

SELECT BOARD MEETING
January 26, 2017 5:30PM

Quorum noted

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

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

C. Pledge of Allegiance recited

D. Moment of Silence observed

E. Public Hearing/New Liquor License Application for Daily Scoop, located at 811 Harold L. Dow Highway

5:31 PM Mr. Lee said that Mr. Scott Dehetre was here this evening and invited him to speak.

Mr. Dehetre said that he was looking to get a liquor license for the Daily Scoop to generate some new business; that it's been really bad these last few years; that, every year, it gets worse out here. He added that Cumberland Farms came in and it really put a damper on our small businesses; that we are actually trying to get into some of that shipyard traffic on the way home. He added that he knew that a lot of them went to The Shipyard down the street and they don't have domestic beers, there, or anything like that; so, maybe, he can draw them in to grab a burger, or, we have delicious food there; that he is just trying to generate more revenues to survive, basically.

Mr. Murphy said that he assumed that the Police had commented.

Mr. Lee said that there were no issues from a public safety perspective.

Mr. Pomerleau asked if he was trying to sell beer; is that what he is after.

Mr. Dehetre said beer and liquor; that he does a lot of dinners, there, steak and chicken and a lot of seafood; that he would like to get into some open-pit Jamaican-jerk chicken, a whole new avenue. He added that you get a whole better profit margin than you do on food; that if you have eaten at his place the portions are huge; that you can do more for your community, put a lot more to it but, like everything, it costs money to do it and it's just not coming in these days; that this Town's tough, it really is. He said that a salesman came in today, saying that he went around to six restaurants, today, and he didn't get an order from any of them; that it's tough out there.

5:32 PM Mr. Pomerleau said that there is a trailer park right behind the applicant, asking if the Chief had any issues with that.

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Mr. Lee said no; that the applicant doesn't have any kind of a record that would indicate any type of a problem.

5:33 PM The Public Hearing was opened.

There was no one from the public who spoke on this.

5:34 PM The Public Hearing was closed.

Mr. Fernald moved, second by Mr. Murphy, that the Select Board approve a liquor license for the Daily Scoop.

Roll Call Vote:

Mr. Fernald – Yes

Mr. Murphy – Yes

Ms. Davis – Yes

Mr. Pomerleau – Yes

Mr. Hughes - Yes

Unanimous vote to approve motion.

The Select Board signed the pertinent document.

F. Approval of Minutes of Previous Meeting(s)

5:35 PM Motion by Mr. Fernald, second by Mr. Murphy, to approve the workshop minutes of January 5, 2017, as amended.

Roll Call Vote:

Mr. Fernald – Yes

Mr. Murphy – Yes

Ms. Davis – Yes

Mr. Pomerleau – Yes

Mr. Hughes - Yes

Unanimous vote to approve motion.

Motion by Mr. Fernald, second by Mr. Murphy, to approve the minutes of October 27, 2016, as amended.

Roll Call Vote:

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Mr. Fernald – Yes
Mr. Murphy – Yes
Ms. Davis – Yes
Mr. Pomerleau – Yes
Mr. Hughes - Abstain

The motion was approved.

G. Public Comment:

5:44 PM 1) Items Not on the Agenda

Mr. (Charlie) Rankie said that, at the Harbor Commission meeting last night, we agreed to send ‘this’ memo to the SB (given to SB) and read the memo: *“Where as your body has chosen to work on recommended changes to the existing Eliot Harbor Ordinance prior to our agreed review completion date of February 24, 2017 we respectfully request the following: 1) Your proposed changes to our “work in progress” that has been presented to the public be edited onto our copy. 2) A copy of your edit of our “work in progress” be send to Commission Members on or prior to February 17, 2017. The Harbor Commission will review your recommendations at our February 20, 2017 meeting and provide written feedback should we not agree with any of your proposed changes.”* He added that we would have our completed proposals to the Town Manager by the 25th, which allows for the 45 days of executive, legal, and administrative review, as well as get it to the Town Clerk for absentee ballots.

5:46 PM Ms. Davis asked for the Town Manager’s opinion, saying that we have a cleaned-up copy we have been working on.

Mr. Lee agreed that we used their word document as the basis for it. He added that he didn’t think there was any harm in sharing what we have, so far; that it’s something he just sent out to the SB today for them to start reviewing towards one final document. He said that he doesn’t have any qualms about sending that out to the Harbor Commission to see what the Select Board workshop and his discussion with the Harbor Masters think might need to be adjusted in that draft ordinance.

5:47 PM Mr. Rankie said that they made some important changes last night. He added that working in parallel seems awkward; that he doesn’t know what kind of time our volunteer secretary has to put those in for what the SB’s work is. Emphasizing the word ‘respectfully’, he said that this would present a deadline to the SB’s work that the SB would want a reflection from us on or before the 17th so that we could get it before the weekend to take a look at it because our meeting is on Monday. He said that their secretary could send another clean copy to the SB.

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5:49 PM Mr. Pomerleau said that it is all public information and seems reasonable to him.

After some discussion regarding changes made to the document, Mr. Rankie reiterated that he would get a clean copy to Mr. Lee for the SB.

5:53 PM Ms. (Rosanne) Adams said that she was puzzled by the process of the SB working on an ordinance before the body charged with looking at that ordinance and making its recommendations even proposes it; that she could understand if the SB had things it wanted to bring to the Harbor Commission's attention; but, to work concurrently, she has never heard of the SB doing that and wondered if this was going to be a normal practice; that she thinks it creates a lot of confusion that's almost a top-down kind of thing.

5:54 PM Mr. Murphy said that he thought there was a version of the Harbor Ordinance that was considered complete like six months ago; that that version came to the SB and they started working on it; that, then, there were interruptions, or misconceptions, and it kind of started all over again in the Commission and that means that things would come differently to the SB, once again, who have the final word on what goes out to the public. He added that the Harbor Commission is not in charge of this but were to prepare a draft to come to the SB for consideration, and they did that, but it's being revised; that this is his understanding but he did agree it was rather hazy in this particular case.

5:55 PM Mr. Rankie clarified that the copy of the Harbor Ordinance that the SB had in December, we tried to make clear at our joint meeting, was simply what we had in a minute in time that we could send out for any feedback from any of the public; that it was not representative of a complete product.

Ms. Davis said that she thought we needed a plan to merge these two documents because there are points of disagreement, here, that somebody has to make a decision on. She asked how we were going to finalize this.

5:56 PM Mr. Lee said that his opinion would be that, following the final report out from the Harbor Commission, we then have a workshop (with the Harbor Commission) to consider their final version, and ours, and to see if there is anything we need to blend together into something we can all sort of agree will work, and go forward. He added that, ultimately, the SB will have to decide at their next regular meeting to vote one version or another through to go to the voters.

Mr. Rankie said that there was a big window of time to finish this, as the drop-dead date for the finished work to go to the Town Clerk is May 1st.

5:58 PM Mr. (Mike) Dupuis, Sewer Committee, said that they did meet and wholeheartedly decided that we would like to merge the Sewer Committee and the Clean Waters

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Committee (stormwater) into one committee; that they were seeking advice and guidance from the SB as to the form of that committee.

5:59 PM Mr. Lee said that the draft Clean Water by-laws are being reviewed by staff; that he drafted it based on a workshop we had; that he sent it to Mr. Moulton and Ms. Pelletier to see if there was anything they wanted to add or tidy up; that his hope is that, on that February 9 SB meeting, they will have that draft and he would be happy to share it with Mr. Dupuis; that maybe Mr. Dupuis' committee could look at it for any recommendations they would like to add. He clarified that many of the Sewer Committee understand that the greater emphasis right now is stormwater and some of them, when the Clean Water Committee is created, would like to fold up Sewer and apply to be part of the Clean Water Committee. He added that he didn't think it was merging but just that we have some very good Sewer volunteers that know a lot about stormwater.

Mr. Dupuis agreed.

2) Jennifer Fox, Land Trust (Tentative)

6:02 PM Ms. (Jennifer) Fox said that she was here to discuss some of the questions that came up when the Conservation Commission presented to both the Select Board and the Budget Committee on the Goodwin Farm Project and a request to the Conservation Commission to use \$40,000 out of the existing Land Bank to support that project. She added that Tim Smith was with her, also a volunteer on the Board of Directors for Great Works Regional Land Trust (GWRLT). She added that GWRLT is the local land trust organization that provides conservation options for landowners in six towns in southern Maine – Eliot, the Berwicks, Wells, and Ogunquit; that it is non-profit and its mission is to conserve valuable natural resources in these towns. She said that we pursue this mission by holding properties, outright owning properties, or through conservation easements. She added that, since 1986, the land trust has completed 111 projects conserving over 5,300 acres in the area; that their first conservation easement in Eliot was Backfield Farms and about 38 acres, which was conserved through a conservation easement. She explained that a deed restriction, in that case, was put on the property but the land owner still controls the property, abiding by the restrictions put on the property. She added that they hold Douglas Woods 'in fee', which means the land trust owns that property to conserve it for recreational purposes. She said that, in 2013, the Town participated in supporting the project Rustlewood Farm, which is a conservation easement; that the portion of property in Eliot is about 90 acres and the property total is about 302 acres, with the purpose to promote agriculture. She added that a question from the Budget Committee was whether the land bank funds could be used for other than acquisition; that, for the Rustlewood project, \$25,000 from the land bank were used to support matching funds. She said that the Conservation Commission is charged with reviewing

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these projects; that they recommended that \$40,000 of the land bank funds be used towards the Goodwin Farm project; that they are strictly an advisory committee. She added that she would strongly suggest that that \$40,000 would be instrumental in supporting that project. She discussed the map of the project, explaining that they own this property 'in fee' and, currently, there is no easement on the property; that they would like to maintain the front portion as a farm and considering a 30-acre agricultural easement on that front portion to conserve the fields and sell that property as a working farm. She said that the rest of the acreage has been historically used for recreation and the trust is proposing to maintain that acreage as a fee property but provide opportunities for recreation and hiking in the forested area. She added that, to support and maintain that, they are requesting \$40,000 from the land bank. She also added that they are discussing having a parking lot on Goodwin Road, providing an easier access to the back parcel; that you could also access the back part of the parcel along the old Johnson Lane trail and would lessen the traffic on Johnson Lane coming in from Brixham Road. She said that there were questions regarding values, if the Town put this type of money into the property, would the Town gain if the Town doesn't actually own the property; that the Town is gaining access to open space that would be maintained in perpetuity, developing trails, and providing access for the Town.

6:12 PM Mr. (Tim) Smith, GWRLT, said that the reason we are approaching the Town at this point is it has been an expensive project for them; upwards of \$350,000 to protect this farm, of which we have had to borrow \$50,000 internally; that we also have a loan out for \$130,000; that to complete this project, while we own it 'in fee', we do not own it outright, so we are searching for ways to make that project whole and make sure it works for all the residents of Eliot. He added that they own a lot of land and one of the points is to make it available for public use; that some of the hardest money to get is for providing access to these properties.

6:13 PM Ms. Fox, pointing to the map, said that the parcels in yellow are currently owned by the Town, so they are adding to an area that's already conserved by the Town, and this project has the potential to add access to those parcels.

6:14 PM Ms. (Donna) Murphy said that one concern that came out of the meeting was how the Town would be guaranteed the Town would always have access.

Ms. Fox said that the mission of the land trust is to maintain access in perpetuity; that if that was a requirement of the Town she thought that was something we could do.

Mr. Smith said that we could certainly do that; that under the State statutes we have to provide public access but we could also sign something differently; that occasionally, although we've never done it on any of our properties, we can set a

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portion of the property off-limits but that mostly has to do with some special natural resource. He reiterated that their mission is to provide public access and, if the Town would like that, then we would be happy to provide that.

6:15 PM Ms. Fox said that other things that the Town is getting out of this is, for example, protecting the buffers around Shorey's Brook; that this also carries out specific goals of the Comprehensive Plan and she thinks the land trust provides, in a very economical way, for the Town to reach the goal of balanced development and maintain Eliot's rural character. She added that she thinks there comes a point that we need to invest financially in the services that the land trust is providing.

Mr. Smith said that we've done about 150 properties and, out of that, we've only approached our communities 13 times for money and they've been approved; that Eliot was the first Town we ever approached (1995) and the first town that overwhelmingly approved the purchase of the Parson property, which is now the Town Forest. He added that we don't take this lightly and know how tight Town dollars can be; that, when Town tax dollars are voted for a project, that proves the value to the Town.

6:18 PM Mr. Murphy said that he favors this; that he wants to see Eliot's natural woods preserved.

Ms. Davis said that she thought it was only fair that this goes on the warrant so the people can express their interest, or not; that, generally speaking, she thinks that Eliot has stepped forward on most of these projects.

Ms. Fox said that the money in the land bank has come about because it's been voted in, and is in a restricted account; that the Conservation Commission has been charged with looking at priorities in Town and they are favorable to using those funds for this particular project, asking, when you have positive advice from the Conservation Commission, how that got represented in the warrant article. She asked if it was currently in the budget.

6:19 PM Mr. Lee said that it was not. He explained that the discussion we had was to put it on as a separate, stand-alone warrant article and allow the voters to vote it up or down. He clarified that this was not put forward as a budget item because we had so many other capital needs; that that is why he invited the Conservation Commission in to speak to it and he thought there was some discussion at the end of it about being happy to put it on as a stand-alone article. He added that he doesn't think there's anything that precludes saying "The Conservation Commission so recommends."

6:20 PM Mr. Murphy said that that is the way it has been done in the past.

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Mr. Lee said that they would have that opportunity to put in a recommendation and, likewise, the SB and Budget Committee may also offer recommendations, either for or against.

Ms. Fox said that the land bank is separate from capital improvement, asking for clarification.

6:21 PM Mr. Lee clarified that the way it was construed to him was that they would like to use \$40,000 out of the land bank and raise \$35,000 and restore the land bank; that it is the raising of the \$35,000 they asked if he would support, as Town Manager, to refill the land bank; that because of all the other pressures he has for the budget he said no.

6:22 PM Mr. Rankie discussed the background of the Town Forest and the struggle the Conservation Commission has had in trying to build up funds in the land bank for land conservation acquisitions. He added that he strongly supports Eliot contributing to the GWRLT works and also wants to see Town access to this property protected.

Ms. (Donna) Murphy clarified that the \$40,000 is in the budget to transfer funds from the land bank for the project but there is no budget request to replenish the land bank.

6:28 PM Ms. Adams said that she believes it is important that the reserve fund be replenished; that because the Conservation Commission has put the request for replenishment forward she would like to recommend that there be another warrant article; that sometimes, when land comes up, it's a very short window of negotiation and it can be lost.

H. Public Works

6:29 PM 1) Pump Station Discussion/Update – Keith Pratt

Mr. (Keith) Pratt, Underwood Engineers, and Mr. (Steve) Smith, lead on pump station design, were present.

Mr. Pratt said that things are progressing, as planned; that they are in the midst of design and plan to get this out to bid this spring. He added that they are working on a SRF (state revolving fund) application with the State and Municipal Bond Bank; that along with that there will be a required environmental review, which is virtually complete; that there are some other regulatory requirements placed by the DEP and we are in the process of completing those, as well. He pointed out that, with a lot of the things required, the Town is being proactive in doing a lot of these things along the way so it's almost done. He said that we wanted to talk

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with the SB about a pre-qualification phase for contractors; that we are leaning towards doing that and working with the DEP on that; that the summary of that approach is two parts – the qualification phase that takes qualifications from contractors, without any fees, and identify qualified contractors we feel are capable of doing the work in a ranking system and it will only be those contractors that will bid on the work; that, then, it goes out to bid, get a low bid, and award the contract. He added that there was also discussion regarding a direct purchase, to help with some of the lead time to buy some of the pumps that take a long time; that we are now actually leaning away from that and keep the pump selections under the contractor responsibility because that will help keep the risk on the contractor and less risk on the Town, and we believe the schedule allows for that. He said that, as we bid this project, we will have several bid items – the pump stations, themselves, testing and quality control, probably some utility allowance, and recommending a contingency line; that we do that in other communities and allows, as the project is bid, if something unforeseen is encountered, us to rapidly proceed with change orders; so, it avoids delays, and costly delays; that with some of these renovations, we feel it's a good way to go. Mr. Pratt said that Mr. Smith handed out a budget sheet that summarizes how you initially budget the \$1.7 million, clarifying that the contingency stays within that amount and builds in in-the-field flexibility for change orders. He added that, regarding the design, itself, we handed out two sketches to show the physical design impact. He said that the changes we are talking about are things to help constructability and reduce costs; that, on Main Street, we've moved the building a little closer to the street, itself, and looking at the possibility of re-using the wet well; that they are also working with the department to try to salvage the pumps because, while they are old, they may still be good for you in some sort of a temporary fashion, if we can refurbish them. He said that, on Kings Highway, the footprint looks much like it did before but is more of an ell shape; that that allows us to actually build the station around the existing station; that it's a little bit smaller footprint and we've shallowed up the excavation a little; that we would eliminate the basement and have stairs down to a depressed floor. He added that when this building is complete, the existing brick building will be dismantled, removed, and all you will see is an ell-shaped building, which allows a space and parking spot for staff and to have easy, safe access. He said that the easement they are working on with that is in progress. He said that we are still on track to get this online this winter; that we are looking to bid this in late spring, early summer; construction will start in July, or soon thereafter, and will start up in the December/January timeframe. He added that there will also be a little clean-up work in the following spring/summer – maybe final paving, final landscaping.

6:35 PM

6:39 PM

Ms. Davis asked when the application was going in and when approval would come.

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Mr. Pratt said that we are targeting February 17th, at the latest, to submit the application and approval could be two to three months; that the cash-flow works with that because we don't expect to have any cash-flow needs on your end until July; that you have the engineering covered, so, it's July before you start looking at the earliest to pay contractors.

6:40 PM Ms. Davis said that she doesn't see any line item for paying back the reserve account that we took money from in the provided cost sheet.

Mr. Pratt said that it is in there because there is \$99,000 budgeted for the engineering; that half of that was what you initially took out of the reserves, so, by showing that on the cost sheet, you are actually taking it out of the SRF.

6:42 PM **2) Sewer Ordinance: Draft – Appendix 1: Policies and Procedures (1st Reading)**

Mr. Lee said that we have completed the technical appendix; that Appendix I is policies and procedures is now in front of you as a first draft and we are looking for feedback.

6:43 PM Ms. Pelletier said that we wanted to have the Town Clerk, who does the billing, and the Finance Director take a look at it because there are things in there that concern them – how liens are done, the 'commitment' of sewer charges is apparently required by State law so they would have to issue a warrant and, then, collect those fees, just like a tax, which will be worked out internally. She added that we had some questions, such as whether the Town would ever allow a payment plan for a betterment fee. She said that the way this is written assumes the Sewer Committee has been abolished, or is no longer in business; that the problem is that that is a direct conflict with the ordinance that still has the Sewer Committee in existence and part of the approval process for allocations. She added that her question was, if the SB intended to abolish the Sewer Committee, she needed to write an amendment to the ordinance because the voters would have to vote on that change; that a word of caution was that, if a committee was voted in by the Town body, they can only be voted out by the Town body; that she wasn't sure if the SB wanted to seek a legal opinion to verify that or if the SB can abolish it by SB action.

Mr. Fernald said that Ms. Pelletier's suggestions on the document were very good and are things that need looking into further.

6:46 PM Mr. Murphy said that he was not in favor of jumping into abolishing the Sewer Committee but might be kept for a long time as a subsidiary interest and might be able to speak up for a long time even though direct authority lies in the department/superintendent. He added that, regarding the draft, he noticed that a side bar note, KP2, is missing.

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Ms. Pelletier said that she thought she might have just deleted it.

6:47 PM Mr. Pomerleau asked if we didn't have betterment fees now and, if not, why is it highlighted.

Ms. Pelletier agreed they were not new; that it was highlighted because she was asking if there are ever any occasions where the SB would allow a payment arrangement on a betterment fee; that it's a question we get a lot and is in other ordinances; that she believes it's been done at least a handful of times in Eliot so she didn't know if that was something the SB wanted to formalize. She added that she would get examples of what other towns do.

After some discussion, it was the consensus of the SB to have language drafted to amend the ordinance using the word "superintendent".

6:51 PM Mr. Murphy reminded not to solidify thinking in the direction that the Charter is unchangeable; that the many charters he reviewed when helping on the Town Charter had been amended many times.

Ms. Davis said that, if she could have a clean copy, she would clarify her questions/comments and submit it to the SB.

6:53 PM Mr. Pomerleau said that he had another statute to add to the document – 30 M.R.S.A 21§405 Revenues.

Mr. Dupuis asked if the Town betterment fees were assessed by the State.

Ms. Pelletier said that it was done by the bond that paid for the sewer.

Mr. Lee said that we would put this back on the agenda in a couple of weeks and asked for any additional feedback be given to him, with a potential workshop.

I. Department Head/Committee Reports

6:57 PM 1) Harbor Commission Resignations: Cabot Trott and Richard Russell

Mr. Lee clarified that Mr. Trott was not resigning.

Mr. Murphy moved, second by Mr. Fernald, that the Select Board accept the resignation of Richard Russell from the Harbor Commission and thank him for his services.

Roll Call Vote:

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Mr. Fernald – Yes
Mr. Murphy – Yes
Ms. Davis – Yes
Mr. Pomerleau – Yes
Mr. Hughes - Yes

Unanimous vote to approve motion.

J. Administrative Department/Department Head Reports

6:58 PM 1) Town Manager Report

Mr. Pomerleau clarified that, regarding **Line 37**, he didn't request a zero budget be prepared but asked what that number would be.

Mr. Lee agreed.

Mr. Hughes asked if, regarding **Line 33**, Mr. Lee had an alternative.

Mr. Lee said that they do; that they got pricing from American Security Alarm; that it's a lower price, better service; that we've been having difficulty with our security services.

Mr. Moulton said that he has it at the Garage.

Mr. Lee said that we are looking to see if we can have one vendor for all three buildings.

a. Financial Report

There were no comments.

7:00 PM Mr. Lee said that he wanted to let Mr. Moulton go and asked if they could take up the item he had under New Business regarding the used glass crusher.

The SB agreed.

Mr. Lee said that we had a vendor come in expressing an interest in buying our used glass crusher; that there aren't that many people who would want something like this.

Mr. Moulton said that they have a particular municipality interested in something that would get them through; that the municipality is willing to invest money into

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something not worth anything in his view so they were looking to see if we would be interested in selling the old glass crusher we have.

Mr. Lee said that he thought it was a good opportunity, at the price they offered, to get rid of this thing; that he doesn't think we would do as well at public auction.

7:02 PM Ms. Davis said that, if someone wants one and we have not put it out to bid, it's not a great thing.

Mr. Lee said that it's not a big deal to put an ad in the paper and give people the opportunity; that he would seal the offer he has.

It was the **consensus of the Select Board** that we follow the policy.

7:03 PM 2) Citizen Petition: Route 236 TIF Expansion Project

Mr. Lee said that we have a memo from the Town Clerk, dated January 12, 2017, regarding the official filing of a Citizen Petition for the construction and funding of the Route 236 TIF Expansion Project in Eliot, which includes petition language and a summary report. He added that he previously provided to the SB some legal advice regarding whether this petition 'must' be accepted by the SB. He read the petition language.

7:07 PM Mr. Pomerleau said that he read the legal opinion very carefully and it gives us more than sufficient grounds to reject this petition; that that is what he is going to do. He added that we voted on this Route 236 expansion 4 times; that we had a vote in November where the citizens finally approved funding for the sewer pumps and we are well underway. He said that that bond has a strong likelihood of having no effect on sewer rates because of the bond. He added that this petition raises a number of legal ambiguities as to the outcome; that, most importantly, we are well on the way now to an amended TIF plan...(interrupted by fire alarm)...after all those votes, that has probably been the most horribly divisive issue probably in the Town's history and we are finally at the point where we can move on. He said that we are on the verge of completing the new amended TIF plan that has some very, very beneficial things in it that affect a wide variety of people in the Town – bringing sewer up along the river to the Village, planning a little village area, here, potential recreational trails, relief of some cost of Town staffing, capital projects that would help keep taxes down over the years. He said that it's time to move on; that the Town needs to come together and we need to stop re-voting and re-voting; we need to move forward and he is going to vote not to put this on the ballot.

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- 7:11 PM** Mr. Fernald said that he believes that, although there's much opinions from the SB on if this should go on the ballot or not, the citizens have met all the qualifications to put this petition on the ballot and he doesn't think this Board has the right to stand in the way of its citizens; that he will vote for it.
- 7:12 PM** Mr. Murphy said that he agreed with Mr. Fernald; that he thinks this proposal that Mr. Pomerleau talks about is still way up in the air; that nothing is settled and deals with land that we don't even own, whereas, this is the basic thing to get us infrastructure in the Town installed in a useful way. He added that he is for this petition; that it should go forward.
- Mr. Hughes said that, as far as he is concerned, the citizens of the Town have voted this particular thing down a number of times; that they have spoken and said that they don't want to do this. He added that it seems to him that to keep throwing this back on the ballot every year is a slap in the face of people that say no. He said that he's not going to vote for this; that he thinks the Townspeople have spoken a number of times on this issue and he needs to side with the voters of the Town.
- 7:14 PM** Ms. Davis said that 4,000 people voted at the November election and this bond was passed 2-1; that that is the largest section of Town to vote on this particular issue. She added that we have a court case to cite in favor, here, of rejecting this Citizen's Petition; that the Supreme Court (Maine) declared that the obligation upon municipal officers should be interpreted to apply to petitions proposing new articles for voter consideration or concerning municipal officers' failure to act and should not apply to situations such as the one presented here in which minority voters seek a re-vote on a recently-approved referendum. She said that there are many reasons stated this evening that are justified for not putting this forward; so, she would have to say that she could not, in good conscience, put this on the ballot again.
- 7:15 PM** Ms. (Nancy) Shapleigh said that the article that was approved at the last meeting was put on there when, she believes, the Attorney General of the State of Maine recommended that no big projects be put on the ballot because the presidential election was probably going to be so contentious that there would be a huge turn-out; that by your own admission this was the biggest vote, ever, and much of that was the national election. She added that Mr. Pomerleau has been against this from day one even though he suggested that previous Boards do a survey to see how beneficial it would be to the Town; that the survey recommended that there was no good reason not to do it. She said that you people have done a terrible disservice to the Town.
- 7:16 PM** Mr. Rankie said that the purpose of the Charter's Article I §2.13 is very clear; that he recommends to the three that oppose this warrant to re-read it. He added that

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the purpose of this Article section is that, if the SB does not wish to put a warrant article on the ballot, the citizens must go out and get a significant percent of the voters to bring forth a petition that is contrary to what the majority of the Board wishes to see. He said that it's not about whether something has been voted on once, twice, and if you feel like you want to get by it; that this allows for citizens to put an article on the warrant over the objections of a majority of the SB. He added that it is very clear and, if there is legal advice contrary to this specific 2.13, he doesn't see why it hasn't been shared with people sitting here.

7:18 PM Ms. (Cindy) Lentz asked how many times will this group put this forward until they receive the answer they want, when the Town keeps rejecting it, presidential election, or not.

Ms. Davis asked her if she thought citizens were able to understand what was on the ballot.

Ms. Lentz said yes.

Ms. Davis said that 4,000 people, a large percentage of the Town, made their wishes known in November and that we have already commenced work.

Mr. Fisher said that he would like the Town Manager to tell him what the Town attorney told him about the 'gray area'. He added that he has probably put more Citizens Petitions in Eliot than any citizen in Eliot and he doesn't think we really can not take that consideration; that he doesn't care who likes it, or not; that he doesn't see how it can be taken out of the hands of the citizens.

After some discussion, it was agreed for the Town Manager to read the attorney's letter.

7:26 PM Mr. Fernald said that he knows there's a lot of complications that will come if we put this on the ballot and it passes; however, he doesn't believe it's about these issues, at all; that he thinks this issue is about the citizens coming up with a petition and meeting all the qualifications to put it on the ballot. He added that we have had many votes on many issues over the years, like the domestic partner issue that used to come up every year and we voted on that; the marijuana issue came up every year and we had to vote on that; that they did it because they had a petition and they had all the qualifications that they needed to do; that these citizens have done that and we should not be able to take their rights away.

7:27 PM Mr. Murphy agreed. He said that, as far as the complications between two sources of money, that could be resolved; that it's a simple complication; that in the world of finance you can do anything you have to do or want to do. He added that he thinks we should proceed forward with this petition, as the citizens want.

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7:28 PM Mr. (Russ) McMullen said that the last time the Townspeople were approached on this subject was November 2015; that Question #4 asked if you would support economic development on Route 236; that 15% of the people said yes; that the majority of people, when asked where they wanted infrastructure such as water and sewer, they said on Route 236. He reiterated that that was the last time the Townspeople were approached on this subject and it was in the positive. He added that he wrote the language in the Comprehensive Plan regarding the zoning changes in Town, including Route 236, as well as being involved with the TIF committee. He reminded them that the language that is in all of these documents regarding the Village, the reason we put the Village Zone in there, and it has to have sewer and water to be created – at the time we had vacant land in the Village in which to install a village and now we do not; that Mr. McPherson does not wish to have his land used for a village; that that plan is gone. He added that the Libbey property was the alternative that we had to create a sizeable village that would amount to anything socially, or otherwise; that by-the-way the idea of this village plan was not an economic development plan from the Comprehensive Plan, it was a social plan to create and identify a town center for convenience of the Townspeople, away from Route 236, so that it could be safely entered from two different directions. He said that there were some real conflicting personalities of that board of 16 but he wanted to tell them that that vote was discussed and discussed and discussed and was voted on 100%. He added that he's very confused that you aren't listening to the Townspeople, it's in two different directions, we have a TIF Alternatives Committee and this has been going on for several years; that he served on the pros and cons committee and we never did get an answer, although, 50% of the people did answer the pros for putting Route 236 sewer and water out there and the other group never came up with anything. He said that here we are seven years later, folks; that we have \$3 million sitting in a kitty and we're doing nothing with it; that all we're hearing about is ruining the Boat Basin, which is the only water access the citizens of Eliot have to the water in the Town. He reiterated that what he doesn't understand is why you are proceeding with that versus something that should have economic development on Route 236, which is where our business zone is. He added that you are not going to get any tax revenue out of a little village; that it's not going to happen. He said that we have had every professional in this Town come and speak to us and every consultant has said the very same thing – the only place you're going to get any economic development out of this Town, and any future tax revenue, is Route 236 because that's what it is; that it's not a duck or an elephant, it's a commercial/industrial zone.

7:30 PM Ms. Davis said that the people who answered his survey were the same people that voted down the TIF three or four times.

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Mr. McMullen disagreed and said that the TIF hasn't been voted on since that survey was out; that the only thing that's been voted on is fixing the pumps; please, do not distort things, talk facts.

7:31 PM Ms. Davis said that we voted the TIF's down and, then, they took the survey and that was the same people that voted down the TIF's.

Ms. (Donna) Murphy said that, from the earlier conversation, that within two months we will have taken that bond out; that that's prior to this vote so that brings up another issue because that sounded like it can't be turned back. She added that, in its language, it states that the original ran straight down Route 236 and went nowhere near these sewer pumps; so, in fact, she thinks it's a little disingenuous to say that some of that money can be used to fix these sewer pumps under the original design when it ran straight down Route 236; that today, with the extension of Kittery coming up, would make far more sense to run it straight down there rather than go through the Village. She said that she would like to reiterate that she thinks it's not fair to dismiss that vote that happened in November; that we had the largest turn-out ever after this project on Route 236 has been rejected 3 or 4 times and, 2 to 1, this Town voted to go the way that they did, and that needs to be respected.

7:33 PM Mr. (Doug) Warrender, Hobbs Circle, said that the language of the TIF has not been in most of the ballot measures that have been voted on; that he wanted to read through the whole history before he was removed (a previous meeting) and that is the only reason he went over, because he was just trying to read through the exact wording of every ballot measure given to him by the Town Clerk, and the TIF funding was not mentioned. He added that it was entirely possible to use TIF money but, if he was a citizen of the Town reading that, he would never have known that TIF money was going to be used for those ballot initiatives; that to say that the Town has voted four times against this TIF is wrong. He said that the Town has voted against paying money out of their own pocket for it, which he thinks is reasonable; that the Town has not voted against using this TIF money that is sitting there and created especially for this, reiterating that he thought the argument was disingenuous, at best.

Ms. Davis said that, technically, the TIF was voted on three or four times.

7:34 PM Mr. Warrender said that he thought that, if she is going to assert that, then she needs to read the ballot language before you're going to vote on this because he tried to read it to her before you had him removed by the police officer.

Ms. Davis said that there may not have been sewer language on there to repair the pump stations but there was a vote whether to pass the TIF, or not, to take out a bond to do sewer.

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Mr. Warrender disagreed, saying that the Town voted to have the TIF created; that we all agree on that. He added that he thinks there have been four votes, and he reiterated that he thought the intent was to use TIF money but, in the language, it was never stated that TIF money would be used, explaining that, as a citizen of the Town and he saw that the Town was going to take out a bond, his assumption would be that the taxpayer is going to have to pay for it rather than using the TIF money; so, trying to say that using TIF money for Route 236 expansion has been voted down is wrong; that it has only been voted down in that the Townspeople thought that they were going to be taxed extra to have it happen and, on top of that, there was a vote to amend the TIF to use the TIF funds for something else, and that was voted down; so, if you're going to use the argument that you're going with the Townspeople, it's a mixed bag, because you went to the Townspeople and asked them if they wanted to change the TIF and they said no; so, as of right now, the TIF can only be used for sewer expansion on Route 236.

7:36 PM Mr. McMullen said that he would like to ask you all, please, kind of remember you are representing the entire Town; that he thinks that the Townspeople have done a very fair job. He added that he thinks there has been a tremendous amount of misunderstanding about this entire project and that a lot of people have been misled in various ways; that he thinks the Board needs to let this go before the Town and let the Town decide what they'd like to do; that anything other than that he thinks would be selective picking of apples. He added that he would like to ask the Board to be fair to the Townspeople and represent all of them.

Ms. Davis said that she is thinking of the 3,000 that voted in November.

Mr. McMullen said, see, this is what you're doing, asking why she was saying things like that.

Mr. Lentz said that he would like to see it be fair to the people, too, for all of those who voted and said no to sewer on Route 236; that he wants to see the Board respect them.

7:37 PM Mr. Fisher said that the Charter really says that we don't want to repeat the same question over and over again, and that's why we put it in there. He added that this is a particular different item; that this is going down Route 236. He said that we voted for the bond and not for going down Route 236; that we voted against it because of the people that were victorious in getting the bond thrown out because they were going to take the money from TIF to pay for the bond; that he was absolutely right, it was a bond vote and nothing to do with going up Route 236 with the whole project. He added that he thinks it's really, really important that we take the signatures of the committee that got the petition going for 140 votes; that he thinks we ought to pay attention to them and he'd be glad to make a small

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contribution if we want to fight the Board on this, and he's quite sure we would be victorious.

7:38 PM Ms. Davis said that he wouldn't be if he was living in Vassalboro.

Mr. Warrender said that he wanted to state for the record that the November vote that you keep referring to never mentioned the TIF, never mentioned Route 236 expansion, asking if that was a fair statement and could he get agreement to that, and not just a nod, for the record.

The SB said yes.

7:39 PM Mr. Warrender said that this statement that you keep saying that the largest turn-out in history, which he is not disagreeing; that he couldn't be happier that that passed because he is on the sewer and he wants to make sure his sewer keeps working. He added that he isn't trying to get something for nothing but, if you keep using the argument that the November election, the people spoke, it's completely irrelevant to this; that the November vote has absolutely nothing to do with the Route 236 expansion; that they are two completely separate issues and you can't use that as an excuse to not allow this on the ballot. He said that he is neutral on whether Route 236 expansion happens; that he is not gung-ho about it but is saying that you need to use a solid argument rather than just saying it has been voted on and voted on and voted on; that that's the argument and when he tried to bring it up over the summer he was removed rather than letting him make the point.

7:40 PM Mr. Hughes said that he thought to the extent that that ballot question in November dealt with the repairs of the pump stations, other than using TIF money, that makes it related to him; finding there was something on the ballot that citizens could say "Great, we're not using the TIF money to fix the pump stations. That's what we're going to vote for."; that that's why it has some relevance. He granted that it had nothing to do with TIF because we didn't want to mention TIF; that we don't want to use TIF money for repairs; that that is what the citizens have been voting down year after year.

Mr. Warrender disagreed; that that was an incorrect statement that Mr. Hughes just made.

7:41 PM Mr. Pomerleau said that, in addressing this relevancy of the November vote, that was one of the legal ambiguities that the attorney raised in here in two ways; that number one would be if a bond passed in that November vote and if this should pass, it with another bond that was saying that we wanted to use that money to do the same thing that the bond is; that that is directly relevant and one of the legal conflicts. He added that the other one, with the bond passed, raises the legality

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question that, even if a Route 236 vote passed, whether or not it would any longer be eligible for the TIF funds because it had already been funded with a November bond. He added that there are a host of legal conflicts, here, that get raised.

7:42 PM Mr. Warrender said that his point about there will be legal problems, and whatever, coming up is perfectly valid but, as Mr. Murphy said, you can work through those things; that that's not a reason for the Board to simply say no to a citizen's petition. He added that, to Mr. Hughes' point, which is his entire point of the problem, here, is that the TIF has not been voted on this four times, as you keep saying; that if you would have let him read through the language of every single vote, you would see that the TIF was only voted on, he thinks, once; that, in this last one, they're obviously related – it's sewer – but the November vote was for repairing the pump stations, which, again, he was giddy that that got passed. He said that this is for Route 236 expansion and, yes, there's some conflicts that will create some issues but, there is a citizen petition here that he doesn't think the SB has enough of a standing to reject just because there's going to be some confusion and legal ambiguity.

7:43 PM Mr. Pomerleau said that one of the fundamental requirements that the courts look for in any referendum question is that there has to be some sense of clarity that the citizens will understand the outcome; that, if you use unintelligible language, or potentially illegal language, and anything like that that would create confusion as to how it's going to work, the courts would uphold us rejecting this particular language. He added that, if the attorney says there are a number of legal conflicts, how would the citizens possibly know what the outcome of this referendum vote is going to be.

Mr. Fisher said let's go to court.

7:44 PM Ms. Selsberg said that her understanding of the whole Route 236 issue was that it was for business development; that she, in fact, heard over several years assertions that we lost huge numbers of big companies, several of which she checked, personally, and were not true, at all. She added that, meanwhile, we have not passed this and we have how many new businesses on Route 236.

Mr. Lentz said that there are 5 or 6.

Ms. Shapleigh said that that was because they had good soils and could put in, or get into an existing sewer.

Ms. Davis called the meeting back to order and asked if there was a motion from the Board.

Mr. Hughes moved that this warrant not go on the ballot in June.

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Mr. Pomerleau said that he would second it but he was expecting one of the people in favor of it making a motion to put it on the ballot.

7:45 PM Mr. Fernald moved, second by Mr. Murphy, that the Select Board put the petition of a Route 236 TIF sewer expansion project on the ballot for the June warrant.

Roll Call Vote:

Mr. Fernald – Yes

Mr. Murphy – Yes

Ms. Davis – No

Mr. Pomerleau – No

Mr. Hughes - No

2 for, 3 against and the motion fails.

7:47 PM **3) Appoint Jay Muzeroll as Fire Chief for Jan. 1, 2017 to Dec. 31, 2017**

Mr. Murphy moved, second by Mr. Fernald, that the SB appoint Jay Muzeroll as Fire Chief for the period of January 1, 2017 through December 31, 2017.

Roll Call Vote:

Mr. Fernald – Yes

Mr. Murphy – Yes

Ms. Davis – Yes

Mr. Pomerleau – Yes

Mr. Hughes - Yes

Unanimous vote to approve motion.

K. Old Business: Upcoming Workshops

This was not discussed.

L. New Business:

This was already discussed.

M. Selectmen's Report:

There were no Selectmen's reports tonight.

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N. Committee Vacancy Report

There was no report tonight.

O. Executive Session: 1 M.R.S.A. § 405.A Personnel

7:48 PM Mr. Murphy moved, second by Mr. Hughes, that the Select Board enter into executive session as allowed by 1 M.R.S.A. §405.A Personnel matter.

Roll Call Vote:

Mr. Fernald – Yes

Mr. Murphy – Yes

Ms. Davis – Yes

Mr. Pomerleau – Yes

Mr. Hughes - Yes

Unanimous vote to approve motion.

8:55 PM Out of executive session

No action taken.

P. Adjourn

There was a motion and second to adjourn the meeting at 8:56 PM.

VOTE

5-0

Chair votes in the affirmative

DATE: April 26th, 2017

S:/ Mr. John Murphy, Secretary