

SELECT BOARD MEETING

August 24, 2017 5:30PM

Quorum noted

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

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

Absent: Mr. Donhauser (excused).

C. Pledge of Allegiance recited

D. Moment of Silence observed

E. Public Comment:

5:31 PM Mr. (Jay) Meyer, Odiorne Lane, thanked Mr. Lee for selecting the microphones we have tonight; that he thinks it's going to be very beneficial for people who can't quite hear.

Mr. (Robert) Fisher asked on the status of the Staples issue.

Mr. Lee said that, on the Staples' fence, it looks as though he re-located a small portion of the fence that's on the property line directly over the well but left the remainder of it on the property line; so, he is still not in compliance and we had to notify our attorney, his attorney, the courts, and will be subject to daily fines, presumably, unless someone can motivate him to get it moved very quickly.

Mr. Fisher said that the SB had an executive session last week that was recorded and he wanted to know what the SB would do with that recording; that it was his understanding that, in executive session, there shouldn't be any notes, or anything; that there was a secretary there and it was recorded and he wondered when that would be available to the public.

5:34 PM Ms. Davis said that we had to record it in case things went further down the line in the system but it is executive session so it is never made public; that the tape will be destroyed after the minutes are approved by the SB in executive session.

A member of the public asked what 'in case it goes further down the line' meant.

Ms. Davis said in case someone decides to appeal any decision that's made or questioned any methods that we used to arrive at a decision; that then we have a record of how we came to be where we are.

Mr. Pomerleau said that, by Maine State statute, that was a hearing and not just an executive session. He added that it was a hearing done in executive session and

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when those things come about, the person who is the subject of the hearing can request that it be made public; that in that case a hearing would be done in a public arena; that, by State law, that was a hearing on a personnel matter involving potential discipline and remains a confidential record forever; that it is sealed and is never available to the public; that the only thing that could be made available to the public is the conclusion or the decision resulting from that hearing; that that has to be made public once it's done.

5:35 PM Ms. (Jess) O'Donoghue said that it came to her attention last week that Mr. Beckert was once again arrested for DUI, the second time in three years. She added that, personally, she's had a problem with him for many years in this Town, as far as his leadership position goes. She added that she would say that he is a bully; that she has seen him harass people in meetings, pick on people, tell people to shut up, tell people to leave the room; that she has seen him make people in Town not being interested in being involved in Town activities, in Town meetings, have them just not be involved in politics at all. She said that she has talked to people from Boston who say that Eliot is a cesspool. She added that she is tired of not wanting to come to meetings anymore because he's involved; that this is a man who should not be involved in our beautiful Town. She said that she doesn't think, as a volunteer or even as a paid employee, we should have someone like this representing our Town. She asked if there wasn't a code of conduct that people involved in our Town should abide by; is being arrested for DUI one of those.

5:37 PM Mr. Pomerleau said that he wasn't going to address that specific person but just in general. He said that we live in the United States of America and the fundamental document that we are run by is called the Constitution and that provides everybody with due process of law; so, they can't be deprived of life, liberty, property, etc. without due process of law. He added that the fundamental process of due process is designed to protect the innocent; that everybody has a presumption of innocence until proven guilty; that a charge or arrest is not a conviction. He said that, as we proceed further, should some individual involved as an official with the Town have a DUI conviction, it is a very highly and questionable area as to whether, or not, the Town has any recourse for a person's personal behavior outside their official duty; you can argue it both ways. He added that the Charter doesn't address that; that if that was an elected official, then the Charter has a recall petition; that there are some defined acts in the Charter, which doesn't leave that open to question; that one of them is a conviction of some criminal act that has a penalty exceeding one year, as an example. He said that the recall petition is only applicable to elected officials. He explained that, as we get to appointed officials, we have a code of conduct in the Ordinance Governing Boards, Commissions, and Committees; that you won't find anything specific that addresses an outside personal act and he would argue that that ordinance is intended to address their conduct in their official capacities as to

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how they are conducting themselves while they are doing Town business. He said that, to reach outside that arena and bring in personal conduct that may have some impact on that particular provision, is a debatable question and is not clear-cut by any means. He added that nobody is going down that road until you have a conviction and found guilty of some act.

5:40 PM Ms. O'Donoghue suggested removing the subject of DUI completely; that we have a code of conduct for while someone is in his/her official capacity doing Town business, whether they're a volunteer or a paid employee, so what about the bullying and harassment and all of that that we've all seen go on for years while he's been running Select Board, Planning Board, and other committee meetings, asking if it isn't time to do something about that.

Mr. Pomerleau said that if there are issues involving allegations of conduct that come under that provision in our ordinance, then people have to bring forward those allegations. He added that, clearly in State statute and in our Charter, for us to consider the removal of any appointed official, then that appointed official is entitled to due process, a fair hearing where evidence is presented and they have a chance to face their accusers, cross-examine, present a defense, etc.

5:42 PM Ms. O'Donoghue asked, regarding the process, what she should do now; that she isn't alone. She added that her mother went through this and you know this; that she isn't alone in this Town; that she is tired of seeing people being bullied and not wanting to be involved in this Town. She said that we have a lovely Town with a lot of people and we're having trouble filling committees; that we can't even get people to come to SB meetings; why, we know why. She asked what her next move was to get this done.

Mr. Pomerleau said that he didn't want to advise her on what to do and prejudice himself before we get down that road. He added that he hardly thought that anybody could put their finger on poor meeting attendance, lack of volunteers; that that has been going on for a long time and is certainly not unique to Eliot; that every town has difficulty with public apathy, volunteers, etc.; that he thinks that is a little too broad. He said that you (citizens) have to decide what you want done and present it.

5:43 PM Mr. Lee said that he would be happy to help anyone when it comes to the administrative procedures necessary, what one would have to do to prepare a complaint, etc. He added that, rather than do it here in a public setting, if she wanted to come in to see him, he could show her the ordinance, Charter, code of conduct, the things that would come into play that she would base her arguments around.

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F. Approval of Minutes of Previous Meeting(s)

5:45 PM Motion by Mr. Murphy, seconded by Mr. Pomerlau, to approve the special minutes of July 6, 2017, as written.

Roll Call Vote:

Mr. Murphy – Yes

Ms. Davis – Yes

Mr. Pomerleau – Yes

Mr. Hughes - Yes

Unanimous vote to approve motion.

5:49 PM Motion by Mr. Murphy, seconded by Mr. Hughes, to approve the minutes of June 22, 2017, as amended.

Roll Call Vote:

Mr. Murphy – Yes

Ms. Davis – Yes

Mr. Pomerleau – Yes

Mr. Hughes - Yes

Unanimous vote to approve motion.

G. Public Works

5:50 PM 1) Sewer Allocation Request

This was a request for a family allocation of 120 gpd for an accessory dwelling unit. There is adequate volume for this requested allocation.

Ms. Davis said that she thought the SB delegated this to Mr. Lee and the Sewer Superintendent.

The SB agreed that they had.

5:51 PM 2) Worster Road – Additional Information

Mr. Lee discussed Mr. Moulton's memo that explained why, for the Worster Road repairs, why we received the money, how the money was agreed to, where the quote came from, and pictures of the damage that led to both the contractor and Public Works Director agreeing that they had, indeed, damaged the road. He

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added that the Finance Director also wrote a memo explaining how payments for property damaged is handled within the financial system; that it's money outside the budget, just like insurance reimbursements.

Mr. Hughes said that he still can't see where this damage is and he would like to schedule a time with Mr. Moulton so that he could show me.

Ms. Davis said that we have just received this information from the Finance Director and haven't had time to review it.

The SB agreed to table this for two weeks. Mr. Lee will arrange a time when Mr. Hughes can get together with Mr. Moulton.

H. Department Head/Committee Reports

5:54 PM 1) Update: Solar Array Project – No Correspondence

Mr. Lee said that we got some information from the second company we've been working with, the company who did the solar panels at the Public Works Garage. He explained that the back log of getting solar panels and their current queue of projects is such that, by the time we felt comfortable approving any kind of a power purchase agreement (PPA), they said that they couldn't do it in 2017; that if the Town were interested in continuing with them, we would have to look at an install for 2018, which takes us from 100% credit to 95% credit. He added that we are going to have a special meeting next week and, when we understand it better and can answer some questions, we would like to possibly have a workshop and/or public hearing on September 3.

Ms. (Christine) Bennett said that ReVision said that, if the SB could make a decision within the next two weeks, they would honor the 2017 installation.

Mr. Hughes asked if we had a draft PPA to look at.

Mr. Lee said that it just came in today at 5PM. He added that he told them that he did not think, reasonably, that there was any way that a full PPA is going to be approved by this Board in two weeks because he's seen the attention to detail and some of the things that have caused concern. He said that this will make it a bit more difficult but we are still going to try to make it work and bring it to you so you can at least consider it for next year.

I. Administrative Department

5:57 PM 1) Town Manager Report

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There were no comments from the SB.

Mr. Lee said that we have a final budget process calendar and he will put it in the SB mailboxes and send it out to the Budget Committee

a) Financial Reports

There were no comments from the SB.

5:59 PM b) Report of Mil Rate & Overlay 2017-2018

Mr. Lee said that our mil rate went from 14.05 to 14.3 and that is a 25-cent increase that equates to 1.78% increase; that it left us with an overlay of \$36,214, which he thought was okay because we are close to our fund balance and he didn't want the mil rate to go up any more than necessary. He added that, by way of comparison, South Berwick's mil rate went up .7 and ours went up .25.

6:02 PM c) Mic/Camera Improvements – No Correspondence

Mr. Lee said that we have mics, now, and waiting for two wide-angle, high-definition cameras that will show more of the room and clearer viewing; that the cameras will be coming very soon and are the IT upgrades he had suggested during budget hearings for sound and sight on our streaming.

Mr. Meyer said that he was wondering how the different committees and boards get training on this.

Mr. Lee said that the fellow who brought the system in provided training to two of us on staff and, in turn, they provided training to the staff people who are helping the PB and BOA; that we trained other staff people to work with their committees. He added that this system could be used for off-site venues.

Mr. Murphy suggested having two mics, one for Mr. Lee and the other for the audience.

Mr. Lee agreed that was a very good point; that he thinks there's a bit of money left from the amount allocated for this and could likely get another hand-held mic. He will also look at having a permanent mic at his seat.

6:06 PM d) Update of Bidding the Audit – No Correspondence

Mr. Lee said that the audit bid is going to have to happen during the course of this year and be awarded in the spring for the following year because right after we close on June 30th, as part of the audit process, they come in and assist with

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closing out that audit and begin the pre-audit of the year that just closed; so, they have already entered and been here a couple of times and so we will use them for this year and bid it during the next year.

6:07 PM 2) Application for Catered Function/Raitt Farm

Mr. Murphy moved, second by Mr. Hughes, that the Select Board approve the Application for Catered Function by Qualified Catering Organization, namely the function at the Raitt Farm done by Mainely Bartenders on September 30, 2017 from 2PM to 6PM.

Roll Call Vote:

Mr. Murphy – Yes

Ms. Davis – Yes

Mr. Pomerleau – Yes

Mr. Hughes - Yes

Unanimous vote to approve motion.

The SB signed the pertinent document.

6:09 PM 3) Workshops – Fall/Early Winter

Ms. Davis said that we need to sit down and talk about this regarding negotiations; that we are going to have to look at this carefully.

Mr. Murphy said that he was still working on the details of updating the Ordinance Governing Boards, Commissions, and Committees; that what was concerning to him is that if we update that to the correct some of the actions that have taken place in the Town the past couple of years, it is going to require a Charter amendment, and he thinks it's almost going to have to be done simultaneously; that he thinks we should have a public hearing to inform the public of the complications involved and to get comments and suggestions from the public.

6:11 PM Mr. Pomerleau said that he had an issue with that; that the first order of business, when we reviewed the ordinance, was to make it comply with the Charter; that the ordinance must follow the Charter and any other area of practices, policies, etc. have to comply with the Charter first. He added that amending the Charter is the same process as the original process was – we have to elect a charter commission.

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6:12 PM 4) Town Hall HVAC Bids

Mr. Lee said that we had an engineer help us with various options on the best way to do heating ventilation and air conditioning in this building, both as it is now and with an eye toward expansion. He added that he and the Energy Commission put together a very extensive request for proposal (RFP); that we had five people sign in to do the review but only two of them bid, he believed, and you see the range of pricing. He said that we have nowhere near enough money to do any of those options, so, this is strictly for the purposes of putting it into the capital improvement plan (CIP) and try to guesstimate how much time we have left before the compressor, or some other unit, goes. He said that he talked with the low bidder about reductions and the bidder said that he could abandon the duct work, which would be an almost \$9,000 savings and would bring us down to about \$110,000 for a complete HVAC overhaul. He clarified that this is all part of his CIP and is just information for the SB at this time.

6:14 PM Ms. Adams asked why they recommended removing that duct work.

Mr. Lee said that he wasn't sure; that he thought they might have been thinking of an ideal situation. He added that at some point in the future we are going to have to look at is some sort of expansion to the Town Hall because we're so cramped for space; that we need to think about if it's a stand-alone project, it's going to be very disruptive and costly but if we do it as part of an overall project, if we can wait that long, it would be better and cheaper.

Mr. Fisher suggested that the duct work left could make good runs for the electrical systems.

6:16 PM 5) CSD Mini-Bus – No Correspondence

Mr. Lee said that the underframe is broken in a couple of places and will never be able to be repaired, that we know of; that he did get a quote from someone and they would be willing to warranty it but the sense he got from them was that it wouldn't be worth it, given its age. He added that he and the ECSD Director are looking at options; that we aren't ready to answer questions as they are just beginning to deal with this.

6:20 PM 6) LD1 Update (Attorney Seel)

Mr. Lee said that he had some questions from staff and others about us doing the cuts to make LD1 work; whereas, back in 2013, the Board went back to the voters to approve the cuts, and why we did it 'this' way this year. He added that he wrote the question to MMA about what happens if the voters approve every article you put in front of them but the net effect is to exceed LD1 and they vote down LD1,

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which was the case this year. He read the MMA Memo, which describes the procedure based on the intent of the legislature. He said that he thinks what they are anticipating is that you commit taxes so quickly after Town Meeting that you wouldn't have time to consider what you want to cut before you commit the taxes; that we made the cuts prior to committing the taxes, which is as good as leaving that money in fund balance to be used at a later date; so, he's not sure we have a problem and thinks we did it the better way. He also asked the question regarding getting unanticipated money from the State and, based on Attorney Seel's response, he will talk with Kate Dufur, who is one of our legislative advocates, to see what the legislative intent is and what that process would be for the Town, as there is a new amendment, regarding getting new revenue-sharing money, that describes what you can do with that money.

6:25 PM Ms. Davis commented that it worked good for the school – they put that question on the ballot, which asked if they got it, can they spend it; but how you would balance that against LD1 in our case might be difficult.

Mr. Lee agreed, adding that having worked with the SB for a while, there's the issue of transparency; using the example of getting an extra \$100,000, he asked if somebody shouldn't approve what we are going to do with it, do we need it for this year, do we leave it in reserve for next year, is it all going toward people or towards capital improvements we've needed for many years; what's the priority.

Mr. Pomerleau said that he agreed with the question on this (LD1) with Mr. Lee; that there was a paragraph in there that says any revenue raised in excess of the LD1 cap should go into a reserve fund that was to be used for further reductions against LD1 the following year and he had questioned whether what we were doing was correct. He clarified that, regarding what prior boards did with LD1, they didn't have to go back to the public to approve the cut, they wanted to try to get around LD1 and give the public another vote at it – asking if they wanted to override LD1 and, if not, did they want to approve the cuts.

6:27 PM Mr. Lee said that he talked with the Finance Director about setting up a special fund and doing it by the book, here; that even though we did it in a way that should make voters feel even more safe, as it isn't even showing up as being expendable, we really ought to follow 'this' and commit the amount of every article that was appropriated and, then, take the amount we're not supposed to spend, put it into that special account, and identify which lines have to be frozen.

Ms. Davis said that it seems easier not to tax the people an excess amount than try to keep a running tab of where it's at and what to do with it.

Mr. Lee agreed.

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Ms. Davis said that, if we could get around it and do it our way, it would be better.

6:28 PM 7) Public Hearing for Marijuana Moratorium – No Correspondence

It was agreed that the Chair and Mr. Lee would discuss which agenda to put this public hearing on, as well as the one for the local food ordinance.

J. Old Business: Aging-in-Place By-laws (Revised)

6:31 PM Ms. Davis asked if the SB was ready to vote on this.

Mr. Hughes asked about the blank with 3.3.

Mr. Lee said that that would be filled in with General Assistance Administrator; that you could approve this with that amendment.

Mr. Pomerleau moved, second by Mr. Hughes, that the Select Board approve the proposed by-laws for the Eliot Aging-in-Place Committee, dated 8/11/2017, as amended.

Roll Call Vote:

Mr. Murphy – Yes

Ms. Davis – Yes

Mr. Pomerleau – Yes

Mr. Hughes - Yes

Unanimous vote to approve motion.

K. New Business:

6:33 PM 2) Authorization to issue Tax Anticipation Note

Mr. Murphy moved, second by Mr. Hughes, that the Board of Selectmen so vote:

1. That under and pursuant to Title 30-A, §5771 of the Maine Revised Statutes, as amended and supplemented, there be and hereby is authorized the issuance of up to \$2,125,000 principal amount of Tax Anticipation Note of the Town in anticipation of the receipt of taxes for the municipal fiscal year which commenced July 1, 2017 and ends June 30, 2018; and
2. Said note shall be dated on or around September 1, 2017, shall mature on or before June 30, 2018, shall be signed by the Treasurer and countersigned by the Chairman of the Board of Selectmen, shall be issued

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on an as-needed basis, shall bear interest at the rate of 1.43% per annum calculated on the basis of actual days elapsed in an assumed 365-day year, shall be payable at Key Bank N. A. and shall otherwise be in such form and bear such details as the signers may determine; and

3. That said note is hereby sold and awarded to Key Bank N. A. in accordance with its proposal dated August 7, 2017; and
4. Said Note is hereby designated as a qualified tax exempt obligation of the Town for the 2017 calendar year pursuant to the Internal Revenue Code of 1996; and
5. That all things heretofore done and all action heretofore taken by the Town, its municipal officers and agents in the authorization of said Note is hereby ratified, approved and confirmed and the Treasurer and Chairman are each hereby authorized to take any and all action necessary or convenient to carry out the provisions of this voting, including delivering said Note against payment therefore.

Roll Call Vote:

Mr. Murphy – Yes

Ms. Davis – Yes

Mr. Pomerleau – Yes

Mr. Hughes - Yes

Unanimous vote to approve motion.

L. Selectmen's Report:

There were no Selectmen's reports tonight.

M. Committee Vacancy Report

6:38 PM Mr. Lee said that, along with the Aging-in-Place Committee that's been created, the Harbor Commission was dissolved and replaced with a Harbor Committee, which is an advisory committee to the SB, as well as the creation of the Clean Water Committee; that, if anyone is interested, we have applications online or you can stop by the Town Office for an application and we would love to have people sign up for these committees.

N. Executive Session

6:39 PM Mr. Pomerleau moved, second by Mr. Hughes, to enter into executive session as allowed by 1 M.R.S.A §405.A Personnel Matters (Meyer complaint).

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Roll Call Vote:

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

Unanimous vote to approve motion.

7:38 PM Out of executive session.

No action was taken.

O. Adjourn

There was a motion and second to adjourn the meeting at 7:39 PM.

VOTE

4-0

Chair votes in the affirmative

Approved: August 24, 2017

S:/ Mr. Richard Donhauser, Secretary