

## **TOWN OF ELIOT - BOARD OF APPEALS MEETING**

November 15, 2012

### **ROLL CALL**

Present: Chairman Edward Cieleuszko, Vice-Chairman Peter Billipp, Secretary Bill Hamilton, Philip Lytle, Jeff Cutting and Associate Members Ellen Lemire and John Marshall.

Others Present: Code Enforcement Officer, Jim Marchese; Planning Board Members Steve Beckert, Lawrence Bouchard, Jeff Duncan and Kate Pelletier; Appellants David and Mary Fournier

### **CALL TO ORDER**

Chairman Cieleuszko called the meeting to order at 7:00. He stated that the procedure for the meeting would be:

- Voting members will be Philip Lytle, Bill Hamilton, Peter Billipp and Jeff Cutting.
- The request from the appellant will be summarized.
- The parties to the action will be determined.
- The jurisdiction of the Board of Appeals to hear the case will be determined.
- The standing of the appellant and the timeliness of the application will be determined.
- Testimony will be given by the appellant.
- The Board will question the appellant.
- Testimony will be given by other parties to the action, followed by questions from the Board.
- There will be rebuttals.
- Comments will be taken from abutters and interested observers.
- The appellant will make the last statement and take any last questions from the Board.
- The public hearing will be closed.
- Findings of Fact will be determined.
- The Board will discuss their duties, make a motion and decide by vote upon the motion.

Chairman Cieleuszko stated that the appeal was a request by Mary and David Fournier, 16 High Meadow Farm Road, Eliot, for Administrative Appeal against the Planning Board and the Planning Assistant for failure to provide notice, as abutting landowners, regarding Notice of Decision to amend an approved Site Plan.

Chairman Cieleuszko stated that the Board of Appeals has the authority to hear the case under the Shoreland Zone. The Board has the jurisdiction under Section 44-47 (a)(1).

Chairman Cieleuszko clarified with Ms. Pelletier that the Fourniers were abutters in the original 2011 project. He stated that, since the current case applies to the same project, they would be abutters.

Ms. Pelletier stated that the amendment in question did not result in any changes to any structure or to anything on the Fournier property.

Chairman Cieleuszko stated that the Fournier property still abuts the wetlands that are involved in the changes. He stated that, unless anyone had questions, he felt they should be granted standing as abutters and aggrieved parties.

Mr. Marshall stated that he did not see the boundary lines for the properties on the map supplied by the Town. Therefore, he was unable to determine if the Fournier property abuts the wetland.

Ms. Pelletier supplied the Board with a new map that did indicate property lines.

Mr. Marshall stated that it appeared that the Fournier property did not abut the wetland. Chairman Cieleuszko stated that they abut the property that contains the wetland. Mr. Marshall stated that the August 2012 meeting of the Planning Board was concerned only with the wetland.

Mr. Billipp clarified that the Fournier property was Lot 20-4 on the map.

Chairman Cieleuszko stated that what needed to be determined was whether the Fourniers had standing as an aggrieved party.

Mr. Billipp asked if the Central Maine power line runs through the Fournier property. Chairman Cieleuszko stated that it does. He stated that the poles under consideration in the Planning Board decision were only in the Shoreland Zone.

Ms. Lemire clarified with Ms. Pelletier that the Fournier property is not in the Shoreland Zone.

Mr. Billipp asked for the definition of an aggrieved party. Chairman Cieleuszko stated that the definition is in Section 45-50, Appeal Procedure, page CD45:17. The ordinance states

that “an aggrieved party is (1) an owner of land whose property is directly or indirectly affected by the granting or denial of a permit, variance, waiver or administrative appeal under this chapter or (2) a person who land abuts land for which a permit, variance, waiver or appeal has been granted.” Chairman Ciesleszko stated that the second category, a person whose land abuts land, would apply because the lot next to the Fourniers is part of land in question.

Mr. Billipp and Mr. Marshall asked how the Fourniers would be affected. Mr. Hamilton stated that he thought they would be affected by proximity to the project, whether or not they are abutters. The power lines also continue through their property.

Mr. Marshall stated that the project had already been permitted through the process of a public hearing. Mr. Hamilton stated that that fact did not affect their standing as an aggrieved party. Mr. Marshall stated that the power line could still be built regardless of whether the August 2012 meeting had been held. He added that the only thing that happened at the August meeting was that four poles became less injurious to the project.

Mr. Hamilton stated that the current issue was that the Fourniers appealed the August 2012 decision and the Board had to determine whether or not they had standing as an aggrieved party, regardless of how the other rulings went in previous meetings. Mr. Hamilton stated that he thought they did have standing.

Chairman Ciesleszko stated that there was a decision made at the Planning Board meeting in August and that the Fourniers were appealing that decision and the way the meeting was run, all of which are in the Board of Appeals purview if the Fourniers have standing as an aggrieved party.

Mr. Billipp stated that another issue in Section 45-50 is the timeliness of the appeal, which has to be within 30 days of the decision. He stated that perhaps that issue trumps everything else.

Mr. Cutting asked if the Chairman was allowing video taping of the meeting. (Mr. Fournier was doing so at the back of the room.) Chairman Ciesleszko stated that he had no ability to stop the recording unless it was bothering the meeting and he had no reservations. He stated that he could not disallow it.

Mr. Billipp stated that Mr. Hamilton appeared to agree that the Fourniers had standing as aggrieved parties and asked if there were further discussion on the issue. Mr. Billipp did not think the Fourniers met the second condition of Section 44-47 because they are not abutters of the piece of land involved in the amendment to the site plan (referring to the 8.9 acres in the Shoreland Zone). He stated that the next lot up, Lot 101-20, is the abutter. He added that, from what he could see, the Fournier property is not abutting where the action is taking place.

He added that that the Fournier property would not have to meet the abutting requirement because it would be affected by having the activity take place on his property. He stated that the Fourniers do not have to meet all of the criteria, but only have to meet one. He stated that he did not think they were directly affected but perhaps were indirectly affected.

Mr. Billipp stated that he would like further information as to how the Fourniers meet the condition of being an aggrieved party. Chairman Cielezsko directed the question to Mrs. Fournier and asked her how she met the criteria of an aggrieved party.

Mrs. Fournier quoted the definition of an aggrieved party from Section 45-50 which states "an owner of land whose property is directly or indirectly affected by the granting or denial of a permit, variance, waiver or administrative appeal under this chapter." She stated that she is an aggrieved party because their land directly abuts the property in question.

Mrs. Fournier showed the Board a zoning map of the Shoreland Zone that was part of the application for what was approved in the Notice of Decision (from the Planning Board) of September 18, 2012). She stated that they had a skimpy packet that was submitted on August 10, 2012. Mr. Cielezsko stated that he could see no property lines. He asked her to show her land as an abutter. Mrs. Fournier stated that the area is a large wetland and is actually a 100-year flood zone.

She showed Chairman Cielezsko the property line on a larger map, stating that that map was more official. She stated she definitely abuts what they are claiming is Shoreland Zone and what the Town map shows as Shoreland. She referenced a yellow area on the map defined as Resource Protection that is now owned by Central Maine Power. Chairman Cielezsko asked for the source of the map and Mrs. Fournier stated that it was from a company called GIS Mapping.

Mr. Billipp stated that the GIS map was not in the packet received by the Board of Appeals and could not be considered. Chairman Cielezsko stated that the appellant was allowed to offer information in response to a question.

Chairman Cielezsko asked Mrs. Fournier how she would be directly or indirectly affected by the granting of the permit. She stated that it would definitely devalue her property by quite a bit. She stated that there would be three transmission lines across her property. She stated that there would be safety and health issues. She added that the structures would be the correct height as ordered by the Public Utilities Commission.

Chairman Cielezsko summarized the standing of the Fourniers as being abutters and as being affected by devaluation of their property, together with safety and health issues.

Mr. Billipp stated that his opinion was that Mrs. Fournier did not prove that she was an abutter to the land in question nor did she explain how she was indirectly or directly affected by the Planning Board approval of the revision of four or five structures. He added that he was still not sure that the appellant demonstrated being an aggrieved party.

Mr. Hamilton stated that in the Planning Board Notice of Decision of September 18, 2012, the second paragraph clearly states the property as being identified by Map 101, Lot 20. He stated that Lot 20 is a large lot and that in the appeal that the Fourniers presented to the Board, their property is identified as Map 101, Lot 20-4. He stated that Lot 20-4 clearly abuts Lot 20 and that he did not see a problem with their standing as abutters. He stated that the Notice of Decision cited Lot 101-20. Since the Fourniers lot is Map 101, Lot 20-4, they are clearly abutters.

Mr. Billipp stated that the activity was on Lot 20 and the Fourniers abut that piece of property. Mr. Hamilton stated that they are abutters and are also parties that are directly or indirectly affected from the outcome of the Planning Board decision. He stated that their standing as an aggrieved party is very clear. Mr. Lytle and Mr. Cutting agreed.

Mr. Hamilton clarified that the information regarding the location of the activity as paragraph 2 in the Planning Board Notice of Decision dated September 18, 2012, which states that the "property can be identified as Assessor's Map 102, Lots 1 and 4 and Map 101, Lot 20" and that the property can be seen clearly on the map that Ms. Pelletier had provided. He stated that he did not see any specific references to any other portion of the property in the Notice of Decision.

Mr. Billipp stated that he could not locate Map 102, Lots 1 and 4. Mr. Marshall stated that Map 102, Lots 1 and 4 were on the next lot north of Lot 20. Mr. Billipp stated that the permit was about activity on those lots and that he was in agreement that the Fournier property abutted the location of the activity.

Mr. Cielezsko stated that the next determination would be timeliness.

Mr. Billipp stated that Section 45-50 states that "the aggrieved party shall file his appeal within 30 days after a decision is made."

Chairman Cielezsko stated that the property is Shoreland which has different requirements and they are located in Section 44-47 (d) (1) (I), Page 44:39. "An administrative appeal or variance may be taken to the board of appeals by an aggrieved party from any decision of the code enforcement officer or the planning board, except for enforcement-related matters as described in section 44-48. Such an appeal shall be taken within 30 days of the date of the official, written decision appealed from." He

stated that the official, written decision was developed and approved on September 18, 2012.

Mr. Billipp stated that he was confused by the Code Enforcement Officer's letter to the Board of Appeals dated October 31, 2012. In that letter the Code Enforcement Officer stated that, in his opinion, the 30 day period starts with the date of the official written decision.

Chairman Cielezko stated that it appeared that the Planning Board erred it stated that the decision had to be appealed within 30 days from the August 21, 2012 date when it should have stated it could be appealed within 30 days of the written decision of September 18, 2012. He asked for clarification from the Planning Board.

Ms. Pelletier stated that the Planning Board considers the decision date to be the date of the actual decision, not the date of the letter. She stated that the decision was made on August 21, 2012, so the appeal occurred almost two months from that date. She added that in the cases of law with which she was familiar, the date of decision is the actual day the decision was made, not the date the letter was written.

Chairman Cielezko asked if there were any questions in regard to the date. Mr. Hamilton stated that the Notice of Decision of the Board of Appeals has to be completed within seven days. The appeal date of the actual decision is 30 days from the meeting date, not the date the Notice of Decision was written.

Mr. Hamilton stated that he did not view the September 18, 2012 date as the day the decision was reached. The decision was made in the meeting of August 21, 2012 and was written at that time in the sense that it was recorded and noted on that night. He stated that he did not know of a requirement of the Planning Board to file a notice within seven days. He stated the September 18<sup>th</sup> date is not the date of the decision. The August 21<sup>st</sup> date is the date the decision was issued by the Planning Board.

Mr. Hamilton stated that he did not know what the requirement was of the Planning Board as to when they have to issue a Notice of Decision. He stated that he did not think that would affect the actual date of the decision because the date of a decision is that of a public hearing.

He stated that, in the present case, it was a public hearing and meeting of the Planning Board to amend a plan that they considered minor which is the decision date. He stated that he agreed with the town planner that the date should be the day the decision was made by the Planning Board, August 21, 2012.

Chairman Cielezko stated that Section 45-50 regards a regular zone. He stated that that section provides a very accurate and detailed definition of the 30-day appeal requirements. In Shoreland Zoning there is a more fluid definition. Section 44-47 states

that “such an appeal shall be taken within 30 days of the official, written decision appealed from, and not otherwise, except that the board, upon a showing of good cause, may waive the 30 day requirement.” He stated that the requirements are quite different from those of 45-50. He stated that he thought they were written that way in order to give as much leeway as possible for situations just like the current one.

He stated that a decision could lay dormant for months without being recorded. He asked what would happen if nobody knew what was going on unless they went to the meetings. He stated that Shoreland Zoning has more protective devices built into it. He looks at the requirement as being from a written decision, which would be September 18, 2012.

Mr. Marshall asked whether if it was more protection or just sloppier writing. Chairman Cieleuszko stated he would assume the positive aspects and that he thought it was meant to be more protective.

Mr. Billipp stated that he thought it further reinforced the 30-day requirement from the date of decision. To him, the waiver possibility meant that maybe if someone filed after 31 or 32 days, that would be the leeway that could be granted. He did not see almost two months as the leeway intended.

Chairman Cieleuszko stated that the courts have thrown out everything over 30 days when it comes to 45-50. He stated that he did not know any history of Section 44. He stated that, under 45-50, if you are a day late you are ineligible. The Board of Appeals has no option to grant extensions under 45-50.

Chairman Cieleuszko stated that the Board has leeway under Section 44. He added that the leeway was not needed in the current case because the appeal was from the written decision. He stated that there was no written decision the night of the meeting. Ms. Lemire stated that the written decision was the motion made and recorded by the secretary. Mr. Marshall agreed.

Mr. Hamilton stated that the paper with the Notice of Decision was not the decision itself but was a recording of the decision that was made back in August. The paper is not the decision but is a notice of that decision. He stated that the Board of Appeals decisions are made at the meetings and public hearings.

Mr. Hamilton stated that he did see the latitude being offered under Shoreland Zoning, but that he still did not believe the term “official, written decision” refers to the Notice of Decision. The decision was made at the meeting and through the Findings of Fact. The Notice of Decision was simply a copy of that decision.

Chairman Cieleuszko asked Ms. Pelletier if, in the meeting of September 18, 2012, the Board went over the Notice of Decision and accepted it. She stated that the board

looked it over for typographical errors and okayed it for issue. She stated that the Planning Board is not even required to issue a Notice of Decision so they didn't even have to write that letter. If they had not done so, the official decision would more clearly be August 21, 2012. They are not required to write a notice and the letter is considered to be just a summary.

Mr. Hamilton clarified that the Planning Board does not have a requirement similar to that of the Board of Appeals. Ms. Pelletier stated that that was correct. Mr. Hamilton stated that to him that meant the clock started ticking the day the decision was made, not the date the date the secretary typed out the summary.

Mr. Billipp stated that that seemed to be more in keeping with the rest of the zoning appeal requirements.

Mr. Lytle stated he was confused because he had not had a chance to thoroughly study all of the paperwork.

Mr. Marshall stated that he thought the appeal was way over the time allowed. He stated that he could see the 30-day period stretched if the end had fallen on a Sunday or a holiday, in which case they could be given until the next business day, but not stretched to two months. He stated that in other situations in the past, it was not even questioned whether it was allowable or not.

Mr. Cutting questioned how one would know what they were appealing without something in writing. Ms. Pelletier stated it was what the ordinance states. She stated that they summarize the decision in writing because they had been advised to summarize every meeting so a person could get an idea of what to do next.

Mr. Cutting wondered if someone should just walk in and state that they wanted to appeal whatever was said at the meeting the night before. He stated that if he disagreed with the decision, that would be what he had to say because he would have nothing in writing.

Ms. Pelletier stated that any motion would be noted in the minutes. Mr. Cutting stated that the minutes are not done right away and that it would take a couple of weeks to get the minutes out. He stated that would also bog down the time frame being given to the appeal because the appellant would need something to hand to an attorney or some other person. If the appellant had not been present at the meeting, nothing they would say would be documented. He asked if there would be a legal record with the Town so that people could go to an attorney stating that the record indicated what they wanted to appeal.

Ms. Pelletier stated that she was not saying the situation was ideal, but only stating what it states in the Ordinance.

Mr. Cutting stated that what he was trying to get clear in his mind was the beginning time of the 30-day period. He wanted clarification as to whether the clock started ticking the night of the meeting with nothing written or did it start with the formalized letter, giving the appellant something to present to an attorney to see whether or not he thought the appeal made sense.

Mr. Cutting referred to a note in the August 21, 2012 Planning Board meeting minutes which stated "Steve Beckert explained the 30-day appeal process." Mr. Cutting noted that there was nothing that really said what that process is. He stated that he was unclear as to what the Fourniers were told that night.

Ms. Pelletier stated that they were not present at the meeting. She added that the Planning Board is not required to notify abutters if there is no public hearing. They were not notified and they were not present.

Mr. Hamilton asked if the item was on the Planning Board agenda and Ms. Pelletier affirmed that it was.

Ms. Pelletier stated that the only reason CMP came back to amend their application was that the Fourniers took CMP to the Public Utilities Commission. The PUC issued an order stating that the poles had to be redesigned. The Fourniers were a party to that.

Chairman Cieleuszko stated that the BOA did not need the background information. Mr. Marshall stated that he thought it was relevant in that it indicated that they were aware. He stated that the current argument being made was that they were not aware. He said the argument had been made that the Fourniers' lateness was due to the fact that they were not aware.

Chairman Cieleuszko stated that the discussion was not about awareness but about the timeliness of the application, which does not depend on when they knew. He stated that under one scenario, they turned in the application within 30 days. He stated that the determination of timeliness cannot be made on the basis of awareness.

Mr. Marshall stated that the argument had been brought up that leeway could be made to allow an extended time because they were not aware. He stated that his answer to that would be that they have been completely aware and party to the whole action.

Chairman Cieleuszko stated that he did not grasp that argument and was looking at either 30 days or 60 days and that that was the determination he was trying to accomplish.

Mr. Cutting asked what instrument would trigger public awareness of the decision. Ms. Pelletier stated that the Planning Board does not notify people. She asked for clarification of the question and asked Mr. Cutting if he was asking if they notified the

abutters.

Mr. Cutting asked when it was publicly noted that there was a decision by the Planning Board. He stated that he was still trying to determine when the 30-day period started.

Mr. Cutting presented the situation where someone was not at the meeting and later found out that the decision affected their property. He asked how they would know about the decision.

Ms. Pelletier stated that they would only be notified if they were abutters and it was a public hearing. They do not get notified about a decision. Only the applicant gets notified of the decision. She stated that they assume abutters have been involved in the process.

Mr. Hamilton stated that the agenda for meetings is published and people are aware of what is on the agenda. He stated that there is an assumption, as there is for a Board of Appeals meeting, that a decision is made the evening of the announced meeting. The record of that would be included in the minutes or Notice of Decision. He stated that a decision is something the board arrives at, not something the secretary writes down. The decision is not made when it is written down, but is made the moment the board votes on it.

Mr. Hamilton stated that he understood Mr. Cutting's concern as to when people would be notified of the moment of the decision. He thinks it is incumbent on people to be aware of the notice of the meeting, which is published in the paper and tacked up on the bulletin board out in front of the Town Hall.

He stated that he could understand how it would be possible for someone to miss the meeting but that would not negate the fact that the actual decision was made during the moment of the meeting and recorded at a future moment. For the Board of Appeals, the moment the decision is made the appeal process starts. He stated that the same thing happens with the Planning Board. Once they made the decision, the appeal process starts.

Because the Planning Board is not required to make notification of a decision, it is incumbent upon whomever is involved in the situation to be aware of the meeting and to take the meeting decision as the moment the appeal process begins. He stated that he understood that the process is not perfect and not necessarily fair, but that is the way it works with the BOA. Though the Notice of Decision is issued seven days later, the decision starts the day of the vote and that is when the clock starts ticking.

Mr. Hamilton stated that he did not see why an appeal process should begin 30 days after the decision. Even though the ordinance says something about a written decision, he stated that he thought that was a confusing statement. Section 44-47(d)(1)(I) states

“an appeal shall be taken within 30 days of the date of the official, written decision appealed from” and he did not see how the clock could start ticking up to two months after a decision.

Mr. Billipp stated that he agreed with Mr. Hamilton that the 30 day period begins the day after the decision was made, which would be August 21, 2012.

Chairman Cieleuszko stated that he had problems with the process beginning on the day of the decision. He stated that the only “official, written decision” would be the Notice of Decision. Mr. Marshall disagreed, stating that the recording secretary takes note of the official decision and that is when it is “written.”

Chairman Cieleuszko stated that there is no reason to believe that a written decision is in the minutes that have not been approved and are written in shorthand half of the time. He stated that minutes are not proof. Until they have been approved, they cannot be counted on as reliable because they might change drastically at the meeting where the approval is given.

Mr. Marshall made the argument that the substance of the minutes would not change during the approval process. Chairman Cieleuszko stated that the minutes cannot be used in Superior Court until they have been approved.

Mr. Marshall stated that the recording of the minutes are considered official rather than when they are approved.

Chairman Cieleuszko stated he was stuck in the way he thinks about it and believes the official decision is the Notice of Decision. He stated that the requirement for the “written” decision is unique to Section 44, Shoreland Zone.

Ms. Lemire stated that the Fournier property is not in Shoreland. Mr. Marshall stated that the project is in Shoreland but that the Fourniers did not appear to be. Chairman Cieleuszko stated that the whole decision by the Planning Board was done under the rules of Shoreland Zone, which requires an official, written decision. He stated that he believes that official decision was made on September 18, 2012, when it was accepted.

Mr. Marshall asked how there could be a written notification when there is no requirement for a written notification. Chairman Cieleuszko stated that a Notice of Decision was sent to CMP which was developed, signed and approved during the September 18<sup>th</sup> meeting.

Mr. Marshall asked who the notice was sent to. Chairman Cieleuszko stated that it was copied to the Fire Department, Chief of Police and the Selectmen. Mr. Marshall stated that it had not been sent to the abutters so that date would still not get to the abutters.

Chairman Cieleuszko stated that the timeliness of the appeal is based on when the decision was officially approved. Mr. Marshall asked if that meant that the official decision was determined by when the Fourniers received the decision. He stated that that appeared to be the argument Mr. Cieleuszko was making. He added that Mr. Cieleuszko was stating that the Fourniers did not know about it until the written decision.

Chairman Cieleuszko stated that he was not talking about when the Fourniers knew about the decision. He did not care when they knew about it. He was referring to the window that was given to file an appeal. He considered when they knew about the decision to be irrelevant.

Mr. Billipp asked when the 30-day period started and how they were going to resolve that question. Chairman Cieleuszko stated that it would require a motion and a vote as to whether the appeal met the timeliness requirement.

Ms. Pelletier stated that the second application from CMP was not reviewed under the Shoreland standard. It was reviewed under Chapter 33, revisions to final site plan after planning board approval. Because it was reviewed under Chapter 33, the appeal procedure in Chapter 44 would not apply to any use that does not require a site plan review. She stated that the ordinances are very clear.

Chairman Cieleuszko stated that was disingenuous because the only reason CMP was before the Planning Board was because the property is in the Shoreland Zone. They would not have had to appear before the Board if they were not in the Shoreland Zone. Ms. Pelletier replied that they had come to revise the original permit. She did agree that the permit was for poles in the Shoreland Zone but that the second application was reviewed under Chapter 33.

Chairman Cieleuszko stated that there are sections from Chapters 33, 45 and 44. He stated that the whole ordinance is applicable.

Mr. Hamilton stated that he agreed with Ms. Pelletier's determination that there is nothing in Shoreland Zone that regards appeal because the amendment was to a previously approved site plan. The amendment for the site plan came from a different chapter.

Mr. Billipp asked for clarification of using Chapter 33 for the amendment. Mr. Hamilton stated it was because there is nothing in Chapter 44 that talks about amending a site plan. He stated that the Shoreland Zone is under the administrative policy of the Planning Board. The decision goes back to the original site plan, not to the amendment. The amendment regarded the Shoreland Zone site plan review.

Ms. Pelletier stated that Section 33-140 refers to revisions to site plans and that there is nothing in Chapter 44. Mr. Hamilton stated that that solidified his thinking.

Chairman Cielezsko stated that the revisions fall within the SPR mandated by the Shoreland Zone allowing a Site Plan Review.

Mr. Marshall stated that that procedure had already been done and that the application for revision was a different procedure. The site plan review had been completed. The only reason CMP was making a change in the site plan was because of the input from the Maine Public Utilities Commission at the Fourniers' request.

Chairman Cielezsko asked Mrs. Fournier how she met the timeliness requirement for appeal. She replied that the Board must make their decision based clearly on the ordinances, not on what they think. She stated that the appeal is based on the clear, written Notice of Decision and that is the only "written" decision.

Mrs. Fournier stated everything refers to the original permit issued on May 17, 2011 and was decided by the Planning Board based on Shoreland Zoning. CMP applied for the permit because the structures are considered as essential services. She stated that it all had to do with Shoreland Zoning and that CMP would not have applied had it not been in Shoreland Zoning.

She stated that the only "official, written decision" was issued on September 18, 2012. She stated that the local law does not allow determination to be vocal. She stated that if the BOA could show her a written description otherwise, she would agree with that. She asked that the BOA be open-minded because the ordinances are to protect the citizens and also to protect people who are applying for permits.

She stated that under Shoreland Zoning, the only ordinance for appeals is Section 44-47. She quoted "An administrative or variance appeal may be taken to the board of appeals by an aggrieved party from any decision of the code enforcement officer or the planning board, except for enforcement-related matters as described in section 44-48. Such an appeal shall be taken within 30 days of the date of the official, written decision appealed from and not otherwise." She stated that the BOA may not like the law, but that it is what the law states.

Mrs. Fournier also quoted from Section 44-47 "the board, upon a showing of good cause, may waive the 30-day requirement." She stated that nobody needs to show good cause because the BOA must go by the clear ordinance unless they can come up with a different official, written decision.

Mrs. Fournier stated that the BOA cannot go by verbal permits and that they would not want verbal permits allowable in Town because they would be so busy they would not be able to sleep.

Chairman Cielezsko stated that a motion was needed as to whether the Fourniers have

standing because they applied within the allotted time or whether to deny her application. The Board of Appeals manual from the Town states that “if the timeliness has not been made, the administrative appeal will be denied.” If the determination is that they have not applied within a timely fashion or applied within the confines of the ordinance, the vote should be to deny the application.

## **MOTION**

Mr. Hamilton moved that the application be denied based on the fact that the application was not received in a timely manner. Mr. Lytle seconded the motion.

Mr. Billipp asked for more information as to why Section 33 was used for the amendment. Mr. Hamilton stated that it was because there is nothing in the Shoreland Zoning ordinances that applies to revisions to a final site plan after the Planning Board had approved it. Section 33 contains the only citation for that situation. He stated that, therefore, it is an administrative process and has nothing to do with whatever was decided, whether is under Subdivision regulations or under any other purview, including the Shoreland Zone.

He added that anything that the Planning Board had decided under those ordinances does not apply when the application is revised and there is a revision to the final site plan after Planning Board approval. That situation requires Section 33.

Mr. Billipp asked if it would have been considered under Section 44 if the changes had been substantive. Mr. Hamilton stated that if the changes had been substantive, it would have required a public hearing.

Mr. Billipp asked for clarification that the Planning Board talked about being able to make a decision without a public hearing if it were a minor change. If they had determined it was not a minor change, it would have been kicked back into Section 44. Mr. Hamilton stated that he supposed that would have been the case.

Chairman Cielezsko stated that he had to argue that point as an observer. He stated that that was the wrong way to look at the ordinances. He stated that the Fourniers are an aggrieved party and that there is no provision for an aggrieved party in Section 44. He stated that Section 45 is where the definition of an aggrieved party is in the ordinances.

He stated that that does not negate the requirements of Section 44. He stated that, once you realize what an aggrieved party is, then you ask what happened in Section 44 to that aggrieved party. He stated that it is the same thing as in a site plan review, which is not in Section 44. Section 33 refers to site plan review. He stated that that does not relieve you of meeting the requirements of Section 44.

Mr. Marshall addressed Chairman Cielezsko but was told to wait.

Chairman Cielezsko restated that you go to site plan review in Section 33, but that does not relieve you of meeting the responsibilities of Section 44.

Mr. Marshall stated that he thought what had happened was a bending of the timeline and confusion as to how to proceed. He asked Mr. Beckert to notify him if he got the timeline wrong. He stated that approximately a year ago, the issue went to site plan review under the Shoreland Zoning. It went through the process, but he did not know whether it took one meeting or a dozen.

Mr. Marshall added that the Planning Board made a decision under site plan review in Shoreland Protection. A decision was made and notified. After that, there was a delay and the issue went to the Maine Public Utilities. Maine Public Utilities made a decision as to what the changes needed to be. That brought the issue back to Section 33-140, revisions to a final site plan. The site plan had been done, the review had been done and had been done under Shoreland Protection.

He stated that the Planning Board, if they determined that the revisions were minor and would not result any substantial changes to the approved plan and would not further impact the abutters, may approve the amended site plan. If the Planning Board determines that the changes are substantial, then they would process the application for the amended site plan in the same fashion as an application for a review of a site plan under Section 44.

He added that substantial changes would kick the issue back to site plan review, but the Planning Board determined that it lessened the impact of what they had already approved. Any more notifications were not needed.

Mr. Billipp stated that that information was really not the point, which was the timeliness of the appeal. Mr. Marshall restated that the meeting was held under Section 33, not under any other section.

Chairman Cielezsko stated that there are things in Shoreland Zone that require site plan review. He stated that if one goes to Section 33 for site plan review, one no longer needs Section 44. He stated that that is not a good way to look at the situation.

Mr. Beckert stated, "Point of Order, Mr. Chairman. Point of Order, Mr. Chairman. When Point of Order is called, discussion stops. You are not following the rules of running a meeting. I've seen your people try to stop you and ask questions and you are not letting them go and do that. I'd like to make that noted for the record, sir." Chairman Cielezsko thanked Mr. Beckert and stated that it would be in the minutes.

Chairman Cielezsko stated that there was a motion on the floor. Mr. Billipp stated that

there was a motion and a second to the motion and that they were currently in discussion.

Chairman Cieleuszko asked if everyone were clear on this question.

Mr. Lytle asked if they were still using September 18, 2012 as the date of the Notice of Decision. Mr. Hamilton and Chairman Cieleuszko both stated that that was literally the question. Mr. Marshall stated that it was either that date or August 21, 2012, the date of the meeting.

Mr. Billipp clarified that the decision referred to the date when the 30-day period for appeal started. A letter went out dated September 18<sup>th</sup> from the Planning Board. If the clock starts ticking on September 18<sup>th</sup>, the Fourniers turned in their application exactly 30 days later on October 20<sup>th</sup>. But, if the clock started ticking the day of the decision on August 21<sup>st</sup>, their application was almost a month late.

Mr. Hamilton asked for clarification, once again, that there is nothing in the ordinance that requires the Planning Board to issue a Notice of Decision. Mr. Beckert stated that that was correct. Mr. Hamilton stated that his understanding was that when the Notice of Decision was issued, not being required by the ordinance or the Town Planner, that the date September 18, 2012 is strictly arbitrary. He added that it could have been any date at all.

Mr. Beckert stated that he would like to make a statement if the BOA chairman would allow. Chairman Cieleuszko stated it was allowed as long as it answered Mr. Hamilton's question. Mr. Beckert stated that it answered the question as to how the Notice of Decision date is handled by the Planning Board.

He stated that the Notice of Decision date is the date of the night of the meeting. The Planning Board chairman states to every applicant that they 30-day period for appeal starts from that date forward. He added that the BOA has always acted on appeals based on that time frame and not on anything else.

Mr. Hamilton asked if there had ever been an appeal of a decision that the Planning Board made regarding the Shoreland Zone that related a decision that was issued at any other subsequent time. Mr. Beckert said that, to his recollection, there had not been. Ms. Pelletier added that she had been on the Planning Board for 10 years and she had never seen that happen either.

Mr. Hamilton stated that what they were saying is that if any appeal that has been made against a Planning Board decision, whether it was in Shoreland Zone or in any other zone, is based on the date of the meeting as opposed to the date of the Notice of Decision. Mr. Beckert stated that that was correct.

Mrs. Fournier stated that she wanted to know where the official, written notice was. She added that that was very important.

Mr. Lytle stated that he still wanted to know which date was to be used. Chairman Cielezsko stated that there were two dates on the floor, one being September 18, 2012 when the Notice of Decision was approved by the Planning Board at a subsequent meeting from the decision. That was the date that the written copy was okayed by the Board. The actual decision to okay the changes was done on August 21, 2012, a month prior.

Chairman Cielezsko stated that it was actually written in the Notice of Decision that an appellant had 30 days to appeal from the August 21, 2012 date.

## **DECISION**

Chairman Cielezsko stated that there was a motion on the floor to deny the appeal because it was not done in a timely manner and asked for a vote. The motion passed by a vote of 3 to 1, with Mr. Lytle, Mr. Hamilton and Mr. Billipp in favor and Mr. Cutting in opposition.

Chairman Cielezsko told the Fourniers that their administrative appeal had been denied.

Mrs. Fournier attempted to ask Mr. Billipp questions about his real estate representation. Chairman Cielezsko stated that that was a personal issue and not appropriate at the meeting. Mr. Billipp stated he had not been involved in any manner.

Mrs. Fournier asked when she could expect a written Notice of Decision. Chairman Cielezsko told her she would have it within seven days. She asked if the Notice would comply with the ordinances and state everything based on the ordinances and was assured that it would.

Mrs. Fournier stated that now they would have to go to court over the issue, which is what they had expected.

## **REVIEW AND APPROVAL OF MINUTES**

The minutes of the October 18, 2012 were approved as amended.

## **OTHER BUSINESS**

The Code Enforcement Officer, Jim Marchese, asked for the authorization to make a

slight revision to the Request for Administrative Appeal form. He stated that the last page of the form stated "Date accepted by the Town Clerk or CEO" and asked that the BOA approve the striking of the word CEO.

Chairman Cielezsko stated that he understood the CEO's thought on that. He stated that he did not think they should limit the Town Clerk's responsibility. The ordinance does not prevent her from delegating that responsibility to anybody. He asked what would happen if she were out for a week.

Mr. Billipp stated that he thought the form needed refinement in some way, perhaps by stating that the form could be accepted during normal business hours. He stated that he did not have an answer but he appreciated that the BOA needed to do something to the appeal form to make it more clear.

Mr. Billipp clarified with Mr. Marchese that what he had asked was to strike the word CEO from the form.

Mr. Hamilton stated that he agreed with the CEO because it puts a burden on him. He stated that he thought the Town Clerk has the ability to check whether there is residence issue involved or other things that need to be checked first. There is a check-and-balance that Mr. Hamilton did not think was available to the CEO.

Ms. Lemire stated that she agreed. Mr. Lytle, Mr. Billipp and Mr. Marshall agreed, providing a full consensus to strike the word CEO from the appeal application form.

## **ADJOURNMENT**

The meeting was adjourned at 8:40 PM.

Respectfully Submitted,

Linda Keeffe  
Recording Secretary

Approved by: \_\_\_\_\_  
Ed Cielezsko, Chairman, Board of Appeals

Date Approved: \_\_\_\_\_