TOWN OF ELIOT – BOARD OF APPEALS MEETING

July 15, 2010

PRESENT: Ed Cieleszko, Chairman; Peter Billipp, Vice-Chair; Philip Lytle; Jeffrey Cutting and Bill Hamilton; Ellen Lemire, Alternate

ABSENT: John Marshall

OTHERS PRESENT: Dana and Karen Norton, Mr. and Mrs. Michael McKinney, Larry Dow, Tony Manero, Barbara Boggiano, Recording Secretary, Shirley Jacques and other community members

1. 7:00 PM: ROLL CALL

Chairman Cieleszko called the meeting to order at 7:00 p.m. and announced that John Marshall is absent. He stated the other Board members were present and acknowledged that the applicant was present. Chairman Cieleszko said that CEO Paul White was occupied, but that he would continue. He outlined the procedure one more time so that everyone would be on the same page.

2. PUBLIC HEARING:

A. Request by Dana Norton, 455 Main Street, Eliot, Maine (Map 4, Lot 21) for an Administrative Appeal against the Code Enforcement Officer's interpretation of the Home Business Ordinance.

Chairman Cieleszko said the Board has the authority to hear appeals under Sec. 45-49(a) of the ordinance. He said the voting members for tonight would be: Bill Hamilton, Phil Lytle, Peter Billipp and Jeff Cutting, all of whom indicated there was no conflict of interest when asked by the Chair.

Chairman Cieleszko said that Dana Norton has shown ownership of the property through deed.

Chairman Cieleszko addressed the issue of timeliness of the appeal and asked Mr. Norton what date or what thing is the Board looking at to determine why he should bring this appeal to the Board this evening.

Mr. Norton replied he believed it has been going on all along. Mr. Norton said that he believes the ordinance should allow the consideration of cars parking for his business as if it were someone pulling into a meat market to buy a package of meat – as a product. He said once someone leaves their car with him, it is his product and his storage.

Chairman Cieleszko said the Board has been over this [argument] with Mr. Norton previously and asked him what decision did the CEO make and on what date. He asked Mr. Norton what is the decision that he is appealing, which has to have been made within the last 30 days of this application. Chairman Cieleszko stated the Code Enforcement Officer had to make an original decision that Mr. Norton disagrees with that he has not appealed before.

Mr. Hamilton said he wanted to clarify that the appeal has to be 30 days from when the CEO made his decision.

Chairman Cieleszko said the appeal has to be within the 30 days of the CEO's decision, or 30 days prior to his decision.

Mr. Norton said he spoke with Mr. White within 30 days, but he does not have any paperwork. He said it has been ongoing, but not within 30 days. He said he had not appealed the interpretation before and he was instructed by the Board of Selectmen to do that.

Chairman Cieleszko said that in 2009 Mr. Norton had a Notice of Violation letter that he could have no more than four cars parked at his garage. He said April 21, 2005 Mr. Norton received a Notice of Violation letter stating that no more than four cars could be parked behind the fence, and that was from then CEO Don Lagrange. He said on May 19, 2005 the Board of Appeals denied Mr. Norton's appeal, when he brought forth his argument that they were products, not cars. Chairman Cieleszko said that Mr. Norton attempted a reconsideration, but that he failed the time limits of that test and his appeal was not re-considered by the Board of Appeals.

Chairman Cieleszko said that Mr. Norton brought forth a more stringent argument that the cars were products - which is not among the definitions of cars in the code when talking about parking. He said from his viewpoint, Mr. Norton did not have standing for this appeal.

Chairman Cieleszko said the Board of Selectmen are mistaken that there is no timeliness of this appeal and the Board of Appeals can not hear Mr. Norton's case. He said that Mr. Norton has to show him somewhere that he has timeliness to ask for an administrative appeal at this time.

Mr. Norton produced a copy of MRS 30-A, §2691, which he read, indicating that a hearing could be held within two years after being denied. Chairman Cieleszko said that this subsection refers to variances in the zoning ordinance, not administrative appeals.

Mr. Norton said that this refers to the zoning ordinance. Chairman Cieleszko said that variances are part of the zoning ordinance. Mr. Norton said it is the interpretation of the ordinance and the conditions of approval that need clarification.

Chairman Cieleszko asked Mr. Norton if that is his argument. Mr. Norton replied that it is in the municipal and county code. Chairman Cieleszko asked that he bring the document forward.

Mr. Hamilton handed Chairman Cieleszko a copy. Chairman Cieleszko informed Mr. Norton that this argument could be raised if he was discussing a variance from a set back, and this section 2691 only refers to variances.

Mr. Norton said it says zoning ordinances and he has been trying to get this straightened out for five years.

Chairman Cieleszko said that the Board of Appeals can not straighten this out for Mr. Norton and asked if Mr. Norton had any other information he wanted to give to the Board.

Mr. Norton replied no, not on timeliness. He said there were a couple of originators of the ordinance present who volunteered to offer their unsolicited opinion on this.

Chairman Cieleszko said if the Board gets to that point, he would entertain testimony from witnesses. He asked Mr. Norton for a minute so the Board could review the document.

Chairman Cieleszko asked if Mr. Norton knew what version this is and from what year.

Mr. Hamilton said 30-A §2691 is State law. Mr. Billipp said it appeared to be an entirely different format. Chairman Cieleszko said he found it on page 65 and read from the book.

Mr. Hamilton thought it did not cover this particular case. Chairman Cieleszko said it does not address that issue any more, it is not valid and this is not grandfathered.

Mr. Billipp asked if the Board could get the book that this excerpt is from. Mr. Hamilton said he did not believe it applies to this situation. Mr. Billipp said it does, if the Board wanted to pursue new evidence.

Mr. Hamilton said no Board may affirm jurisdiction of any matter unless by charter or ordinances and he felt that their hands are tied by the time limit.

Chairman Cieleszko asked if any Board member had an issue with this section of State law.

Ms. Lemire said she can not reference it. Chairman Cieleszko said this section refers to variances only.

Chairman Cieleszko asked the Board if there were any questions regarding the timeliness of Mr. Norton's request.

Mr. Hamilton said the Board can only hear appeals within 30 days of an action, or inaction of the Code Enforcement Officer, or Planning Board, and that is the Board of Appeals' limit. He said it is sort of like appealing to Superior Court, you have 45 days, and on the 46th day you have lost your appeal because you are one day late, and that applies here.

Ms. Lemire asked Mr. Norton if the CEO had ever written and mailed him a Notice of Violation on parking. Mr. Norton replied not within the last 30 days.

Chairman Cieleszko again asked if everyone was comfortable with the timeliness issue. He said it is in their manual and the Board of Appeals has no authority to change the appeal period.

Mr. Billipp said he was not at the last Board of Appeals meeting and asked Mr. Norton to go over what happened.

Mr. Norton replied he went to the Planning Board and they decided on April 20th to deny his application, and the decision could be appealed within 30 days, but the 30 days lapsed.

Chairman Cieleszko said this was last month's case. Mr. Billipp said that Mr. Norton was late on that. Mr. Lytle said he missed the 30 days window for an appeal.

Mr. Cutting said that the Board of Selectmen sent Mr. Norton back to the Board of Appeals and asked when did that recommendation happen. Mr. Norton said it was at their last meeting.

Ms. Jacques said it was June 24th. Mr. Billipp said the Board of Selectmen sent him back here.

Mr. Norton said the Board of Selectmen advised him that he was within 30 days. He said he went to the Planning Board and they turned him down and he went to the Board of Selectmen. Mr. Norton said he went to the Board of Appeals but there was a mistake made on the dates and that the Board of Selectmen gave him the wrong information and he went to the Board of Appeals and then he went to the Board of Selectmen who sent him back here.

Mr. Norton asked if he could appeal the Board of Selectmen. He said he was asking for an explanation of the ordinance.

Mr. Cutting said he was not at the last Board of Appeals meeting and asked who had told him that.

Mr. Norton replied it was Roland.

Ms. Lemire said the Board of Selectmen waived the fee for Dana Norton.

Mr. Cutting said he was confused about that.

Mr. Norton said they wrote it off the first time and asked what else he could do.

Mr. Cutting asked how did that get on [the agenda]? Chairman Cieleszko said the Board of Selectmen waived the fee from the original hearing and applied it to this one.

Mr. Cutting asked if the Board of Selectmen had sent Mr. Norton back to the Board of Appeals.

Chairman Cieleszko said the Board is in a very clear place, and that is, they can not hear this case. He closed the hearing at 7:30 pm.

Mr. Hamilton moved that the Board of Appeals deny the application of Dana Norton for his request for an administrative appeal against the CEO based on a lack of timeliness, seconded by Mr. Billipp.

Discussion:

Mr. Hamilton said the Board's hands are tied and that Mr. Norton asked for final recourse – and the answer is the State Superior Court. He said the Board can not go on any further, even if they wanted to.

Chairman Cieleszko said the Superior Court is not the end of the line, it is the next step.

Mr. Billipp said he is concerned about the timeliness in addressing the specific decision or indecision of the CEO. Chairman Cieleszko said that Mr. Norton has a long history with the Board of Appeals.

Mr. Billipp said he knew about that, but there is nothing recent and Mr. Norton is looking for an interpretation of a definition that is not in the Board of Appeals' purview. He said he agreed the Board can not hear the case.

Mr. Lytle said he too agreed on the time limits, but said that Mr. Norton did have another option. He said he could go before the town, for a vote and possibly get the ordinance changed, but that the Board of Appeals' hands are tied.

Mr. Cutting said based on the fact there are no other violations, he also agreed.

Ms. Lemire agreed as well considering there were no other violations within the last 30 days.

Mr. Lytle thought that they could send it back to the Planning Board. Chairman Cieleszko said they have reviewed the case recently. Mr. Lytle asked if they have reviewed the information.

Chairman Cieleszko said they have a letter from Larry Dow but they are not at that point because, based on time limits of not being appealed within 30 days, the Board has to deny the request.

Vote taken by a show of hands and the motion passed unanimously, 4-0, to deny Mr. Norton's request for an administrative appeal. The Chair concurs with the majority.

Mr. Norton asked if he got a letter from Paul White, could he file an appeal.

Chairman Cieleszko replied no because this is the same issue that Mr. Lagrange spoke to Mr. Norton about. He said when Mr. Norton first applied he had an opportunity, and he could have been turned down then, and we would not be here. Chairman Cieleszko said every decision by the Board since that time has been to try to hold Mr. Norton to that decision. He said Mr. Norton has used his opportunities to appear in front of the Board of Appeals to have this matter addressed and again, the next step is to either consider Phil Lytle's suggestion to get the ordinance changed by town vote or to bring this matter to Superior Court.

3. REVIEW AND APPROVE MINUTES AS NEEDED:

Chairman Cieleszko asked if there were any corrections, additions or deletions to the minutes of May 20, 2010. One correction was noted on page 1 by Bill Hamilton (8 foot).

Jeff Cutting moved the Board accept the minutes of May 20, 2010 as amended, seconded by Ellen Lemire. Vote taken by a show of hands: 3-0-1 (Peter abstained). Motion passed.

Chairman Cieleszko asked if there were any corrections, additions or deletions to the minutes of June 17, 2010. A few were noted.

Phil Lytle moved the Board approve and accept the minutes of June 17, 2010 as amended, seconded by Ellen Lemire. Vote taken by a show of hands: 3-0-2 (Jeff Cutting and Peter Billipp abstained).

4. OTHER BUSINESS AS NEEDED

Chairman Cieleszko said he was reminded that they have to appoint officers, which should have occurred at the first meeting after the town meeting.

Moved by Phil Lytle, seconded by Ellen Lemire to nominate Ed Cieleszko as Chairman.

Moved by Phil Lytle, seconded by Ellen Lemire that nominations cease. Vote taken by a show of hands on both motions and passed unanimously to appoint Ed Cieleszko is Chairman.

Moved by Phil Lytle, seconded by Ellen Lemire to nominate Peter Billipp as Vice-Chair. Moved by Phil Lytle, seconded by Ellen Lemire, that nominations cease.

Vote taken by a show of hands on both motions to appoint Peter Billipp as Vice Chair and motions passed unanimously with Peter Billipp abstaining.

Moved by Phil Lytle to nominate Bill Hamilton as Secretary, seconded by Peter Billipp.

Moved by Phil Lytle, seconded by Peter Billipp that nominations cease.

Vote taken by a show of hands to appoint Bill Hamilton as Secretary and motion passed unanimously with Bill Hamilton abstaining.

Bill Hamilton said it was brought up this evening by Dana Norton that the Board of Selectmen waived the fee for their hearing tonight, yet they have a budget they have to meet and it costs money to advertise and mail letters to every abutter. He said he did not realize that the Board of Selectmen has the authority to waive fees.

Chairman Cieleszko said he should not have spoken flippantly, but he assumed they had the authority to do that because no one else does.

Mr. Billipp asked if the Board of Appeals could check on that.

Mr. Hamilton asked if there was a full vote of the Board of Selectmen to waive Mr. Norton's fee. Chairman Cieleszko asked if Ms. Lemire, in her capacity as recorder for the Board of Selectmen if she could shed any light on that.

Ms. Lemire said it was a consensus by the Board to waive this fee for this particular hearing.

Mr. Lytle said the problem is the Board of Selectmen gave him the wrong information.

Chairman Cieleszko said that the date of the Planning Board decision was not the date of the letter and Paul White told Dana he still had two days. He said this was all brought up at the last meeting. He said everyone told Mr. Norton not to apply for an appeal, but he did anyway.

Mr. Cutting wanted to know how did the Board of Selectmen get around not issuing a consent agreement. He asked why Mr. Norton thought he could come back to the Board of Appeals.

Chairman Cieleszko replied he did not know why.

Mr. Billipp asked if the Board of Selectmen understood the situation.

Ms. Lemire replied they knew and that she was surprised when they recommended that Dana Norton come back to the Board of Appeals. She said that several members of the Board of Selectmen have been on other town boards for some time.

Chairman Cieleszko said that Dana Norton is a nice guy.
Ms. Lemire said it is not fair to him.

Mr. Cutting said that something needs to be said to the Board of Selectmen because he does not think they should be sending people back to the Planning Board or Board of Appeals.

Mr. Hamilton said the Board of Appeals gave the Board of Selectmen suggestions on the Consent agreements.

Mr. Cutting said it is not fair to the citizens of the town and that it is a waste of their money.

A brief discussion ensued.

5. **ADJOURN:8**

Peter Billipp moved to adjourn the meeting at 7:52 p.m., seconded by Jeff Cutting. All were in favor by a voice vote.

Respectfully submitted,

Barbara Boggiano
Recording Secretary

Approved by: _____
Ed Cieleszko, Chairman, Board of Appeals

Date approved: 9-16-10