**January 14, 2016 5:30PM (continued)**

type of question, that he will be there to best represent the Town, not the BOA; that Ms. Pelletier will represent the PB in this.

**7:35 PM** Mr. Beckert said that that needs to be clear to everybody that he is not there as the PB's representative.

Mr. Lee said that he spoke with the Chair and the Chair said yes to getting the attorney; that the BOA Chair asked if he decided that, alone, or does the whole Board decide and Mr. Lee said that the whole Board would have to decide it tonight, whether or not we want to insist, he guessed, that our Town attorney attend the meeting for purposes of protecting our interests in the case.

Mr. Murphy asked if we weren't creating a tendency to incendiary-ize the whole process; people ready to butt heads.

Mr. Beckert said no, and that's why initial discussion with Ms. Pelletier and Mr. Lee was that the attorney is not there to represent the PB; that if he was there to represent the PB it would be a conflict of interest and the same attorney could not go forward and represent the Town or the BOA.

Mr. Murphy asked what this attorney would actually do, asking if he was just listening.

Mr. Beckert said yes, basically, and if the BOA had procedural questions.

Mr. Lee said that he does think they know what they are doing, procedurally, but we can't really afford any procedural issue on this.

Mr. Pomerleau said that he would be acting as an advisor to the BOA.

Ms. Pelletier said that that would be fine; that that is standard procedure for attorneys.

Mr. Pomerleau said that he just wanted to be clear that he is going to act as an advisor to the BOA on procedural and technical issues; that that's the limit of his presence.

Ms. Pelletier said yes.

**7:38 PM** Ms. Davis she asked who Bernstein Shur would send.

Ms. Pelletier said that it would be either Phil Saucier or Mary Costigan; that they weren't sure which one would be available that evening; that we are familiar with both of them.



**BOARD OF SELECTMEN'S MEETING**  
**January 14, 2016 5:30PM (continued)**

It was the consensus of the Board to have the attorney at the BOA meeting.

**7) Health Officer Shannon Darr Resignation**

Mr. Beckert said that he thought the Board should accept her resignation, thank her for her service to the Town over the years that she has served as Health Officer, and congratulate Mr. Lee for one more feather in his cap because he is the new Health Officer.

**7:39 PM**

Ms. Davis asked if there was someone who could be helping Mr. Lee out with some of these things that might volunteer to become certified as a health officer.

Mr. Murphy said that he sort of feels funny about this because Mr. Lee is very busy; that he views this Health Officer as being almost an emergency, someone whom citizens can call at any time; that can visit houses at any time, asking if Mr. Lee really wanted us to rely on him to do this amongst the other things. He added that we've had a health officer all these years and asked why we would want to abandon this.

Mr. Lee said that, in this day and age, quite frankly the role of health officer is greatly diminished from what it was decades ago where the health officer really was a local health official; that now it's really more a case of, if someone finds a dead bird, for example, they bring it to the health officer who somehow manages to get it to the lab in Augusta to see if it's got equine encephalitis, etc. He added that he has served as health officer before and, in the course of a year, he may have two things to concern himself with. He added that our CEO is also a health officer and, so, he could appoint her as a deputy, if he was not available.

Mr. Beckert asked if he had a motion to accept the resignation of Shannon Darr.

Mr. Murphy moved, second by Mr. Fernald, that the Board of Selectmen accept the resignation of Shannon Darr, with regrets and a letter of thanks from the Selectmen.

**VOTE**

**4-0**

**Chair concurs**

**7:40 PM**

**8) Health Officer Appointment: Dana K. Lee, until June 30, 2016**

Mr. Beckert asked if he had a motion to appoint Dana Lee as the Health Officer for the Town of Eliot.

## **BOARD OF SELECTMEN'S MEETING**

**January 14, 2016 5:30PM (continued)**

Mr. Fernald moved, second by Mr. Pomerleau, that the Board of Selectmen appoint Dana Lee as the Health Officer for the Town of Eliot.

**VOTE**

**4-0**

**Chair concurs**

### **G4. Public Safety**

#### **7:42 PM 1) FEMA Reimbursement**

Mr. Lee said that this memo was from Chief Muzeroll; that we finally got the federal portion of the FEMA reimbursement for the big storm (Juno); that FEMA pays 75%, the State owes us 15%, and locally we pay 10% of these declared emergencies. He added that Public Works is getting back a total of \$31,088.11 (federal/state) and Fire Department will be getting back \$2,988. He added that a portion of that will drop through to fund balance and the rest will go into reserves for recompense of vehicle usage.

Ms. Davis asked how much we were expecting from MEMA.

Mr. Lee said it was between \$5,500 to \$5,600; that it's the lower portion of the memo.

Ms. Davis asked if we were going to need the full amount to purchase the DPW truck we approved.

**7:45 PM** Mr. Lee said yes.

#### **2) Choose to be Healthy 1/21 at York Library**

The agenda was not changed to reflect an item renumber change. This is an event that will be held in York on January 21<sup>st</sup> that has to do with the heroin and opiate addiction; that it's a regional meeting.

Mr. Pomerleau said that this would be hosted by the Choose to be Healthy Coalition; that there would be a lot of law enforcement officials there; everybody trying to come together to come up with a proactive plan on dealing with the heroin epidemic. He added that he knows we haven't seen a lot of headlines in Eliot on this and the best thing about that is that it isn't here but let's do everything we can to make sure we keep it out of here; that there are proactive things that he thinks we need to look at and needs to be brought out into the light and discussed. He said that he is going and Chief Short will be there, as well; that his only question for this Board was whether they would like him to go there and represent support by the Board with no particular commitment of any kind.

## **BOARD OF SELECTMEN'S MEETING**

**January 14, 2016 5:30PM (continued)**

**7:47 PM** Mr. Beckert asked if the Board had any issue with Mr. Pomerleau going as our liaison to this group.

No one from the Board had an objection.

Mr. Lee said that you might also hear of this as Hope for the Seacoast; that if you want to receive more about it go to the Eliot Police Department Facebook.

Mr. Beckert said that it has been very out in the news; that both the New Hampshire and Maine Governors have been quite vocal on it.

Mr. Pomerleau voiced his concern for what might be going on at our schools because that is one of the places where you certainly have to focus, with the education and prevention aspects of it; that he hasn't seen anything on the school website.

Mr. Lee said that he would make sure that school officials were invited to this, that they know about it, and it's taking place.

Mr. Pomerleau said that there is limited seating because of the venue, needing to reserve a seat.

**7:49 PM** Ms. (Donna) Murphy said that she was just wondering, as a community, if we wanted to speak with the Chief and get any thoughts of how we could address this as a community; that she would suggest going down further into the 5<sup>th</sup> and 6<sup>th</sup> grade and bringing it up with those people because she works in Social Services and we're seeing it; that we're seeing it with 50-, 60-, 70-year olds.

Ms. (Jan) Lytle said that she would say that you must start with at least the middle school because my granddaughter's school was put in lockdown less than a week ago, or two weeks ago, because there were some kids using drugs in the restroom. She added that, when she went to the school a few days later for something, she asked what was being done about this as we haven't heard anything, no information sent home to parents, and the person said that she had no idea; that they are kicking it under the rug.

**7:50 PM** Mr. Beckert asked Mr. Lee to have a conversation with the superintendent to see what their involvement is going to be.

Mr. Lee said that they are probably ahead of it, anyway.

Mr. Beckert said that, hopefully, someone from the school department is going to this.

**BOARD OF SELECTMEN'S MEETING**  
**January 14, 2016 5:30PM (continued)**

Mr. Lee said that he would seriously suspect so.

Mr. Pomerleau said that we have a workshop that same Wednesday at 5:30 PM and this is scheduled from 3:30 PM to 5:30 PM so he may be a little late for the workshop.

**3) Creation of and Transfer to Boat Basin Reserve**

Mr. Lee said that we currently have some \$18, 650 in Boat Basin funds and, per the contract we have with the State, we have to have a Sinking Fund; that money raised at the facility has to go into a fund for the perpetuation of the facility. He added that he is trying to formally create that fund and put money raised, thus far, into that fund. He said that the purpose of this memo is to create a Boat Basin Reserve using boat launch revenues; that you will see in the budget a capital project he is requesting come from the Boat Basin funds for the Boat Basin area and the building there.

**7:53 PM** Mr. Murphy asked if the sinking fund already existed or do you want us to create that, also.

Mr. Lee said that he is concerned that somebody, some day, would ask him who gave him the authority to create that so he is coming to you folks.

Mr. Murphy asked if there was a sinking fund and a basin reserve fund as two separate funds.

Mr. Lee said that he would call it a reserve fund; that it's one fund.

Mr. Murphy moved, second by Mr. Pomerleau, that the Board of Selectmen create a reserve fund named "Boat Basin Reserve" and authorize the transfer of \$12,650 and any other remaining funds earned through the end of FYE 2016 into said "Boat Basin Reserve". Further, that annually, any funds raised at the Boat Basin also be moved from the general fund and held in the "Boat Basin Reserve".

**VOTE**

**4-0**

**Chair concurs**

**H. New Business:**

**7:54 PM** Ms. Davis said that she had a request for a legal opinion on the Stormwater account, giving copies of her memo to Board members. She read portions of her memo to the Board to explain her rationale and respectfully requested we get a legal opinion from, specifically, Linda McGill on this and that would most likely put this topic to bed.

**BOARD OF SELECTMEN'S MEETING**  
**January 14, 2016 5:30PM (continued)**

**7:58 PM** Mr. Beckert asked for the pleasure of the Board.

Mr. Pomerleau said that he's got to support this because he's really troubled by the conflict of what we're doing, in the legal opinion of the MMA stuff; that he knows the role of the Auditor is to say the books balance – debits and credits – but the legal advice that we had conflicts with that. He added that he's not sure the Auditor made a distinction between a form of government where you have a town council that functions as both executive and legislative branches of government, and they can make these kinds of changes and decisions on the fly, but with our form of government – Selectmen/Town Meeting – decisions on expenditures like this have to go to a legislative branch. He said that he needs this clarified because he's very concerned that we're not doing it right.

**7:59 PM** Mr. Murphy said that it does no harm to have more expression of opinion, so long as they understand what's going on; that he wouldn't decide anything on this tonight; that it might be argued whether this is necessary, or not, and you might want to wait about actually authorizing additional legal expenditures until we think about this.

Mr. Fernald said that he thought this was actually put to bed a long time ago; that he thinks if you give this to a lawyer on #1, #2, and #3, he thinks the lawyer is going to have to look at much more information than what is implied here and it's going to cost the Town a considerable amount of money. He added that he doesn't think it's necessary.

**8:01 PM** Mr. Murphy said that he wondered how much money we're willing to spend on this; has the money been lost or is it just a question of purity of actions, or something like that, in a case where the purpose of the Town is more important and was met, even if there was some crossing of funds, a way to get things done within a timeframe.

Mr. Pomerleau said that he thinks it's really important because he doesn't think it's just a question about what's happened but he thinks it will impact what we do going forward into the next fiscal year; that he thinks this is a serious question. He added that we had this sewer rate issue come up and a citizen in the audience objecting was enough to get a legal opinion; that it certainly warrants that we give Selectmen that respect, as well, that we get a legal opinion on this because there's two of us here, at least, that are very concerned that we're not doing this legally.

**8:02 PM** Ms. Davis said that in Attorney McGill's last memorandum she stated on the question, "As Selectmen, do we have any inherent authority under State law to overdraft an appropriation by Town Meeting; for example, in case of emergency or unanticipated expense." Her answer, "Generally, no. Under the Town Meeting form of government the voters retain exclusive authority over budget

**BOARD OF SELECTMEN'S MEETING**  
**January 14, 2016 5:30PM (continued)**

appropriations.” She said that her three questions specifically address voter authority over these types of expenditures. She added that she thinks, as a Board, we have disparate views over what our authority is in these particular cases; that moving forward we need to have a unified view of how to handle each of these situations; that she very strongly requests that we get an opinion on this. She added that the Auditor gave an opinion on these things and never asked her one question, no member of staff, and only one Selectman has asked her any details about why this issue is a problem; that she is wondering why the Auditor would proceed with investigating this without asking where she thinks the problem is; that she is perfectly willing to admit that, if she’s made a misinterpretation or something, that discussing it might have ironed it out. She said that she does not feel that she has made a misinterpretation of this situation because all of the invoices say Stormwater; that she’s given the Board several spreadsheets that show we have a problem with spending, here, and we need to resolve it. She again asked if we could have an opinion, also asking if she could also submit that, if Ms. McGill has any questions, that she’d be willing, through the Town Manager, to submit any information to make her job easier.

**8:04 PM** Mr. Lee pointed out that, in getting the Auditor to look at this question, we provided the Auditor with all the materials that Ms. Davis had sent to us; that he did read all the stuff that Ms. Davis had thought, said, and written before going in to do it; that the Auditor did have a pretty full understanding of where she was going.

Ms. Davis said that he had some understanding; that nobody questioned what invoices she was referring to; that she doesn’t see how you can look at expenditures of at least, she thinks, of \$148,000 and not call that an overdraft unless you don’t have an understanding of the situation.

Mr. Lee said that he understood that Ms. Davis didn’t accept the Auditor’s opinion.

Ms. Davis said that nobody in Mr. Lee’s office has asked me about this, either, and she finds that puzzling; that you have not sat down and asked me what’s going on here.

**8:05 PM** Mr. Lee said that we know exactly what’s going on; that we know her opinion on this very clearly; that you’ve not been quiet about it and we understand it.

Ms. Davis said that it is unresolved and it will be unresolved until we get our attorney who is already well-versed on this situation because she’s addressed it somewhat in this memorandum from November 10<sup>th</sup> and she would like to have the attorney’s opinion on the rest of it.

**BOARD OF SELECTMEN'S MEETING**  
**January 14, 2016 5:30PM (continued)**

**8:06 PM** Mr. Beckert asked Ms. Davis what if we get the attorney's opinion and Ms. Davis doesn't like the opinion; that the attorney sat here and told us that we act as a Board; that if the Board decides, as a Board, that the issue is done then it's done. He reiterated his question of what Ms. Davis would do if she didn't like the attorney's opinion.

Ms. Davis said that this is a matter of legality. She added that based on what she's seen so far she can say probably.

Mr. Beckert asked if she would be done; that it's a yes-or-no question. He asked, if she doesn't like the attorney's opinion, even though she doesn't like it, is the issue going to be done; that's a yes or no.

Ms. Davis said most probably.

**8:07 PM** Mr. Pomerleau said that he thinks he understands some of her reluctance because he thinks we all know that the answer you get depends on the question you ask; that if the question is asked to satisfy her concerns, clearly, he's sure she will be satisfied with the answer.

Mr. Beckert said, again, that we just heard that the Auditor was given all of her concerns and she wasn't happy with the Auditor's answer.

Mr. Pomerleau said that the Auditor's job is to tell us that the books balance, that the credits and debits are equal; that he's not a legal authority.

Mr. Beckert said that he is on audits.

Mr. Fernald said that we asked the Auditor to come in to speak with us for this particular reason and he indicated that everything was done by the book and, now, because Ms. Davis doesn't like the answer.

Mr. Pomerleau said that he never addressed the attorney.

Mr. Fernald disagreed.

Mr. Pomerleau asked why could he come up with his answer when the attorney's answer says you can't do that; that all he said was what we had here balanced.

**8:08 PM** Mr. Fernald said that it wasn't done that way; that the Auditor looked at it and said it was fine.

Mr. Pomerleau said that he didn't think we went to our accountant for legal advice.

**BOARD OF SELECTMEN'S MEETING**  
**January 14, 2016 5:30PM (continued)**

Mr. Fernald asked why, then, did we ask him to come in for this purpose.

Mr. Lee said in hopes that he would give the right answer.

Mr. Pomerleau asked what are you afraid of.

Mr. Lee said that he was not afraid of anything in this.

Mr. Pomerleau said that we are asking for a legal opinion; that there's two of us here that think that we're not conducting the Town's business on overdrafts legally; let's just get an attorney to answer it.

Mr. Fernald said fine, let's spend some more money for no reason.

**8:10 PM** Mr. Lee said that we're already into this for about \$1,900 in consulting on this one issue. He added that he did put notes in his budget that you might want to have a Selectmen's contingency for these very types of things because he doesn't plan for these.

Mr. Beckert asked the Board where they wanted to go with this.

Mr. Pomerleau moved, second by Ms. Davis, that the Board of Selectmen get a legal opinion on this.

**DISCUSSION**

Mr. Murphy asked if we could limit the amount of money spent on this legal opinion.

Mr. Lee said that he didn't think that would be reasonable; that this could go down a real rabbit hole.

Ms. Davis said that, based on the research she has shown in this other memorandum, it may not be a problem; that, perhaps, going into this and providing her with this information, you may be able to ask her for a preliminary assessment of the situation.

Mr. Fernald said that he doesn't believe this is going to solve the problem; that he thinks if this comes back to what the Auditor said, it's not going to make a difference on the decision.

**8:11 PM** Mr. Pomerleau said that he doesn't know how Mr. Fernald can say that; that if the attorney comes back and says we've got a problem, then we've got a problem; that if the attorney comes back and says that, based on her review of that, we're



## **BOARD OF SELECTMEN'S MEETING**

**January 14, 2016 5:30PM (continued)**

okay, then we're okay; that it will solve something. He added that he's not relying on an accountant to tell us that our legal issue has been solved.

Mr. Fernald said that if it comes back that we've done everything the way we should, by the book, Ms. Davis is not going to be satisfied.

Ms. Davis said that, if it's Ms. McGill and if it comes back with a very strong opinion that she has no basis for this, she will abide by it, if that makes you feel any better.

Mr. Murphy asked what if she comes back with the opinion of, well, yes, it could be interpreted as being questionable from one point of view, but, the Town has to go forward and solve a problem and you had two problems that presented a dilemma and an operational decision was made and the work got done and, therefore, legally your Town is okay.

Ms. Davis asked to get an initial assessment; that she doesn't think it will come back like that.

Mr. Murphy asked Ms. Davis if she would accept that from her.

**8:12 PM**

Ms. Davis said that there was some real shifting of funds, here; that she's not happy, at all, with this and cannot condone it happening in the future, asking for the Board to please get an opinion; that we just went through this whole thing with the sewer that the BOS doesn't have the authority to collect fees; so, do her the honor and the respect to get a legal opinion.

Mr. Beckert said that the Board does have the authority; that he didn't need a legal opinion to know that.

Ms. Davis said that she didn't, either, but we spent money doing that; that on this she has a genuine question.

Mr. Beckert asked for the pleasure of the Board.

Mr. Murphy said that he would like to settle this and keep a record of how much it cost, together with all other costs in a similar direction.

**DISCUSSION ENDED**

**VOTE**

**3-1 (Fernald opposed)**

**Chair concurs in the affirmative**

**BOARD OF SELECTMEN'S MEETING**  
**January 14, 2016 5:30PM (continued)**

**I. Old Business**

**8:14 PM 1) Over-the-Road Banner Policy – 5<sup>th</sup> Reading**

Mr. Murphy said that there are some corrections to be made to the wording of Eliot's proposed version.

It was decided some changes were substantive and that Mr. Murphy would give Mr. Lee his changes and this policy would be brought back in two weeks.

Ms. Davis asked if we could hear from Mr. Fernald; that she knows he's had an opinion about this, asking if we could iron out his concerns.

Mr. Fernald said that we've been doing this for quite a few years, asking why, all of a sudden, did this come up.

Mr. Lee said because it's unwritten and he finds, here in particular, when it's unwritten and open to interpretation things go poorly; that he felt that whatever we were doing, whatever had been the tradition, we should commemorate with some sort of a policy; that when you start to write a policy, unfortunately, you get into having to make some decisions about things, such as what Mr. Fernald is concerned about, like what is a 501C3, how hard is it to become a non-profit, and do the smaller organizations get punished because we want it to be a legitimate non-profit; that they could be a legitimate non-profit but not have the 501C3; so, do you include the word, or not, do you want to cover the Town, or not. He added that, as far as he is concerned, this Town has done fine without a policy.

**8:17 PM** Mr. Fernald said that it was one of those things that, if you took a survey throughout the United States, how many banners have come down on cars.

Mr. Lee said probably not a one and that's why we're probably beating a dead horse.

Mr. Beckert said that, other than the fact that the Fire Department puts up, or has put up in the past, banners why are we letting the Fire Department approve, install, and remove; that the Town Highway Department has the lift truck now.

Mr. Fernald asked, if the Town is putting up the banner and the Town is coming with insurance, why isn't that good enough; if the person gives the Town a banner that meets all the qualifications and the Town puts it up, doesn't that fall under the Town's insurance.

Mr. Lee said yes, and as long as it's for not-for-profit activity, a community- or civic-based activity, and they have a good durable banner, he doesn't see why we

## **BOARD OF SELECTMEN'S MEETING**

**January 14, 2016 5:30PM (continued)**

couldn't do it, except that the Fire Department doesn't want to be doing it every other day for every group; that he thought they wanted to limit that.

**8:19 PM** Mr. Fernald said that you're trying to limit someone from doing something so you don't have to do it a lot.

Mr. Lee agreed, in a sense, and that's never been an issue; that we only have one or two a year that we put up; that this is a lot of todo about nothing, really.

Ms. (Donna) Murphy said that she has listened to all this and it feels like we're creating a problem where none exists; that she doesn't know anybody who has ever been harmed by one, she doesn't see people beating down the door to hang them up, asking if this even needs to be addressed.

Mr. Pomerleau said that he thinks it's good to have a policy; that there's a reason you put things like this in writing, so you don't have to go through this over and over and over.

After a little more discussion, it was agreed that Board members would give Mr. Lee their issues with this and he would incorporate those and bring it back in two weeks.

### **J. Selectmen's Report:**

#### **8:22 PM 1) Committee Vacancy Report**

Mr. Murphy said that, for the standing committees, there are 10 vacancies and there are a few openings on the Comprehensive Plan Review, which is a Selectmen's ad-hoc committee with no terms

### **K. Other Business as needed**

Mr. Pomerleau said that when he was going through all this information on consulting, a reference pointed to a website they use to collect a lot of data; that it had intriguing, interesting stuff; that putting in Eliot's zip code brings up a financial profiling of the Town and described some of what he found.

### **L. Executive Session**

**8:23 PM** Mr. Fernald moved, second by Mr. Murphy, that the Board of Selectmen enter into executive session as allowed by 1 M.R.S.A §405.6(F), Inability to Pay Abatement and 1 M.R.S.A §504.6(D), Labor Negotiations, M.A.P.

**VOTE**

**4-0**

**Chair concurs**

**BOARD OF SELECTMEN'S MEETING**  
**January 14, 2016 5:30PM (continued)**

**8:54 PM      Out of executive session.**

Mr. Beckert asked if there were any actions from the Board.

Mr. Murphy moved, second by Mr. Fernald, that the Board of Selectmen grant an abatement to Case #2016-1 in the amount of \$1,884.

**VOTE**

**4-0**

**Chair concurs**

Mr. Murphy moved, second by Mr. Fernald, that the Board of Selectmen grant an abatement to Case #2016-2 in the amount of \$3,001.89.

**VOTE**

**4-0**

**Chair concurs**

**M.      Adjourn**

There was a motion and second to adjourn the meeting at 8:58 PM.

**VOTE**

**4-0**

**Chair concurs**

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**DATE**

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**Mr. John Murphy, Secretary**