

**TOWN OF ELIOT
BOARD OF APPEALS MEETING**

March 17, 2011

Present: Chairman Ed Cieleuszko, Vice-Chair Peter Billipp, Phil Lytle, Jeff Cutting, and Ellen Lemire, Alternate and John Marshall, Alternate

Absent: Bill Hamilton

1. CALL TO ORDER/ROLL CALL:

Chairman Cieleuszko called the meeting to order at 7:03 p.m. All members were present with the exception of Mr. Hamilton. Chairman Cieleuszko appointed Ellen Lemire as a voting member for tonight. He asked if the Recording Secretary had the recorder and she replied she did not.

2. REVIEW AND APPROVE TWO SETS OF MINUTES:

Chairman Cieleuszko said that, before the Board addresses the minutes of December 16, 2010, he would precede the discussion by reading a memo from the Board of Selectmen to all Board Chairs regarding the timeliness of submission of minutes.

Chairman Cieleuszko asked if there were any corrections, additions or deletions to the minutes of December 16th, 2010. There were none.

Ellen Lemire moved the Board accept the minutes of December 16, 2010 as presented seconded by John Marshall. Vote was taken by a show of hands and the motion passed 4-2 (Peter Billipp and Jeff Cutting abstained).

Chairman Cieleuszko asked if there were any corrections, additions or deletions to the minutes of January 20, 2011. Corrections were noted on pages 1, 10 and 11 by Mr. Billipp and Mrs. Lemire.

Peter Billipp moved to approve the minutes of January 20, 2011 as amended, seconded by Ellen Lemire. Vote was taken by a show of hands and the motion passed, 4-2 (Phil Lytle and Jeff Cutting abstained).

3. OTHER BUSINESS AS NEEDED

a. Effect of Eliot Shores Decision on Notices of Violation:

Chairman Cieleuszko noted that the Board had received a letter from Atty. Chris Vaniotis regarding the decision and how it impacts the CEO's issuance of Notice of Violation letters. He said that Atty. Vaniotis has suggested changing the language a little bit so that the owner knows he does not have to go to the Board of Appeals but can go to the Board of Selectmen without input from the Board of Appeals.

Chairman Cielezsko said that, according to Atty. Vaniotis's suggestion, Notice of Violation letters should include the following language: "... Pursuant to the decision of the Maine Supreme Judicial Court in Eliot Shores, LLC vs. Town of Eliot...any decision of the Board of Appeals would be advisory." He said, referring to the letter from Atty. Vaniotis, the Board of Selectmen could take the BOA decision into account in any enforcement action.

There was further discussion by the Board regarding the letter from Atty. Vaniotis.

Mr. Marshall said the whole issue felt nebulous to him.

Mr. Billipp asked Chairman Cielezsko if he could go back and review the case.

Chairman Cielezsko gave a brief overview. He said that Eliot Shores appealed a CEO decision re-designating their development as a subdivision.

Chairman Cielezsko said that only the Board of Appeals denied the appeal by Eliot Shores LLC and the Superior Court supported the Board of Appeals' decision. He said the Maine Supreme Court looked at it and decided the CEO could only recommend an action to the Board of Selectmen, which was appealable.

Chairman Cielezsko said that the Board of Selectmen can enforce any action, which would then be appealable.

Chairman Cielezsko said that the CEO's opinion is advisory and that it can be questioned through the Board of Appeals by the land owner. He said Atty. Vaniotis has indicated that the decision of the Board of Appeals is only advisory, according to the decision by the Supreme Court, and that the CEO can take their opinion, or recommendation to the Board of Selectmen for their decision and any legal action. He said that the CEO and Atty. Vaniotis will be working on changing the language of the Notice of Violation letter.

b. Notice of Decision letter: Chairman Cielezsko said that the Board also had a copy of an e-mail from CEO Jim Marchese sent to Atty. Vaniotis, along with the reply from him to the CEO, regarding language in the Board of Appeals' Notice of Decision {NOD} letter.

Chairman Cielezsko said that, when an appellant comes before the Board with an administrative appeal against the CEO, the NOD letter states that the applicant has the right to appeal the Board of Appeals' decision to Superior Court within 45 days from the date of their decision. He said, in certain circumstances, that it is no longer the case and that all the Board is doing is giving an advisory opinion.

Mr. Cutting said that the opinion of the BOA should go to the Board of Selectmen and they should decide.

Chairman Cieleuszko said that, according to Atty. Vaniotis, the word “appeal” should not be mentioned at all in the Notice of Decision Letter. He said the Notice of Decision letter should be written without referring to “45 days to appeal to Superior Court.” He said the Board can deny the appeal, and inform the applicant that their decision will be given to the Code Enforcement Officer so a decision could be made by the Board of Selectmen.

Mr. Marshall pointed out that if the Board does not have the ability to approve an appeal, they did not have the ability to deny it, in other words, if they cannot do one, they cannot do the other.

Mr. Cutting questioned whether or not the Board of Appeals may be abolished.

Chairman Cieleuszko said that is unlikely because this only applies to Administrative Appeals of CEO Violation letters based in Chapter 45 zoning.

Mr. Marshall wanted to discuss the recent appeal for the porch, where the applicant came in for a variance, and the Board of Appeals denied his request. He asked if they had the authority to do that.

Chairman Cieleuszko replied yes, because the Notice of Violation was in the Shoreland zone.

Chairman Cieleuszko said if the Planning Board said the project is too close to the road and won't allow it, and they cannot get a Building Permit from the CEO, the Board of Appeals has the authority to address the issue one way or the other.

Ms. Lemire asked, if the CEO finds an owner is in violation, he has to bring that to the Board of Selectmen.

Chairman Cieleuszko replied yes, the Board of Selectmen has to initiate any action.

Chairman Cieleuszko said he was not sure how this will work out and the line referring to the “45 days to appeal to Superior Court” may be removed in the Notice of Decision letter.

Ms. Lemire asked if the line should be removed just for an administrative appeal.

Chairman Cieleuszko replied if the appeal refers to something outside the Shoreland Zone. He said that some Administrative Appeals against a Planning Board decision may be applicable, so maybe the line should be “the applicant may or may not have 45 days to appeal the Board's decision.”

Mr. Marshall said that not everyone can afford a lawyer and that this matrix language has been created for people to use. He thought the job of the Board of Appeals is to help people through the complexities of the ordinances.

Mr. Billipp suggested putting in the language, or taking it out, depending on the situation.

Chairman Cieleuszko agreed that they will verify whether or not the line is in or not, depending on each case.

c. Town Report Draft: Chairman Cieleuszko said the Board had a copy of the proposed report he will be submitting and asked for their input.

Mr. Marshall said he thought that he and Ellen Lemire are alternate members, not “associate,” as written.

Chairman Cieleuszko said that, according to the by-law's, it mentions associate members. He added that there were changes to the manual after the last revision.

Mr. Marshall asked whose binder was the Chair referring to.

Chairman Cieleuszko responded MMA's.

Mr. Marshall asked the Chair to remember who the Maine Municipal Association is.

Chairman Cieleuszko said it was noted that alternate members could not speak after the public hearing was closed. He said he did not like that at all. He noted that is why he likes to refer to them (John and Ellen) as associate members, not alternate members.

Mr. Marshall wanted to know how do they refer to them as voting members when there are only five members per meeting.

Discussion continued.

Ms. Lemire asked if the Chair had any definitions for each one so they could see the differences.

Chairman Cieleuszko replied no, they did not pursue that.

Mr. Billipp thought they should call them associates, since that is what is mentioned in the Board of Appeals' by-laws.

Chairman Cieleuszko referred to Sec. 45-47 and read on page 45-16 Appointment and Composition of the Board of Appeals: 5 regular members and 2 associates.

Mr. Cutting said that the associate members could talk up until the public hearing is closed, and then after that, only the voting members can speak.

Mr. Marshall said he did not have a problem with that.

Ms. Lemire asked if Bruce Trott {former Chair} did that.

Chairman Cieleuszko replied no, everyone was polled afterward.

Mr. Marshall asked if that is what they should be doing. He wanted to know if he could not vote, why does his opinion matter.

Chairman Cieleuszko disagreed and said associate members should be able to supply input until the end of deliberations.

Mr. Billipp asked the Chair what did the ordinance say.

Chairman Cieleuszko said it is moot.

Mr. Cutting wanted to know if maybe the Board should get a legal opinion from Atty. Vaniotis.

Ms. Lemire said if she cannot vote, then she should not interject her opinion.

Mr. Marshall said his opinion could influence the other members.

Chairman Cieleuszko said he will make sure, before closing the public meeting, if the associate members have any other comments they would like to make.

Mr. Billipp and Ms. Lemire offered a few corrections to the Report. The consensus was the report should be submitted as amended.

Chairman Cieleuszko asked the Recording Secretary to type the report and e-mail it to Barbara Thain. He noted the report was due by March 31st.

d. Recusals/Conflict of Interest: Chairman Cieleuszko said that the meeting that he and Bill Hamilton attended related to recusals.

Mr. Marshall asked who sponsored the workshop.

Chairman Cieleuszko replied SMRPC.

Mr. Marshall said that they are a private organization and asked what the ordinance mentioned.

Chairman Cieleuszko referred to Sec. 45-48, Duties and Proceedings, but said if a board member steps down, they can still sit in the audience and speak as a citizen of the town.

Mr. Marshall and Ms. Lemire noted that a conflict of interest by one member shall be decided by the majority of the voting members – before the hearing.

Mr. Marshall said if he felt he had a conflict, he would not sit in on the proceedings.

Mr. Billipp added that if he thought there was a conflict, he could bring it up for a vote.

Chairman Cielezsko said that was all he had for issues and asked if anyone else had something to discuss.

Ms. Lemire read page 18 from the MMA manual on "Failure to Abstain" saying that the court could declare the board's vote void if challenged, if a board member fails to step down and abstain or disclose the nature of the conflict.

Mr. Billipp asked if there was some place where "a conflict of interest" is spelled out?

Chairman Cielezsko replied it is in the Board of Appeals' manual.

Ms. Lemire asked if there were any appeals coming up next month.

Chairman Cielezsko said it is too early in the month at this point.

Mr. Marshall asked if there was a sense on how the new CEO was doing.

Chairman Cielezsko he has heard very good responses from people in the town.

Ms. Lemire said that Jim Marchese is an engineer.

Mr. Marshall thought it is important that Board members live in town.

There was no other discussion.

4. ADJOURN:

Phil Lytle moved to adjourn the meeting at 8:06 p.m., seconded by John Marshall. Voice vote was taken with all in favor. Motion passes.

Respectfully submitted,

Barbara Boggiano
Recording Secretary

Approved by: _____
Edward Cielezsko, Chairman
Eliot Board of Appeals

Date approved: May 19, 2011