Town of Eliot

REGULAR PLANNING BOARD MEETING MINUTES September 18th, 2012 7PM

ITEM 1 - ROLL CALL

Present: Steve Beckert – Chairman, Jeff Duncan – Vice Chairman, Dennis Lentz, Larry Bouchard, and Greg Whalen.

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 - REVIEW AND APPROVE MINUTES AND INVOICES AS NEEDED

MOTION:
Jeff Duncan made the motion to approve the minutes of the June 5th, 2012 Planning Board meeting, as amended.
Greg Whalen seconded the motion.
Vote: 4-0, Chair concurs.

ITEM 5 - REVIEW OF "NOTICE OF DECISION" LETTERS, AS NEEDED

The Board reviewed the notice of decision letters for the Eliot Community Services Department and Central Maine Power's amended site plan. No changes were made and the letters were issued as written.

ITEM 6 - PUBLIC APPLICATIONS OR PLANNING BOARD BUSINESS TO BE CONSIDERED

A. Public hearing – and continued review of a proposed ordinance amendment (Draft #5) titled, "Amendments to Chapter 1 (General Provisions), Chapter 37 (Streets & Sidewalks), Chapter 44 (Shoreland Zoning), and Chapter 45 (Zoning), of the Municipal Code of Ordinances of the Town of Eliot, Maine, to revise the municipal fee schedule."

Steve Beckert explained the rules of a public hearing and asked Kate Pelletier to summarize the proposed changes for the public.

Kate Pelletier stated that the Planning Board performed a comprehensive review of the municipal fee schedule, which had not been done since 2004. In an attempt to make the fee schedule more user-friendly, fees were reorganized and categorized by department or board/committee. New, more equitable formulas for calculating building, plumbing and electrical permit fees were then established based on the nature of the work, staff review time, and the number of inspections required. Building permit fees, for example, are now based on square footage and finished/unfinished area rather than market value. The problem with using market value as the basis for calculating fees is that it is much too subjective and essentially cannot be proven. Most towns have moved away from this method in favor of using square footage. She stated that a handout is available showing a comparison of existing versus proposed permit fees using

examples of actual building permits issued by the Code Enforcement Officer in 2012 for things like single-family dwellings, pools, sheds and garages. She stated that the proposed fees should now adequately cover the cost of administering and enforcing ordinances and permits so that the overall burden to taxpayers is minimized.

Steve Beckert added that fees associated with for Planning Board public hearing fees had also increased by $25.00

Kate Pelletier stated that the increase was attributed to rising postage costs. She added that a flat fee of $150.00 was also established for Board of Appeals applications that includes all application and public hearing fees.

Public hearing opened.

Nancy Shapleigh, 28 Sandy Hill Lane, asked how much an average permit had increased compared to the old permit fees.

Kate Pelletier stated that it was difficult to provide an estimate as the entire formula for calculating permit fees had changed. Using the existing fee schedule, building permit fees are calculated at $4 per $1,000 of market value whereas the proposed fee structure would base fees on square footage and amount of finished/unfinished area. For example, using the existing fee schedule, building permit fees for a 2,500 sq. ft., 4-bedroom, 2 ½-bathroom home would have been $800 if the owner estimated the market value at $200,000. Under the new fee schedule, the permit fees for that same house would have been $1,540. The electrical permit fees for that house would have been $60 under the old fee schedule and $100 under the new system. She stated that there are other examples when the permit amount may be reduced. For example, using the existing fee schedule, building permit fees for an in-ground pool would have been $100 if the owner estimated the market value at $25,000. Under the new fee schedule, the permit fee would have been $75.

Cabot Trott, 1050 Main St., stated that the proposed fees still seemed low in comparison to some surrounding towns.

Kate Pelletier agreed that Eliot's permit fees were still lower than those of other towns in the area, however, since permit fees had not been increased in Eliot since 2004, the Planning Board felt an increase that sharp would not have been well received. The Board will reassess the fees again at some point in the future once people have had time to adjust to the initial increase.

Public hearing closed.

MOTION:
Jeff Duncan made the motion to forward the proposed amendments to the fee schedule to the Board of Selectmen for inclusion on a future warrant.
Larry Bouchard seconded the motion.
Vote: 4-0, Chair concurs.

B. Public hearing – and continued review of a proposed ordinance amendment (Draft #5) titled, "Amendments to Chapter 1 (General Provisions) and Chapter 45 (Zoning) of the Municipal Code of Ordinances of the Town of Eliot, Maine ordinances to clarify ordinances related to agriculture and the keeping and breeding of animals and livestock".

Steve Beckert stated that he was made aware of comments posted on Eliot Online today that were not correct. He read the comments as follows:

> *"Tonight at 7, public hearing on proposed changes for animal care and shelters arising from the "chicken coop" controversy. My concern for people in the agricultural zones that it looks like they plan reducing from 100' to 50' the distance from property lines for animal shelters. When you have to have 3 acres to start with, why is it necessary to bring shelters closer to a neighbor's property line? Guess they forgot what brought this about."*

He stated that he would like to clarify that the amendments actually propose an increased minimum setback and not a reduction of setbacks. The previous Board of Selectmen and Board of Appeals asked the Planning Board to look into addressing the zoning regulations related to the keeping of animals following a dispute between neighbors over a chicken coop being located too close to an abutting residence. He stated that if the ordinance were left as written, a chicken coop would only need to be 10' from the property line. The proposed amendments increase that setback to either 25' or 50' depending on the zone. He asked Kate Pelletier to give a brief overview of the proposed amendments.

Kate Pelletier stated that backyard farms and gardens had become increasingly popular over the last few years due to the reemergence of the local food movement, rising food costs, and increasing concern about food safety and quality, however, Eliot's existing definitions and zoning regulations pertaining to agriculture had not been updated since they were written in the 1970's and no longer effectively regulated all varieties of agricultural operations. Existing regulations were written primarily for commercial farming operations and do not take into consideration things like the keeping of domesticated chickens and chicken coops, which according to the code enforcement officer, had been causing problems in terms of enforcement. The proposed amendments create two separate categories for commercial and non-commercial agricultural operations and define specific activities allowed under each. Homeowners in all zoning districts will now be permitted to engage in animal and livestock husbandry for personal use, including the keeping of chickens, provided setback requirements could be met for their particular zone. She stated that the zoning ordinance currently requires a 100' setback from all property lines for buildings housing animals, but only when those buildings are associated with the specific land use *"Animal breeding & care*", which would include activities such as dog breeding. Structures associated with agricultural operations like chicken coops currently fall under the definition of an "accessory structure", and only require a 10' setback from property lines. The proposed ordinance establishes a setback of 25'-50' depending on the zoning district. Along with the new

setback requirements, the ordinance also has provisions that would allow those setbacks to be reduced 15' or 25' with permission from abutting landowners.

Steve Beckert explained the rules of a public hearing.

Public hearing opened.

Cabot Trott, 1050 Main St., questioned whether there was any need to prohibit roosters. He also suggested that a "grandfather" clause be added to the language that would protect those people with existing farms who will no longer comply with the new regulations.

Kate Pelletier stated that she believed the existing language in the zoning ordinance pertaining to nonconforming uses was adequate in terms of establishing "grandfather" provisions and restating them as part of this ordinance would be redundant, however, she could add something more specific to this particular section or at least reference the existing language on nonconformance.

William Gilbert, 241 River Road, stated that he interpreted the definitions of *"livestock husbandry"* and "*animal husbandry*" to mean that those activities are only allowed when breeding is done for commercial gain and that there were no restrictions in terms of setbacks or other requirements. He also stated that he thought roosters should not be prohibited anywhere in town and that issues like that should be handled neighbor to neighbor.

Steve Beckert stated that the Planning Board did not initially propose prohibiting roosters but Eliot's Animal Control Officer, Tina Buckley, had requested the town-wide prohibition of them. The Planning Board voted and the majority favored at least a partial ban. The Board ultimately decided to allow roosters only in conjunction with commercial agricultural operations. Non-commercial agricultural operations such as a backyard chicken coop for personal use would be prohibited from keeping roosters. He stated there is still time to change the proposed language before it's passed along to the Board of Selectmen or voted on at town meeting. The purpose of holding a public hearing is to hear from the public what concerns they may have about a particular issue so that the Planning Board can effectively address those concerns via ordinances.

Bill Widi, 34 Sandy Hill Ln. stated that he raises chickens for meat and processes them in about 10 weeks. Half of them are usually roosters and they don't make a sound. He also stated that he would like to put up a greenhouse on a piece of vacant land he owns so that he could grow food for his own personal use, however, the ordinance doesn't allow him to do that without also having a principal structure on the land first.

Kate Pelletier stated that the zoning ordinance already prohibits accessory structures such as greenhouses from being the principal structure on a lot and that the requirement Mr. Widi was referring to was nothing new. An accessory structure must be secondary and incidental to the principal use, so without a principal use, there can be

no accessory use. A greenhouse may exist as the principal structure on an otherwise vacant lot if the principal land use is conducted inside it. "*Agriculture*" would be the principal land use that most closely resembles what Mr. Widi would like to do on his property, but the existing definition of "*Agriculture*" does not include agricultural products grown for personal use or consumption. She read the existing definition as follows:

> *Agriculture means the production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green house products. Agriculture does not include forest management and timber harvesting activities.*

John Marshall, 95 Beech Ridge Road, stated that he had lived in town for many years and thought neighbors should be able to handle issues like this among themselves without needing new regulations. He stated that he believed the new definitions just seemed to have more pitfalls and loopholes, which will cause problems in the future. The more complicated the definitions, the more issues arise in the interpretation. He stated that he didn't see anything in the definitions about dogs and questioned how they would be regulated.

Jeff Duncan stated that dogs are under the definition of "*animal husbandry."*

John Marshall stated that might be so but if the new ordinance is applied to chickens then it would behoove the Planning department to start looking around town at everyone's doghouses and whether or not they meet these dimensional requirements. He asked if the Planning Board was going to start regulated wild turkeys now too. He stated that this was a lot of foolishness for nothing and that everyone should just learn how to be neighbors again.

Bob Pomerleau, 93 Cedar Rd. stated that his wife owns a piece of property that had a greenhouse on it without a principal structure. He stated that it was previously used as part of a commercial operation but was not any longer. He asked if that would now be considered a non-conforming situation.

Kate Pelletier stated that a greenhouse on an otherwise vacant lot would have been conforming at some point if it were a structure where the principal use of the lot occurred. She stated that the requirement for an accessory structure, like a greenhouse, to be on a lot with a principal structure has existed in the zoning ordinance for decade but that she would need to know more in order to determine whether or not Mr. Pomerleau's greenhouse was in conformity or not.

Bob Pomerleau stated that he also thought the ordinance was too complicated. He stated that decreasing the setback for structures housing animals would only cause more problems between neighbors in the future.

Steve Beckert stated that again, the setbacks have not been decreased. If the ordinance were left as written, only the structures housing animals associated with the specific land use "*Animal breeding and care*" would be required to meet a 100' setback. Buildings housing animals not associated with "*Animal breeding and care*" would only be required to meet a 10' setback.

Kate Pelletier stated that the proposed ordinance increases the setback requirements for all of those buildings that would have previously only had to meet the 10' setback. She stated that different code enforcement officers have interpreted the existing language differently. For example, the current code enforcement officer believes the 100' setback applies to all structures housing animals regardless of the land use, whereas previous code enforcement officers have applied the 100' setback only to structures where "*Animal breeding and care*" activities occur, such as a dog breeder . She stated that when an ordinance is subject to this much interpretation it's usually an indication that the language needs to be clarified and improved.

Dave Oeser, 61 Goodwin Rd., stated that many of the problems being discussed tonight revolve around or are have been caused by the code enforcement officer and his interpretation of things. He stated that he thought there was a simple fix to all of these problems and that someone needed to reprimand the code officer about these issues.

Suzanne Nixon, 464 River Rd., asked if someone who already had chickens would be "grandfathered" if they couldn't meet the new 100' setback requirement.

Steve Beckert stated that the Planning Board will look into the "grandfathering" issue further and that it was not the Board's intention to create illegal or nonconforming situations for people who already have chickens.

Eric Christian, 204 River Rd., stated that he also owns a nonconforming lot in the Suburban zone and has a chicken coop that will become nonconforming if the new ordinance is adopted. He stated that he understood that he would be required to meet a 50' setback if he were adding a new chicken coop to the lot but asked if there were any provisions that would allow him to expand the existing coop.

Jeff Duncan stated that a nonconforming structure can't be made more nonconforming unless it meets certain requirements.

Kate Pelletier stated that the provisions for nonconforming structures/uses are found in Sec. 45-191 of the zoning ordinance.

Ellen Lemire, 696 Goodwin Rd., asked what the justification was for prohibiting roosters in non-commercial agricultural operations and that you can't determine the sex of a chick for several weeks after they're born.

Steve Beckert stated that it was primarily a noise issue. He stated that the animal control officer had requested prohibiting rosters town-wide. He stated that he wasn't

personally in favor of it but that the Planning Board voted on it and the majority favored allowing roosters only in commercial agricultural operations.

Amy McClellan, 202 Bolt Hill Rd, stated that it was her chicken coop and her family's desire to have four pet chickens that started all of this controversy in the first place. She stated that she had significant concerns about the minimum lot size in the Village zone being one acre. She stated that she purchased her house, which was built in 1947, with less than one-acre and that there are many homes in the Village zone that would not comply with the one-acre minimum lot size requirement. She stated that she also had concerns about the definition of "*Animal husbandry and care*" and that if the Planning Board was going to look this closely at chickens then they had to look that closely at rabbits too. She stated that rabbit hutches are everywhere and attempting to regulate them would open a huge can of worms, just as regulating dogs and doghouses would. She stated that any person who owns property, maintains property, and pays taxes should be able to use their property as they see fit.

Fraser Nixon, 464 River Rd., asked if the regulations for chicken coops specified the number of chickens someone could keep or the minimum size of a chicken coop.

Steve Beckert stated that some towns have entire ordinances devoted to chicken coops. South Portland, for example, has a chicken coop ordinance that must be close to 20 pages regulating everything from the number of chickens you can have, the size and appearance of the coop, ventilation and lighting requirements, etc. He stated that the Planning Board did not want to get into those types of specific requirements. If the amendments are adopted and are later found to be inadequate in certain areas then the Planning Board can always go back and add to them but their intention was to give people some flexibility.

Jeff Duncan added that Eliot also has an existing Animal Control Ordinance that already regulates some of those issues like animal waste and noise.

Fraser Nixon asked if the Planning Board was going to add in some provisions for "grandfathered" chicken coops.

Steve Beckert stated that the Planning Board will look into it and seek input from the Town's attorney on exactly what provisions they can include in terms of nonconforming situations.

Fraser Nixon asked if he would be at risk of having to remove his chicken coop if it didn't comply with the new regulations.

Kate Pelletier stated that she did not think Mr. Nixon was at risk of losing his chicken coop if the new regulations are adopted. Zoning laws are fairly consistent in that any land or buildings that are lawful at the time of adoption of a new ordinance or an amendment to an ordinance are allowed to continue even though the land or building may no longer conform to the new requirements.

Nancy Shapleigh, 28 Sandy Hill Ln., stated that she would like to see the existing ordinance corrected instead of adding all of these pages of additional regulations. She stated that she would like the setback for chicken coops to be 10' and not 50' or 25'. That would allow nearly everyone, including those people with small lots, to have chickens.

David Oeser stated that the right to grow or raise your own food is about as basic as you can get and these regulations are bordering on ridiculous.

Cabot Trott stated that he didn't think there was a problem with chickens in town now and couldn't see the need for adopting even more regulations.

Linda Driver, 1771 State Rd., stated that she didn't want to ever pay to have chickens and that she did not believe anyone, except her neighbors, had the right to tell her that her chickens couldn't run around in her yard.

John Marshall stated that a 50' setback around a 3-acre property doesn't leave much room for a chicken coop. Also, the comprehensive plan talks about preserving the Rural character or Eliot but when you consider the overall impact of State laws, Federal laws and now even more local regulations, all of the farms that made the town rural to begin with will be regulated out of existence. He stated that he would be in favor of updated the existing regulations instead of creating all of these new rules.

Public hearing closed.

Steve Beckert asked the Planning Board what next steps they would like to take with the proposed amendments.

Jeff Duncan stated that based on the comments received from the public tonight, he didn't feel the ordinance was ready to be passed along to the Selectmen yet.

The Planning Board agreed by consensus to continue working on the agricultural regulations.

Steve Beckert stated that the Planning Board will continue working on this issue and that they would likely hold additional public hearing if any substantive changes are made.

C. Application for site plan review to establish a restaurant at 424 H.L. Dow Highway. Applicant is Susan Allen (mailing address: 159 River St., Sanford, ME 04073). Owner is John Price (mailing address: PO Box 666, Eliot, ME 03903). Property can be identified as Map 45/Lot 12 and is located in the Commercial/Industrial zoning district. (PB12-10)

Susan Allen, applicant, stated that she would like to open at a restaurant at 424 Dow Highway, formerly occupied by Pawsitive Steps. She stated that she owns Sue's Seafood market in Kittery, which will remain a retail store. The restaurant will have 6-8 tables with 6 additional seats at the bar. Breakfast and lunch will be offered 7 days per week and dinner offered Thursday, Friday and Saturday. She stated that she will serve traditional breakfasts and that the lunch and dinner menus will be similar to what is offered at Bob's Clam Hut.

Greg Whalen asked the applicant to describe the parking area.

Jennifer Gokey stated that there are a total of 13 parking spaces available. Seven spaces are directly in front of the building, two are located around the sign area, and four are located behind the building.

Greg Whalen asked Kate Pelletier what the parking requirements were for a restaurant.

Kate Pelletier stated that Sec. 45-495 requires one parking space is required for every three seats. A 38-seat restaurant would be required to have 13 parking spaces.

Dennis Lentz asked if there was any information on the water supply to the property.

Larry Bouchard stated that an approximate well location was shown on one of the plans provided in the application package.

Steve Beckert asked if the Board wanted to conduct a site walk.

The Board agreed by consensus to waive the site walk due to the fact that no changes to the site or exterior of the structure were proposed.

Jeff Duncan asked the applicant to clarify what the hours of operation would be prior to the next meeting. He stated that any statements made to the Planning Board become part of the approval so the applicants may want to consider more general hours of operation to avoid limiting themselves too much or having to come back to the Board to amend the permit later.

Susan Allen stated that she would clarify the hours of operation on the application prior to the next meeting.

Greg Whalen asked if the bathrooms shown on the plan were existing.

Jennifer Gokey stated that one bathroom exists now and one additional bathroom is proposed.

Steve Beckert asked if the Board was ready to schedule the public hearing.

MOTION:
Greg Whalen made the motion to accept the application as complete and schedule the public hearing for October 2nd, 2012.
Dennis Lentz seconded the motion.
Vote: 4-0, Chair concurs.

ITEM 7 - ACTION ITEM LIST

None.

ITEM 8 – CORRESPONDENCE, OTHER AS NEEDED

Kate Pelletier stated that on October 24th UNH is offering a one-day workshop on porous pavement, which included a tour of sites using various applications of permeable pavement. She stated that anyone interested in attending should let her know and that she would register them.

Jeff Duncan asked what the cost of the workshop was.

Kate Pelletier stated that it was $225.

Jeff Duncan asked Kate Pelletier to inquire if any discount on the registration fees is offered for municipal employees or board members.

Kate Pelletier stated that she would find out.

ITEM 9 - SET AGENDA AND DATE FOR NEXT MEETNG

The next regular Planning Board meeting was scheduled for October 2nd, 2012.

ITEM 10 – ADJOURN

MOTION:
Dennis Lentz made the motion to adjourn at 8:35 PM.
Larry Bouchard seconded the motion.
Vote: 4-0, Chair concurs.

_____

Stephen Beckert, Chairman

Date approved: _____

Respectfully submitted,

_____

Kate Pelletier, Recording Secretary