

TOWN OF ELIOT - BOARD OF APPEALS MEETING

March 15, 2012

ROLL CALL

Time: 7:00 PM

Present: Chairman Edward Cieleuszko, William Hamilton, Peter Billipp, and John Marshall and Ellen Lemire, Alternate Members

Others present: James Marchese, Code Enforcement Officer; Linda Keeffe, Recording Secretary; Joseph DeLuccia, appellant; Dr. Christopher Lee, presenter; and John Saulnier, abutter.

CALL TO ORDER

Voting members of the Board will be Jeff Cutting, Bill Hamilton, John Marshall and Peter Billipp.

Chairman Cieleuszko stated that the procedure will be as follows:

- The ownership of the property and legal issues will be clarified
- The Chairman will summarize the case
- The appellant will present the case
- The Board members will question the appellant and include their comments
- The Code Enforcement Officer will give his input
- The abutters will have the forum
- Any other interested parties will have the forum
- All speakers will be followed by questions by the Board
- The appellant will make additional statements, if desired, and the Board will ask their final questions
- The public hearing will be closed
- The Findings of Fact will be listed
- A motion will be made
- A vote will be taken

Chairman Cieleuszko called the public meeting to order at 7:00 PM to hear a request by Joseph DeLuccia for a Request for Variance in use to Section 45-290 as allowed by Section 45-49(b) on property located at 1034 Goodwin Road, Eliot, Maine (Map 101, Lot 20-1).

Chairman Cieleuszko noted that there was a difference in the book numbers between the

application and the actual deed. On the application, the number is listed as 13968 and the number on the actual deed is 13938. It was noted that there was a typographical error on the application. The appellant has shown ownership by deed.

Chairman Cielezsko stated that the appellant was seeking a variance to Section 45-290 in regard to the inability to have a veterinary hospital in the Rural District.

Mr. Hamilton stated that because the date the application was received and signed by the Town Clerk was February 28, 2012, the date of the application should also be changed to February 28, 2012 (rather than the March 15, 2012 date that was on the application). The date on the application was actually the date of the meeting to hear the appeal.

Mr. Hamilton also questioned whose signature was on Page 4 of the application and Mr. DeLuccia stated that it was his own, not that of Dr. Lee.

Chairman Cielezsko asked for clarification that the owner of the property is 392 Goodwin Road, LLC and that Joseph DeLuccia is that entity. Mr. DeLuccia said that he was.

Mr. DeLuccia introduced Dr. Christopher Lee, who is the veterinarian who would like to occupy the premises. He stated that Dr. Lee would make the presentation.

TESTIMONY FROM APPELLANT

Dr. Lee thanked the Board for hearing the case. He stated that Mr. DeLuccia and he had approached the Planning Board last month. Being new to the process, they had not been aware that a veterinary hospital was not allowed in the Rural District. He stated that he had learned a lot along the way in the process.

Dr. Lee stated that they were appearing before the Board of Appeals to request a variance for a veterinary hospital, which is a non-conforming use for a Rural Zone. He stated that he hoped they had addressed each of the criteria to the satisfaction of the Board. He stated they were at the meeting to answer any questions the Board might have and that he would be happy to do so.

QUESTIONS TO APPELLANT FROM THE BOARD OF APPEALS MEMBERS

Mr. Marshall stated that the application states that there would be no overnight care. He asked Dr. Lee how he would handle the situation where an animal needed more long-term care.

Dr. Lee stated that the same question had also been asked by the Planning Board. He said that it is his philosophy that they are not operating a 24-hour hospital. If there are animals that need around-the-clock-care, there are veterinary hospitals available that do that and that are in the business of attending to animals overnight. That is not Dr. Lee's philosophy for his business. If an animal needed 24-hour care, they would be referred to an overnight hospital in Portsmouth. He stated that he already has a relationship established for that.

Mr. Marshall asked for clarification as to what type of services Dr. Lee would provide in his practice. Dr. Lee answered that they are a medical and surgical facility. He stated that animals that require overnight care are few and far between and really require care around-the-clock. He stated that that is why there are 24-hour-care facilities like the Emergency Hospital in Portsmouth.

Mr. Hamilton asked if Dr. Lee had signed a lease on the property. Dr. Lee stated that they have a lease but that it has not been signed.

Mr. Hamilton asked how Dr. Lee would handle a situation if an animal was brought to him in the late afternoon which had been severely injured. Would he refer to another facility because of the potential of having to provide overnight care? Dr. Lee stated that, in that situation, the animal would be stabilized, referred to an overnight facility and brought back to his facility in the morning.

Mr. Hamilton asked if Dr. Lee had another facility where he is practicing. Dr. Lee stated that he owned and operated a South Berwick veterinary hospital for 20 years, up until 2007. Mr. Hamilton asked if animals were kept overnight in that facility. Dr. Lee stated that initially they were. In roughly 1999-2000 the advent of the Emergency Hospital in Portsmouth occurred. He then started referring overnight care to that hospital.

Mr. Hamilton asked if that had been because the zoning would not allow for overnight stays. Dr. Lee stated that it was a question of quality of care.

Mr. Hamilton stated that it appeared that Dr. Lee was accustomed to that procedure and Dr. Lee said that he was very accustomed.

Mr. Billipp asked how much space in the facility being considered, which consists of a house and a barn, would Dr. Lee plan to occupy. Dr. Lee stated that the veterinary hospital would only encompass the front building, upstairs and downstairs in that office building.

Mr. Cutting asked for more information on what the practice would look like and for specifics of what Dr. Lee envisioned, including what type of animals he would serve. Dr. Lee answered that it would be a 100% small animal facility, 99% dogs and cats. It would be a one-doctor facility, at least initially. Operating hours are planned to be from 8:30

AM until 6:00 PM Monday through Friday and 8:00 AM until 12:00 noon on Saturday. There would be appointments every half hour.

Dr. Lee stated that he did not believe there would be any major impact on traffic, noise or anything of that nature. It would have no more impact than the medical facility that had been in that location for six years. ~~had had.~~

Dr. Lee stated that nothing would change on the exterior of the building except for the signage and that the changes would be in accordance with the Sign Ordinance.

Mr. Cutting asked if the facility as it is now is suited, in terms of sewer and water that those types of issues, to what Dr. Lee wants to do and Dr. Lee stated that "it is perfect."

Ms. Lemire stated that Dr. Lee had already answered most of her questions. The one thing she stated that she was concerned about was that the facility is not really a hospital, so she asked why he named it a hospital. Dr. Lee stated that it could be called a clinic and that that is what a veterinary facility is called. Ms. Lemire thought a better term would be veterinary practice because she did not see the facility as really a hospital. Dr. Lee stated that it is a hospital. His hospital would not be providing around-the-clock care. Facilities that do provide around-the-clock care also call themselves hospitals.

Chairman Cieleuszko asked Mr. DeLuccia how long he had been trying to rent or lease the property. Mr. DeLuccia stated he had been trying to lease it for three years. Chairman Cieleuszko asked if anyone had been in tenancy during those three years. Mr. DeLuccia replied that it had been empty for that time period.

Chairman Cieleuszko asked if Mr. DeLuccia had been trying to lease it as a hospital or veterinary clinic solely or if he had he been open to other purposes. He replied that he had been trying to lease it as a professional office because it is set up that way, with examining rooms and plumbing facilities. He didn't want to see a used furniture dealer or a flea market lease the space. He stated that, at this point, he would take anybody because just to paint and maintain the property costs him a fortune every year. He stated he had had no other interested possible tenants.

Mr. DeLuccia stated that the property was conducive to the type of practice that Dr. Lee envisions because it is all set up. He stated it would be a shame to carve up the space for a different use.

Chairman Cieleuszko stated that the area includes residential houses and asked if the property shares a road with the houses located behind it. Mr. DeLuccia stated that it does not. Ms. Lemire stated that there is a separate road that goes to the residences.

Mr. Marshall asked Mr. DeLuccia how many feet he would estimate the distance to be

between the back of his building and the nearest property. Mr. DeLuccia replied at first that it was 75 feet and revised that to 200 feet, stating that he is not good with figures. Ms. Lemire stated that the sign was 108 feet from the boundary line, so the building would be more distant. Mr. Marshall stated that he goes past the property daily and didn't estimate the distance to be closer than approximately 400 feet between the property and the closest residence.

Mr. Hamilton asked Mr. DeLuccia to describe the building behind the office building that he was intending to use as a veterinary hospital. He wanted to know what the building contains and whether Mr. DeLuccia had thoughts about leasing that building, which is a barn. Mr. DeLuccia stated that he has an office in the barn and used to have an antique shop there. He uses the whole facility for himself as storage, but he eventually envisions establishing a gallery there. The barn building is not currently available for lease and never has been leased.

Mr. Billipp asked if Mr. DeLuccia operates a used car business in that location and stated that he has seen a few cars outside occasionally. Mr. DeLuccia stated that he does and that his office is in the back of the barn. Mr. Billipp asked if he had any employees and Mr. DeLuccia said there were none.

TESTIMONY FROM THE CODE ENFORCEMENT OFFICER

The CEO stated that he understands the applicant's need to identify his business as a veterinary hospital. In his opinion, based on the testimony of how Dr. Lee intends to use the property, he did not think it was any different than a professional office, doctor's office or dentist's office because the clients would be coming in and leaving on the same day. The only difference is that the patients would be pets.

Mr. Marshall asked the CEO if he would have any objections to the hospital in that location and the CEO stated he would have none

Mr. Hamilton said that he had noticed that the memo dated March 8, 2012 from Kate Pelletier, Planning Assistant, referred to Dr. Lee's site plan. Mr. Hamilton stated that he was assuming it was a typographical error and that it was Mr. DeLuccia's site plan that was presented to the Planning Board. Mr. DeLuccia stated that it was Dr. Lee who created the Planning Board application.

Mr. Hamilton asked if there were ownership requirements for the Planning Board as there are for the Board of Appeals where the proof of ownership creates standing. The CEO replied that the only issue that the Planning Board has is with the use of the property. Whether it is owned or granted is a civil issue.

Mr. Billipp stated that the memo from Ms. Pelletier stated that the Planning Board was

very supportive of the potential use of the property and that they are going to initiate, or perhaps already have initiated, a zoning change. He asked the CEO if that was correct as far as he knew. The CEO stated that he had not seen any preliminary zoning revisions to date.

Ms. Lemire stated that it was anticipated that the zoning amendment would be an issue that would be voted on in June at the Town Meeting. Mr. Hamilton mentioned that any amendment is required to have two public meetings prior to the June vote and asked if they had been scheduled. The CEO stated that the requirement is correct but that he did not know of any schedule. He stated that the time limit is coming up very fast and that there has to be a Warrant Article in order to be included in a Town vote. The deadline for initiation of the process would be in April.

Mr. Hamilton stated that the amendment for change in the ordinance may or may not be initiated in time for a vote in June. If it doesn't occur and the Board of Appeals denies Mr. DeLuccia's application, it would mean that Dr. Lee was out of luck. Chairman Cielezsko stated that that was supposition. Mr. Billipp said that it sounded as though it was a fact because it was mentioned in the Planning Board memo.

Mr. Hamilton asked if anyone knew where the idea of the proposed amendment originated. The CEO stated it came through the Planning Assistant's office.

Chairman Cielezsko stated that the amendment issue should not affect the decision of the Board of Appeals in this case.

Mr. Cutting asked Dr. Lee what his definition difference would be between the terms hospital and clinic. Dr. Lee stated that he didn't have a separate definition. Every veterinary facility he had worked in had been called a hospital. He stated that he knows of veterinary facilities that use the term clinic but he considers it semantics. The facilities are there for medicine, surgical care, and wound care. He stated his facility is a hospital rather than an emergency facility. His definition of an emergency facility is one that offers around-the-clock care, overnight care.

Mr. Cutting stated that he questioned the use of hospital as the right word. He stated that he agreed with the CEO that the practice falls under professional operation rather than a hospital because it offers a shorter volume business rather than a full-care facility with a 24-hour staff. He stated that what Dr. Lee was describing sounds more like a doctor's office practice than a hospital. Dr. Lee stated that most of the veterinary hospitals he has been associated with have had his philosophy have been open for 10-hour periods and that the animals that require around-the-clock care are few and far between and have been referred to a full-care facility.

Ms. Lemire asked Dr. Lee if he had a working relationship with Kittery Animal Hospital and he replied that he did not.

Mr. Billipp asked whether or not Dr. Lee would consider handling the patients overnight, rather than sending them out, if the business had grown and prospered and Dr. Lee had added more staff. Dr. Lee replied that he would. He stated that, however, that requires a vast amount of investment in equipment, personnel and expertise. He stated he would liken it to what people have to do if they have an emergency in the middle of the night. In that case, a person would not call a primary care doctor but would call the emergency room instead.

Dr. Lee stated that he had spent the first 13 years of his practice as an around-the-clock care facility, 24 hours a day for seven days a week. He found it exhausting and found that it was difficult to be 100% alert the following day after providing care in the night. That was why he made the difficult decision to refer to emergency hospitals. He stated he doubted he would want a full-care facility again.

Mr. Billipp asked Dr. Lee if he would continue having a crematorium such as the one he currently has in his practice in South Berwick. Dr. Lee responded that he would not have a crematorium in Eliot.

Chairman Cieleuszko asked the CEO whether or not the Planning Board could put binders on the conditions if the BOA granted the variance so that the business could not be changed to an overnight facility. The CEO stated that they could put such a binder on the variance and that changing those would still be hurdles that would have to be addressed with the Planning Board.

Chairman Cieleuszko asked Mr. DeLuccia what his position was in the Planning Board process and whether or not there had been any progress. Mr. DeLuccia stated that he had attended two meetings and that they had referred him to the Board of Appeals. The initial meeting was on February 7, 2012, and that is when the application was tabled. Dr. Lee stated that he made the initial application, not realizing that it had to be made by Mr. DeLuccia. They met again with the Planning Board a week ago and that is when there was some discussion about a proposed change in the ordinance. They were referred to the Board of Appeals for the appeal process.

Chairman Cieleuszko asked if there were a permit for the car sales business currently on the property. Mr. DeLuccia stated that there is a permit. Chairman Cieleuszko stated that that has some bearing on whether or not the land is producing income. He asked Mr. DeLuccia if that was his primary business and Mr. DeLuccia replied that it is.

Mr. Marshall stated that he has seen repeatedly in the ordinances that a business has to be screened from the abutting non-commercial properties. He stated that Mr. DeLuccia's building is a beautiful building that he has maintained well. He asked the CEO why it would need to be screened.

The CEO replied that that would be something the Planning Board would consider. Mr. Marshall stated that screening the building with trees or fences would detract. The CEO stated that it had been approved by the planning board as professional offices before, which is a commercial use. Screening is not part of the approval process. He stated that if the BOA approved the use, the Planning Board would continue in the same vein in which the prior approval had been given with this particular piece of property, where it is a unique piece of property that has always been a commercial business in a Rural Zone.

Chairman Cieleuszko asked Mr. DeLuccia if he had anything else to add to his case, because he was worried about the four criteria which have to be justified for the variance. Mr. DeLuccia has an existing business on the property right now. Chairman Cieleuszko stated that was the hardest issue with the appeal.

Mr. DeLuccia stated that he not run the business for the prior nine months because he has had some health issues. He has been trying to lease the building and it has been an uphill battle to get a tenant. He stated he would like to maintain the status of the building as it has been for the past 20 years by finding someone who can occupy the building in a professional manner so that he could return to his own small business in the barn building.

Mr. Marshall asked what the taxes are on the property and Mr. DeLuccia replied that they are over \$6000 a year and the insurance was almost that much also. He stated that the maintenance was similar to that for a battleship where it is constant.

Chairman Cieleuszko asked if there were any additional points to be added. Dr. Lee replied that he did not think that a veterinary hospital would have any greater impact on the location than the prior family practice had had for six years in that location. He thought a veterinary hospital is a professional office.

Mr. Hamilton asked if a name for the business had been established and Dr. Lee stated that it would be called Eliot Veterinary Hospital.

TESTIMONY FROM ABUTTER

John Saulnier of 8 High Meadow Farm Lane stating that his attendance was a fact-finding mission to see what Mr. DeLuccia had in mind for the property. He stated that Mr. DeLuccia had always been a great neighbor and that his proposed use sounds like it would be a fine fit. His only question was whether or not the actual day-to-day practices would be entirely encompassed within the building.

Chairman Cieleuszko asked for final questions. Ms. Lemire asked if the Planning Board

had suggested any conditions that would have to be met if the variance were to be granted. Dr. Lee responded that his impression was that the Planning Board was very receptive to the idea and one member commented that the property was a great location for the practice. The only concern was the fact that a veterinary hospital is excluded.

Ms. Lemire stated that, in terms of screening, the barn behind the house would be an appropriate screen because the residences are all behind the property.

Mr. Billipp, referring to Mr. DeLuccia's application in regard to criteria #3, asked for a definition of a Knox box and how the box relates to the property. Mr. Marshall stated that it is a locked box which contains a key to the building for use by emergency personnel to access the building for fire and safety purposes.

The CEO asked the appellant for his definition of "small animal" and Dr. Lee responded that the largest animal would be the largest breed of dog. There was discussion of whether to limit the definition by weight. Dr. Lee stated that the business would be 99% dogs and cats and that he did not think there would be any animal weighing more than 185 pounds.

Chairman Cielezsko closed the public hearing at 7:45.

FINDINGS OF FACT

- The applicant is Joseph Deluccia
- Mr. DeLuccia's mailing address is 14 Nature Lane, Rochester, NH
- The owner of the property is 392 Goodwin Road, LLC
- The location of the property is 1034 Goodwin Road, Eliot, ME
- Proof of ownership is demonstrated by Deed Book 13938, Page 28 received by the York Registry of Deeds on February 13, 2004
- The public hearing was held March 15, 2012
- The property is zoned Rural
- The property consists of 3.5 acres
- The property is identified on Tax Map 101, Lot 20-1
- The Board of Appeals has authority to hear the case by Ordinance 45-49B, Variance Appeals
- Dr. Christopher Lee presented the oral testimony with the approval of the applicant
- Other Relevant Facts
 - There is a lease that has been made but not signed, pending their work with the Town
 - Only the main office is to be used for this occupation

- The hours of operation that were stated in the application are to be 8:30 AM-6:00PM Monday through Friday and 8:00AM-12:00 noon on Saturday
- It was testified that the office sat for three years without a tenant
- It was also testified that the barn has a car sales business run by the applicant
- It was also testified that the car sales business has not functioned for at least nine months
- Dr. Lee testified that there would be no overnight boarding of animals and no outdoor keeping of animals
- The date of the application is February 28,2012
- Dr. Lee testified that 99% of the business would be dogs and cats
- The applicant, prior to coming to the Board of Appeals, made an application to the Planning Board for his intended use. That application was tabled and it was suggested that the applicant come before the Board of Appeals

Mr. Marshall asked if it was significant that historically the property was, in fact, a farm. Chairman Cielezsko stated that the property had not been a farm for approximately 20 years. Mr. Marshall stated that the zoning ordinance was originally formulated under the premise of protecting the rural character of Eliot. Chairman Cielezsko stated that the property had been used for other purposes than farming since that time. Mr. Hamilton stated that he did not think former use had bearing on the current issue. Mr. Billipp stated that the fact that the property had originally been a farm was not a relevant Finding of Fact.

Chairman Cielezsko stated that the Board's duty is to make sure that the four criteria for a variance have been met.

Mr. Billipp made a motion to approve the request for a variance by Joseph DeLuccia to allow a veterinary hospital in the Rural Zone as the application states. Mr. Marshall seconded the motion.

#1 - "The land in question cannot yield a reasonable return unless the variance is granted."

Mr. Billipp attested that the property has been vacant, since the prior doctor left, for two to three years. He also stated that he is in the real estate business and attested that the real estate market is very slow and the economy anemic. He stated that he was not surprised that the owner has been unable to lease the building for any use because there are very few people looking. He stated that he justifies the first criteria because Mr. DeLuccia has operated a very small, very limited business and has had some health issues and that the operation has been curtailed. He stated that the criteria had been

met because the property cannot yield a reasonable return when it is vacant and not generating any income, at the same time that the owner has considerable expenses for maintenance and taxes.

#2 - "The need for a variance is due to the unique circumstances of the property and not the general condition of the neighborhood."

Mr. Billipp stated that the property is unique because it has had a commercial use over the past 20 years or so while still being in a Rural Zone. As was noted by the Planning Board, there are number of commercial uses that are allowed in the Rural Zone if they are located on Route 236. He stated he thought that this situation is a "Catch-22" situation that the Planning Board hopes to correct with a zoning amendment. He stated that he thought the second criteria had been met.

#3 - The granting of a variance will not alter the essential character of the locality."

Mr. Billipp stated that the granting of a variance would have no effect whatever on the locality. He stated that the use of the office building would be much less than the use when it had when it was operated as a medical facility because it will have less personnel and all of the animals would be treated within the building. He stated that from the outside, it would be a very low-impact business and would not alter the character of the locality.

#4 - "The hardship is not a result of action taken by the appellant or a prior owner."

Mr. Billipp stated that this is a situation that has "fallen through the cracks" in the Zoning Ordinance where a veterinary hospital is not allowed in a Rural Zone at the same time that other commercial uses are allowed. He stated the Zoning Code does not address every type of use and, in this case, the use is more akin to professional office use than to a hospital. He stated that the semantics of whether or not it is a clinic or a hospital is not what matters. It is more a matter of the type of services provided. Since the service to be provided does not include overnight care, he stated that he felt the applicant meet all four criteria.

Mr. Marshall stated that he was in agreement with Mr. Billipp's comments.

Mr. Hamilton stated that he agreed with Mr. Billipp on criteria #2, #3 and #4 but disagreed with criteria #1. As much as the property is a perfect fit for the proposed use of the appellant, it does not fit the zoning code. He stated that he did think the property could yield a reasonable return if it were rented to somebody else where the use would fit the code. He stated that the situation might be different if Dr. Lee were

the applicant, but Dr. Lee does not own the property.

Mr. Cutting stated that he disagreed that the appellant met criteria #1 and that he agreed with Mr. Hamilton that other uses could be found for the property. He stated that he agreed with #2 and #3. He stated that he felt "on the fence" about criteria #4 and viewed the hardship as self-created since Mr. DeLuccia presumably had knowledge of the restriction on the use of the property. He had prior knowledge that the proposed usage is not allowed in that zone and, therefore, Mr. Cutting did not think criteria #4 had been met.

Chairman Cieleuszko called for a vote on the motion to approve the variance request to allow a veterinary hospital be on that property in a Rural Zone. Mr. Billipp and Mr. Marshall approved the motion. Mr. Cutting and Mr. Hamilton opposed the motion.

Chairman Cieleuszko stated that the vote was tied and, as Chairman of the Board, he has to make a final vote. He stated that he agreed that Mr. DeLuccia did not meet criteria #1 or criteria #4. He stated that he agreed that criteria #2 and #3 had been met. Therefore, he opposed the motion.

Chairman Cieleuszko informed Mr. DeLuccia that he would receive a Notice of Decision within seven days stating that the application for the variance had been denied. Mr. DeLuccia will have 45 days to appeal the decision to the Superior Court. The minutes of the variance appeal would be available within a month if he needs them.

REVIEW AND APPROVAL OF MINUTES

The minutes of the February 16, 2012 meeting were approved, with amendments.

Chairman Cieleuszko noted that the Notice of Decision sent to Mr. McClellan following the February meeting contained an erroneous meeting date of February 15, 2012 and it should have been February 16, 2012. He stated that the appellant has already been told about the error.

OTHER BUSINESS

The Code Enforcement Officer stated that he is in the process of amending the fee schedule and he proposed that he change the fee for Administrative Appeals to a flat \$150 rate. He stated that people are confused because they think the process will cost \$25 when it really costs closer to \$150. His thought was that it would simplify the process, though it might result in occasions when it will cost the Town \$10-\$15 additional. There would also be times when they would break even. The CEO stated

that it would clarify things if the same fee that is charged by the Planning Board for a public hearing were also charged by the Board of Appeals.

Chairman Cieleuszko stated that that would be an ordinance change and is not part of the BOA by-laws, so what the CEO is seeking is input from the BOA for an ordinance change.

Chairman Cieleuszko stated that for most single applicants, the costs run from \$25 up to \$140 for advertisement, alerting the abutters and putting an announcement in the newspaper. Therefore, \$150 is not far off the mark.

Mr. Billipp asked what the current charge is. The CEO's response was that there is a \$25 fee and an additional \$135.76 for notification to the abutters and for advertising. Chairman Cieleuszko added that the additional fee depends on how many abutters are notified and also on how many cases are to be presented at the meeting. If three or four hearings occur at one meeting, the cost of the advertising goes way down because the basic block is what is expensive. Sentences can be added for not much more expense.

Mr. Hamilton asked for confirmation that that is the fee the Planning Board charges and the CEO confirmed that it does charge a flat fee of \$150. Chairman Cieleuszko added that the fee only includes the newspaper announcement for one public hearing. Therefore, the Planning Board is not incurring any more expenses than the Board of Appeals incurs.

Mr. Marshall stated that the bulk of the expense must be for the newspaper and Chairman Cieleuszko confirmed that that is correct.

Mr. Lemire stated that the mail to the abutters is certified. The CEO stated that the fee for certifying a letter is only \$1.00. Mr. Marshall asked if the letters are sent with a return receipt and the CEO said that they are not.

Chairman Cieleuszko asked if anyone had any reservations about charging a fee of \$150. Ms. Lemire stated she did not have any reservations. Mr. Hamilton stated that if the Planning Board charges \$150, then the Board of Appeals probably should also.

Chairman Cieleuszko stated that there was a consensus to charge a \$150 fee.

The CEO stated that he did write a letter to the Board of Selectmen indicating that his opinion on the McClellan case is advisory, the Board of Appeals' decision is advisory and that the BOS is responsible for making an official decision on the McClellan case. What format they will choose to use is unknown to him. He stated he does know that they invited the neighbor and Mr. McClellan to the last Board of Selectmen meeting, but there were only three members present. Therefore, they did not hear the case. The next scheduled meeting is coming up soon.

Mr. Marshall stated that the Appeals Board used to be the Appeals Court at the Town level. An appellant could appeal basically any issue. Whether the appellant was opposed to something the CEO has allowed or whether the CEO was opposed to something that had been rejected. The decision of the Board of Appeals was definitive. He stated that it seemed that now, the Board of Appeals cannot approve anything.

Mr. Hamilton stated that it is specifically on Notices of Violation that the Board of Appeals is only advisory because of a recent Maine Supreme Court case. Mr. Marshall stated that cleared his confusion as to why the decision in the McClellan was advisory only.

The CEO stated that it may be that the reason behind that issue is that the Board of Appeals members are appointed by the Board of Selectmen. The Board of Selectmen is voted in by the citizens.

Mr. Marshall stated that the court has to levy a fine. The CEO confirmed that the court judge actually is the person to levy a fine. If an appellant does not move forward on an issue, it then goes to court and the court reviews what has been done and levies the fine against an appellant.

Chairman Cielezsko passed out a letter to each of the BOA members which read as follows:

To each member of the Board of Appeals,

At our last meeting, Bill Hamilton brought to my attention a wrong I had done in my role as the chairman of this board. It occurred at one of the Board of Selectmen's February meetings. Statements I made at that meeting confused the selectmen (I learned later) and led a local paper to print that the Board of Appeals had formally voted to request that no live or taped presentations of our meetings be allowed. At a subsequent BOS meeting, I believe I repaired any harm I caused to their deliberations on the use of cameras at meetings.

My role as chairman includes bringing to the attention of the BOS, as a committee head, any concerns, information, or opinions that we as a board have approved by motion at our meetings. Wrongly, during my diatribe against the upcoming camera policy of the BOS, I referenced a short informal discussion at the end of one of our meetings. Bringing it up during my comments to the selectmen blurred the line between me speaking as a citizen and me speaking as a chairman. I knew, and know, better than to do that, but failed.

I am sorry for my actions in this matter and hope you can believe that no malice nor subterfuge was intended.

Each of you help make up the best Board of Appeals I have worked with or read about and I hope, with your patience, that I can be a chairman worthy of you.

Chairman Cieleuszko apologized and the BOA members all accepted.

Chairman Cieleuszko stated that he wants to add one sentence to the Annual Report, which otherwise would be the same as last year's report. It states how many meeting the BOA has and is very basic information. He would like to add one sentence at the conclusion stating that Barbara Boggiano, the BOA's long-standing secretary, has left the board for new adventures and the Board has welcomed Linda Keeffe as her replacement. The report has to be submitted by April 6, 2012. He stated he can send it to the members by email for editing by the end of the month. It does not need a motion.

Chairman Cieleuszko stated that the last item of business was the issue of video streaming. He stated that the Board of Selectmen had sent the BOA a memo but that he did not receive one. He asked if everyone else had seen the memo and nobody had.

Chairman Cieleuszko stated that the BOA has been asked to submit their input as to whether the members want video recording of the BOA meetings. He stated that it is not clear from the way the memo is written whether the BOS was asking for a vote or if they just wanted everybody's opinion or consensus.

Mr. Cutting said that it had been mentioned that with video recording there would no longer be a need for recording secretaries. Chairman Cieleuszko stated that had been one of his comments at the BOS meeting that had been part of his diatribe. Ms. Lemire agreed with Mr. Cutting that the audio would still need to be transcribed onto a written page. Mr. Marshall also stated that there would still be a need for a hard copy. Chairman Cieleuszko and Ms. Lemire stated that there is a need for written minutes to meet legal requirements.

Mr. Billipp stated that the BOS is in favor of video screening. Ms. Lemire stated that they have been doing it for a while.

Mr. Cutting stated that most towns in Maine do video streaming. He asked if the reason the BOS wanted the BOA's input was for the purposes of transparency where any member can tune in and watch what is going on. Mr. Lemire stated that anyone in Town can tune in, those who are interested in Town affairs and can't get to the meetings for whatever reason.

Mr. Cutting stated that when he lived in Portsmouth, he used to watch Planning Board and Council meetings in order to see what was going on in Town and found it very informative. Mr. Hamilton asked if Portsmouth Board of Appeals was video-taped and Mr. Cutting stated that he did not remember watching any BOA meetings.

Mr. Marshall asked if the video streaming was only available on the internet. Ms. Lemire stated that it is only available on the web. Chairman Cieleuszko stated that, in the current form, the local video streaming is only available on the internet for the BOS and that only written thing he had seen about the issue was what had been presented in the BOA memo.

Mr. Hamilton stated that transparency is a big problem in Eliot and that he would not oppose video-taping at all.

Chairman Cieleuszko stated that he does not like the idea at all. He stated that even the BOS meetings find a couple of speakers who try to sit under the cameras so they won't come into view and who don't want to be televised. He stated that the speaker are forced to show up because of the issues they are involved in.

Mr. Marshall asked who would be required to be at a meeting who did not want to be on camera. Chairman Cieleuszko stated that the Planning Board Chairman is one of the people.

Mr. Marshall stated that he is not opposed to the idea, but that he is uncomfortable with it because the BOA meetings are close to an executive session type of situation, dealing with matters of personal lives. Mr. Billipp asked if the Planning Board also dealt with the same type of issues. Ms. Lemire stated that she did not think so.

Mr. Hamilton asked if the BOS dealt with the same issues and Ms. Lemire stated that they do in Executive Session, but they forbid any discussion of anything personal.

Mr. Marshall stated that he is uncomfortable with video streaming when someone is dealing with personal issues. Chairman Cieleuszko stated that he was not sure how an argument based on that would hold up because the BOA has public minutes that are posted on the web. Mr. Marshall reaffirmed that he was not opposed to streaming but was uncomfortable with it.

Chairman Cieleuszko stated that at the Town Hall meeting where the people budgeted for this, the speakers were saying that it was "entertaining" and he stated that that would be what the BOA would be doing...providing entertainment for people who want to watch.

Ms. Lemire stated that she does not feel strongly one way or the other, but that she had noticed that during this meeting, Mr. DeLuccia appeared very uncomfortable talking

about his reasons for meeting the first criteria. Chairman Cieleuszko agreed that he did appear to be uncomfortable. Mr. Marshall stated that he thought the reason for that was that the property had been empty for so long that Mr. DeLuccia could lose it.

Mr. Billipp stated that he thinks there are times when the BOA should be able to confer amongst itself and not be under the scrutiny of the world. Mr. Marshall stated that went against the very idea that, if there were more than two members together anywhere, discussion of anything would then become an unadvertised meeting. Ms. Lemire agreed.

Chairman Cieleuszko stated that the BOA is open to people who have an interest. Once it is recorded, then it becomes fodder. He stated that, for him, to be available for people who are watching the streaming for the “gotcha moment” or just to twist things up is not a public service.

Mr. Hamilton stated that a positive outcome would be that it would keep the BOA members on their best behavior.

There was discussion about how much streaming people would actually watch. Mr. Cutting stated that if there were a current issue people cared about, they would be sure to watch. Chairman Cieleuszko restated that he was concerned that people would watch purely for the entertainment value. Mr. Billipp asked what was wrong with entertainment.

Mr. Hamilton stated that he thought it was entertainment for some. However, the important point is that the streaming applies to freedom of information. Chairman Cieleuszko stated that the BOA has freedom of information through the minutes and the public meetings. Mr. Hamilton replied that streaming would be another layer for people who cannot come to the meetings. Chairman Cieleuszko replied that there are some elderly people who are hardly able to walk who attend the meetings. He stated that those are the people who are showing up and participating.

Chairman Cieleuszko raised the point that at any meeting regarding a big issue where the speakers are facing an audience full of irate people, they are aware of that. If a camera is recording and the crowd of irate people is at home, the speakers don't see them. He stated that that is not participation. Mr. Hamilton stated that they can't participate from home, but that they can view the meeting and inform themselves. Ms. Lemire stated that would be a percentage missed if one were not present at the meeting.

Mr. Cutting raised the issue that the cameras can't view everyone and that content is missed in that way. Some chambers are covered by rotating cameras. The cameras in Eliot are stationary.

Ms. Lemire stated that the BOS has talked about having microphones on the podium.

Chairman Cieleuszko stated that he has many grave reservations about the streaming.

Mr. Hamilton stated that what should also be considered are the ramifications if the BOA decides to refuse the streaming. He stated that he thinks the idea of not being supportive of public information access does not send a good message to the rest of the community. He stated that it could lead to the suspicion of conflict of interest.

Mr. Cutting stated that he thinks the BOA makes very good decisions and tries to help the people. Ms. Lemire agreed. Mr. Hamilton stated that he thinks a lot of people don't know that.

Chairman Cieleuszko asked for a motion regarding the video streaming issue. Mr. Hamilton moved that the BOA agree to the proposition of having video streaming of the meetings. Mr. Billipp seconded the motion. Voting in favor were Jeff Cutting, Peter Billipp and Bill Hamilton. John Marshall abstained because the motion did not express his feelings. He restated that he was not opposed but was uncomfortable.

Chairman Cieleuszko stated that the BOS had not asked for a vote, but that they did request input from each committee. He stated he could present a consensus.

Mr. Marshall stated that the BOA report was mixed. He questioned whether the BOA would have some control if a sensitive issue arose and what would be the definition of an Executive Session.

Chairman Cieleuszko stated that the BOA has the ability to go into Executive Session only when the BOA is speaking to an attorney when the BOA becomes a party to the action.

There was a general discussion about the fact that there are cameras in many public spaces. Mr. Marshall stated that he has misgivings about being watched.

Mr. Hamilton stated that he could understand the feeling of "big brother is watching" if one is walking down the street without willingly agreeing to be video taped. But, in the BOA meetings, the members are doing a public business rather than a private business. He stated that anybody who has been informed by the Chairman about video taping would probably be very careful about what they say. They probably would not talk about things that are very personal and that would be their choice. If they decide to reveal a personal problem in order to persuade the BOA that they are in a hardship situation, that would be their choice. They would know that they are being recorded.

Ms. Lemire asked what would happen if a person needed to reveal something personal and they were so uncomfortable with the camera that they would not reveal and ended up losing the case.

Mr. Hamilton stated that he could not imagine what sort of situation that would be. Ms. Lemire stated that she could not think of a specific situation. Mr. Marshall stated that he thought that in the recent case involving a variance to allow a carport, the appellant may have withheld some personal issues about the fact that he is getting to be an old man. Mr. Hamilton stated that if the appellant was coming to the BOA for an appeal because of that fact, people need to know that is the reason.

Mr. Hamilton stated that the BOA has nothing to hide, the members conduct themselves in a good way and people would have more respect for the Board if they see how they proceed. He stated that he knows quite a few people who cannot attend meetings because they work at night.

In response to a question about when the video is available for viewing, Ms. Lemire stated that it is archived at the internet site and can be viewed at any time.

Mr. Marshall restated his discomfort with the idea of video streaming. Mr. Hamilton restated that he thinks it is a good idea and that he does not feel that his privacy would be violated and does not think people who testify in front of the Board would feel that their privacy is violated any more than it is among the other people in the room. When that audience is expanded to another 100 people who are watching on video that fact would not increase the degree of feeling embarrassed.

Ms. Lemire stated that she would suggest that, if the BOA does agree with video streaming, the CEO inform the appellant that they will be video screened right on the application and also is verbalized. She stated it should also be announced at the beginning of each meeting.

Mr. Cutting wondered if the Town should copyright because of the possibility that the video could be lifted off the web. Ms. Lemire stated that content on the web can be copyrighted and cannot be used without prior consent.

Ms. Lemire stated that the BOS meetings are video screened and that the visual presents the Board members and the backs of the heads of the audience.

Mr. Billipp stated that there are some questions about whether or not there are legal issues that need to be addressed by the Town attorney regarding video streaming. He said that he is not opposed to the streaming, but he want to be sure the Town has consulted with council.

Ms. Lemire stated that she is not completely opposed to video streaming, but she does have some legal concerns.

Mr. Hamilton stated that he was still not clear as to what the legal issues would be. If someone manipulated the video, it might become a liability issue. That would be

culpable because someone would be altering the recording. He stated that he thinks that legal ramifications are a non-issue and that he cannot see any possible issues.

Mr. Billipp stated that he doesn't know what some of the issues might be, but that determining what they might be is the Town attorney's job. Ms. Lemire agreed that it was not a bad question to ask. She stated that the BOS is the only meeting that is currently being video streamed. Mr. Billipp stated that there could be different issues for different types of Boards.

Ms. Lemire stated that one of her concerns was that people would feel uncomfortable. Mr. Hamilton stated that he did not see any difference between the public meeting and video streaming.

Chairman Cielezsko stated that the BOA approves the minutes by looking them over. He stated that video streaming would rely on total strangers to keep a recording of the BOA meetings. He stated that he doesn't trust that process. Mr. Hamilton stated that it is just another means of recording similar to the tape recorder.

Chairman Cielezsko stated that the most telling argument is that if the BOA is against video streaming, people will wonder what they are hiding.

Chairman Cielezsko stated that it appeared the BOA was approaching a full consensus in favor of the issue. Mr. Marshall stated that he would accept it, but that he was uncomfortable with potential ramifications and unintended consequences. Ms. Lemire state that that was a good way to state the reservations.

In conclusion, Chairman Cielezsko stated that he would report to the BOS that the BOA accepts the premise for video streaming with some concerns by some members of the Board.

Mr. Marshall made a motion to adjourn, Ms. Lemire seconded the motion, all voted in favor.

The meeting was adjourned at 9:08 PM

Respectfully Submitted,

Linda Keeffe
Recording Secretary

