

1 **ITEM 1 - ROLL CALL**

2
3 Present: Steve Beckert – Chairman, Jeff Duncan, Larry Bouchard, Dennis Lentz,
4 Melissa Horner – Alternate, and Dutch Dunkelberger – Alternate.

5
6 Absent: Greg Whalen; excused.

7
8 Also present: Kate Pelletier, Planning Assistant.

9
10 Mr. Beckert appointed Ms. Horner as a voting member for tonight's meeting.

11
12
13 **ITEM 2 – PLEDGE OF ALLEGIANCE**

14
15 **ITEM 3 – MOMENT OF SILENCE**

16
17 **ITEM 4 – REVIEW AND APPROVE MINUTES, AS NEEDED**

18
19 Mr. Bouchard moved, second by Mr. Lentz, to approve the minutes of December 17,
20 2013, as written.

21 **VOTE**
22 **3-1 (Mr. Duncan abstained)**
23 **Chair concurs**

24
25 Mr. Duncan moved, second by Mr. Lentz, to approve the minutes of October 21, 2014,
26 as amended.

27 **VOTE**
28 **4-0**
29 **Chair concurs**

30
31 **ITEM 5 – REVIEW “NOTICE OF DECISION” LETTERS, AS NEEDED**

32
33 **PB14-20: Apsey – Amendment to previously approved Site Plan**

34
35 This was approved as written.

36
37 **PB14-13: Cumberland Farms – Site Plan Review**

38
39 This was not addressed tonight.

40
41 **PB14-21: Pierson – Shoreland Zoning Permit**

42
43 This was not addressed tonight.

44
45 **ITEM 6 – PUBLIC APPLICATIONS OR PLANNING BOARD BUSINESS TO BE CONSIDERED**

- 93 1. The property may be developed and used only in accordance with the plans,
94 documents, material submitted, and representations of the applicant made to the
95 Planning Board. All elements and features of the use as presented to the Planning
96 Board are conditions of approval and no changes in any of those elements or
97 features are permitted unless such changes are first submitted to and approved by
98 the Eliot Planning Board.
99 2. The permit is approved on the basis of information provided by the applicant in
100 the record regarding ownership of the property and boundary location. The
101 applicant has the burden of ensuring that they have the legal right to use the
102 property and that they are measuring required setbacks from the legal boundary
103 lines of the lot. The approval of this permit in no way relieves the applicant of this
104 burden. Nor does this permit constitute a resolution in favor of the applicant of
105 any issues regarding the property boundaries, ownership, or similar title issues.
106 The permit holder would be well-advised to resolve any such title problems
107 before expending money in reliance on this permit.
108 3. The applicant authorizes inspection of premises by the Code Enforcement Officer
109 during the term of the permit for the purposes of permit compliance.
110 4. Applicant will comply with the Town of Eliot Municipal Stormwater Sewer
111 Permit, as noted in the ordinances. The applicant will provide knox box access to
112 the building. A DOT driveway cut permit shall be provided to the Town of Eliot
113 prior to construction.
114 5. The Fire Chief recommends the building be fire alarmed.

115 **VOTE**
116 **4-0**
117 **Chair concurs**
118

119 Mr. Beckert explained the 30-day appeal period to the applicant.
120

121 **ITEM 7 – DISCUSS STATUS OF OUTSTANDING ACTION ITEMS**
122

123 There were no outstanding action items.
124

125 **ITEM 8 – CORRESPONDENCE AND PLANNING ASSISTANT, AS NEEDED**
126

127 Mr. Lentz said that we received a letter from Mr. (Charles) Rankie dated October 28,
128 2014, regarding electing versus appointing PB and BOA members. He added that he
129 would be attending the next Charter Commission meeting so, perhaps, we could discuss
130 that letter.
131

132 Mr. Dunkelberger supported appointment; that he thought electing PB members made
133 little or no sense because this was supposed to be a non-partisan Board. He added that
134 appointment allows the Selectmen to, at least, vet individuals with regard to minimal
135 qualifications; that an election was just a waste of ink for putting people on the ballot;
136 that there is no background, nothing there to know if they even know what the PB is.
137

138 Mr. Duncan said that he didn't know if election would result in any more interest in
139 people being here...that if people really wanted to be here – we have a full board.

140
141 Mr. Lentz said that, if we were elected and we were bad boys and girls, we would have to
142 go through the recall process.

143
144 Mr. Dunkelberger said that that assumed that they have one.

145
146 Ms. Horner said that she saw no benefit.

147
148 Mr. Bouchard agreed with Ms. Horner and Mr. Dunkelberger.

149
150 Ms. Horner asked if anyone knew why this was brought up because, as far as she
151 understood in Eliot, there has never been an elected PB; that it's a "new" idea.

152
153 Mr. Lentz said that he has gone back through town charters with similar governments and
154 found it mixed; that most of them are appointed.

155
156 Mr. Beckert said that he thought that, as a Board, we should have a formal response.

157
158 The PB discussed how best to present their sentiment to the Charter Commission.

159
160 Mr. Dunkelberger said that there is nothing to be gained by having people elected and
161 there are things to be lost, such as losing applicants.

162
163 Mr. Beckert agreed it was hard enough to get people to volunteer never mind run.

164
165 Ms. Lemire said that, as a member of the BOA, she would not run for that position;
166 appointment, fine, but she would not campaign for it.

167
168 Mr. Bouchard said that he guessed if we had 12 or 15 or 18 people clamoring and
169 wanting to get on the PB, or any board, and left it to the Selectmen to choose and pick,
170 then he could see going to a vote but this PB, even the last couple years, we have sat not
171 complete; that he agreed with Mr. Dunkelberger that it was a waste of time and ink.

172
173 Mr. Beckert discussed a meeting a couple of months back where the BOA Chairman
174 spoke about some people holding multiple positions on boards and committees, feeling
175 that that held other people back from volunteering; that on that very same night we had
176 17 open positions on the various boards and committees in this Town that nobody had
177 stepped forward to take; that nobody is stopping anyone from coming forward. He added
178 that he said that night that, if he thought for a minute that he was stopping somebody
179 from coming forward to volunteer, then he would step down tomorrow.

180
181 Mr. Dunkelberger said that, to be perfectly honest, he was kind of like Ms. Lemire that, if
182 he had to run for this job, he didn't think it was worth it.

183

184 Mr. Bouchard said that, if he had to run, he wouldn't be here; that he didn't have the time
185 for it.

186
187 Ms. Horner asked if anyone knew of any towns in the area, even in NH, that had elected
188 boards.

189
190 Ms. Pelletier said that she was not aware of any; that even in Manchester they are
191 appointed.

192
193 Mr. Dunkelberger said that, if we had to run for the position, it would inhibit the
194 volunteerism for the various boards.

195
196 Ms. Lemire said that when we request to be appointed to a board or committee we have a
197 tendency to try to be appointed to a board we have a background in.

198
199 Mr. Lentz suggested framing the communication around the fact that we've had a general
200 discussion, talked about pros and cons, and we don't see anything that really benefits us
201 or benefits the Town; to ask the Charter Commission, as they have apparently studied it,
202 to come back with what they see as pros and cons in case we missed something.

203
204 Ms. Horner asked what process was currently in place for removing board and committee
205 members.

206
207 Mr. Beckert said that the Selectmen had the authority to remove members; that, as an
208 example, for excessive absenteeism the Board Chair would send a report to the Selectmen
209 that a member had not shown up for however many meetings and it is recommended that
210 they be removed. He added that right now without a charter or recall procedure it goes by
211 State statute, which says "removal for just cause", so, what's just cause. He agreed with
212 the PB members that he didn't see any advantage to it, especially on a quasi-judicial
213 board; that he wasn't so sure you would want it to become a popularity contest.

214
215 Ms. Pelletier will draft a response for the PB to the Charter Commission.

216
217 Mr. Beckert said that Thursday night the Selectmen have a workshop to discuss TIF
218 alternatives.

219
220 Mr. Dunkelberger said that he would not be here for their next meeting, as he was
221 travelling.

222
223 Mr. Beckert said that Mr. Dunkelberger was excused from the next meeting.

224
225 Ms. Horner said that the Business Development Committee would be coming to the next
226 PB meeting and that they are working on their next Business After-Hours get-together.

227
228 Mr. Beckert said that there was one thing he wanted to bring up because it kind of
229 bothered him and he heard from another member of this committee, that he mentioned it

TOWN OF ELIOT, MAINE

PLANNING BOARD

December 2, 2014

Charles L. Rankie Jr., Chairman
Eliot Maine Charter Commission
1333 State Rd.
Eliot, ME 03903

Dear Charlie,

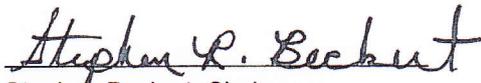
The Planning Board had a general discussion about your October 20, 2014 letter regarding the Charter Commission's consideration of an appointed versus elected Planning Board.

After weighing the pros and cons, the Board ultimately did not see the merits of having an elected Planning Board. Some comments made by Board members included that requiring elections would politicize the Planning Board and could deter qualified applicants from getting involved. As of today, there are 16 vacant positions on the Town's many boards, committees and commissions and the Planning Board only recently filled a nearly decade long vacancy. If Planning Board membership ever fell below the minimum number needed to make up a quorum, commercial developments, residential subdivisions, home businesses, piers, etc. could not be approved.

Further, transitioning to an elected Planning Board would mean that any interested candidate could run and would not need to meet any minimum qualifications to join and the Board of Selectmen would no longer have the authority to remove that member for just cause should the need arise.

The Planning Board would be happy to meet with the Charter Commission to discuss the issue further.

Sincerely,



Stephen Beckert, Chairman

Attached 1-14-15

Charter Commission Meeting.

heaton.lodge@comcast.net

Sent: Tuesday, January 06, 2015 7:19 AM

To: stephen.beckert@navy.mil

Cc: Charles Rankie; rma249@yahoo.com

Steve

Good Morning

The Charter Commission welcomes you and any of the Planning Boards (PB) Members that wish to discuss appoint vs. elect on January 14, 2015. The meeting starts at 7PM.

It is important that the Planning Board authorize this. The Board of Appeals has not authorized any representation other than as private citizens. Therefore, BOA members will only be recognized to speak during that portion of the discussion. If authorized your Board will be welcome to speak during Commission debate.

Realizing that the PB meets tonight I am sending this officially to you. I had planned to send a letter however, did not.

Thank You.

clr

Sent from Xfinity Connect Mobile App

MAINE MUNICIPAL ASSOCIATION

Legal Services
60 Community Drive
Augusta, Maine 04330-9486
(207) 623-8428
Fax (207) 624-0187

**WILLIAM W. LIVENGOOD
REBECCA WARREN SEEL
RICHARD P. FLEWELLING
MICHAEL L. STULTZ
SUSANNE F. PILGRIM
AMANDA A. MEADER**

**JOSEPH J. WATHEN
(1957-1997)**

April 24, 2014

Charles L. Rankie Jr.
Eliot Maine Charter Commission
1333 State Road
Eliot, Maine 03903

Dear Charles:

I am writing in response to your letters of April 23rd in which you ask for my opinion on whether members of the Planning Board and Board of Appeals should be elected or appointed.

Although MMA Legal Staff takes no official position on whether these offices should be elected or appointed, our experience has shown that dealing with an uncooperative or incompetent person on a zoning or planning board is significantly more difficult if the position is elected. This is because an elected officeholder is not subject to the supervisory or disciplinary authority that would otherwise govern appointed officials. An elected official is answerable to no one on a regular basis and can be "fired" or recalled only by the voters (and even then, only if the municipality has a recall ordinance).

Personally, I think all these positions should be appointed. Making these positions appointed not only makes them subject to the supervisory and disciplinary authority of someone (either the selectmen or town manager, depending) who will be in the best position to regularly evaluate their performance. It also helps to ensure that those chosen to fill these positions will have the qualifications necessary to carry out the increasingly sophisticated responsibilities of board membership. The decision of who is best qualified to serve on a planning board or board of appeals is more apt to be made objectively by the selectmen or a manager, after review of applications and perhaps even interviews, rather than by a popular election, which often can turn on personality, local politics or other factors having little to do with proper board member qualifications.

I hope that this feedback provides useful guidance to the Charter Commission. Please do not hesitate to contact us with further questions.

Yours truly,



Amanda A. Meader
Staff Attorney

AAM/cb

BOA

William Hamilton Chair
Peter Billipp Vice Chair
Ellen Lemire Sect.
Edward Cieloszko
Jeffery Cutting
Charles Fankie Alt
John Marshall Alt.

Planning

Stephen Beckett Chair
Jeffrey Duncan
Laurence Bouchard
Gregory Whalen
Dennis Lentz
Melissa Magdziasz Alt.
Leroy Dunkelberger Alt.

Quasi-Judicial Boards

Proposal: That the members of the quasi-judicial boards of Eliot be elected by the citizens. As elected officials the members would be subject to recall by the citizens.

The quasi-judicial boards in Eliot are the Planning Board and the Board of Appeals. These boards are empowered to make binding decisions affecting all of the citizens of Eliot and to judge the actions of certain officials within the executive branch of our government. The members are currently appointed by the Board of Selectmen (our executive branch), and are subject to disciplinary action and/or removal only by the BOS.

The goals of the change to the election of members are:

1. Removal of the Quasi-Judicial Boards from the control and influence of the executive branch of our government and,
2. Place these Boards under the direct control of the citizens of Eliot so that they become responsive only to statutes, ordinances, and the guidance of the comp plan and the needs of the citizens.

The following objections have been raised to this change. Listed also are the reasonable solutions to these objections:

1. "...dealing with an uncooperative or incompetent person on a zoning or planning board is significantly more difficult if the position is elected. This is because an elected officeholder is not subject to the supervisory or disciplinary authority that would otherwise govern appointed officials. An elected official is answerable to no one on a regular basis and can be "fired" or recalled only by the voters..." and "...the Board of Selectmen would no longer have the authority to remove that member for just cause should the need arise..."

Solution: The elected members would, of course, be subject to recall. In addition, the charter provision could be written to permit the removal by the BOS following the hearing process and for IMMEDIATE AND PRESSING JUST CAUSE. Just cause would be clearly defined in the charter.

2. "...that requiring elections ... could deter qualified applicants from getting involved."

Solution: Meeting clearly stated and publically established qualifications could be made part of the nomination process.

3. "...that requiring elections would politicize the Planning Board..."

Response: There have been elections since the town has been formed with no concrete evidence of politicization. This objection is purely a red herring.

4. "...the Planning Board only recently filled a nearly decade long vacancy, If Planning Board membership ever fell below the minimum number needed to make up a quorum, commercial developments, residential subdivisions, home businesses, piers, etc, could not be approved."

Solution: If no qualified candidate seeks nomination, the BOS could then appoint a qualified member to serve until the next election. At this time this member would run for election.

FOAA REQUESTS.

Among the jobs of the Chair are:

- Carry out the wishes of the Comm.
- Act as a point of contact.

Problem Area

- The Charter Agenda is published Monday before a Wednesday meeting.
- Commission members are Elected Officials not Employees
- "Reasonable amount of time"

Requests Made

- Most requests are for Articles that are being worked on.
- The Commission voted to not release Articles being worked on - FOAA requires they be released.

Action Steps

- Manager has committed to Tracking form
- Make Articles available?
- Charter Commission Agenda Button.
- Commit to check requests Monday Eve.

Freedom of Access Act Highlights

Source – Maine.gov

January 12, 2015

What is a public access officer?

A public access officer must be designated to serve as the contact person for an agency, county, municipality, school administrative unit and regional or other political subdivision for public records requests. An existing employee is designated public access officer and is responsible for ensuring that public record requests are acknowledged within a reasonable amount of time and that a good faith estimate of when the response to the request will be complete is provided.

Does an agency have to acknowledge receipt of my request?

Yes. An agency or official must acknowledge receipt of a request within 5 working days of receipt of the request.

When does the agency or official have to make the records available?

The records must be made available "within a reasonable period of time" after the request was made. 1 M.R.S. § 408-A The agency or official can schedule the time for your inspection, conversion and copying of the records during the regular business hours of the agency or official, and at a time that will not delay or inconvenience the regular activities of the agency or official. 1 M.R.S. § 408-A(5)

What if the agency or official does not have regular office hours?

If the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists. 1 M.R.S. § 408-A(5)

Does an agency have to produce records within 5 days of my request?

No. The records that are responsive to a request must be made available "within a reasonable period of time" after the request was made. 1 M.R.S. § 408-A Agencies must acknowledge the request within 5 working days of receipt. A written denial within 5 working days of receipt is required if your request is denied in whole or in part. 1 M.R.S. § 408-A(4) P.L. 2013, ch. 350

Do members of the public have a right to speak at public meetings under the Freedom of Access Act? The FOAA does not require that an opportunity for public participation be provided at open meetings, although many public bodies or agencies choose to permit public participation. In those instances, the public body or agency can adopt reasonable rules to ensure meetings are conducted in a fair and orderly manner. For example, the body or agency can set a rule that requires the same amount of time be afforded to each person that wants to speak.

OK Copy

Maine Revised Statutes
Title 1: GENERAL PROVISIONS
Chapter 13: PUBLIC RECORDS AND PROCEEDINGS

§408-A. PUBLIC RECORDS AVAILABLE FOR INSPECTION AND COPYING

Except as otherwise provided by statute, a person has the right to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record. [2011, c. 662, §5 (NEW).]

1. Inspect. A person may inspect any public record during reasonable office hours. An agency or official may not charge a fee for inspection unless the public record cannot be inspected without being converted or compiled, in which case the agency or official may charge a fee as provided in subsection 8.

[2011, c. 662, §5 (NEW) .]

2. Copy. A person may copy a public record in the office of the agency or official having custody of the public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy. The agency or official may charge a fee for copies as provided in subsection 8.

A. A request need not be made in person or in writing. [2011, c. 662, §5 (NEW).]

B. The agency or official shall mail the copy upon request. [2011, c. 662, §5 (NEW).]

[2011, c. 662, §5 (NEW) .]

3. Acknowledgment; clarification; time estimate; cost estimate. The agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within 5 working days of receiving the request and may request clarification concerning which public record or public records are being requested. Within a reasonable time of receiving the request, the agency or official shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request, as well as a cost estimate as provided in subsection 9. The agency or official shall make a good faith effort to fully respond to the request within the estimated time.

[2013, c. 350, §1 (AMD) .]

4. Refusals; denials. If a body or an agency or official having custody or control of any public record refuses permission to inspect or copy or abstract a public record, the body or agency or official shall provide written notice of the denial, stating the reason for the denial, within 5 working days of the receipt of the request for inspection or copying. Failure to comply with this subsection is considered failure to allow inspection or copying and is subject to appeal as provided in section 409.

[2013, c. 350, §2 (AMD) .]

5. Schedule. Inspection, conversion pursuant to subsection 7 and copying of a public record subject to a request under this section may be scheduled to occur at a time that will not delay or inconvenience the regular activities of the agency or official having custody or control of the public record requested. If the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists.

[2011, c. 662, §5 (NEW) .]

*From Donna Murphy
attached 1-14-15*

Email dated December 18, 2014, 2:51 PM

Mr. Rankie,

We have not spoken and I would like to give you the opportunity to dispute any material facts as presented here. If there is anything that might substantially change my findings, please don't hesitate to contact me.

It is my understanding that a Charter Commission meeting was scheduled for 7:00 p.m. on Wednesday and that the agenda for this meeting was published on Monday. According to Ms. Murphy, the agenda listed Articles 1, 4, 5, and 7 for discussion and she immediately made a FOAA request to Mr. Lee for electronic copies of these articles. She also requested that the copies be sent to her in advance of the meeting. Since the formation of the Commission it has been her intention and practice to follow along with the Charter Commission's discussion during the meetings. This is impossible to do without a copy of the current version of the articles being reviewed and discussed by the members.

It appears that you did not respond to a request from Mr. Lee on Monday to provide the public records to Ms. Murphy prior to the meeting and as of 5:30 p.m. on Wednesday, Ms. Murphy had not received either an acknowledgment or response from you. However, on Wednesday you did email Mr. Lee to inform him that you had received the request and would provide the public records some time Thursday or Friday.

The Freedom of Access Act provides that a FOAA request be acknowledged within five working days and responsive records be made available within a reasonable amount of time. A requester may ask for electronic documents in electronic format. According to Mr. Lee, Town of Eliot policy requires that responsive records be produced within five days, whenever practical. Although the Town has implemented a protocol to promote access to records within no more than five days, the law does not provide a five day "grace period" within which records can be withheld, even if readily available.

Ms. Murphy has requested electronic copies of the various versions of articles under consideration by the Commission since at least last May and her current request is neither unexpected nor frivolous. Ms. Murphy has encountered difficulty accessing current versions of the articles in the past and in reviewing an earlier complaint from her in June, I noted in an email to Mr. Lee that an overly formalistic approach to FOAA compliance should not be used to thwart the spirit of open government and transparency intended by the law. "While Ms. Murphy is required to submit requests for new versions of the draft charter, Mr. Rankie must not use FOAA in a way that prevents the timely release of public records."

Ms. Murphy asserts that the requested documents were available in electronic format and sent via email to members of the Commission prior to the meeting. There is nothing to suggest that attaching readily available documents to the email you sent to Mr. Lee prior to the meeting or sending an email directly to Ms. Murphy would have resulted in any

hardship or undue burden. Under these circumstances, withholding the responsive public records until after a meeting is concluded constitutes an unreasonable delay and frustrates the purpose of the Freedom of Access Act.

Since the work of the Commission involves a detail oriented review of complex written material, I question why a FOAA request must be made for members of the public to gain access to those written materials. Public comment is invited in the meeting but how are the citizens to develop any informed comment without being able to reference the written materials used by the Commission members?

If the requested documents have not yet been provided to Ms. Murphy, please ensure this happens immediately.

Brenda

Brenda L. Kielty
Assistant Attorney General
Public Access Ombudsman
6 State House Station | Augusta, ME 04333
207.626.8577 (direct) | 207.287.3145 (fax)
brenda.kielty@maine.gov | www.maine.gov/foaa

Correspondence to and from this office is considered a public record and may be subject to a request under the Maine Freedom of Access Act. Information that you wish to keep confidential should not be included in email correspondence.