

**ITEM 1 - ROLL CALL**

Present: Steve Beckert – Chairman, Jeff Duncan, Greg Whalen, Dennis Lentz, Melissa Horner – Alternate, and Dutch Dunkelberger – Alternate.

Also present: Kate Pelletier, Planning Assistant.

Absent: Larry Bouchard (excused).

**ITEM 2 – PLEDGE OF ALLEGIANCE**

**ITEM 3 – MOMENT OF SILENCE**

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

Mr. Duncan moved, second by Mr. Lentz to approve the minutes of December 16, 2014, as amended.

**VOTE**  
**4-0**  
**Chair concurs**

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

**PB14-19: Zaremba Group – Site Plan Review**

This was accepted as written.

**PB14-21: Pierson – Increase size of Non-conforming structure in Shoreland Zone**

This was not reviewed.

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

**A. Continued review of proposed amendments to the Growth Management Ordinance.**

Mr. Beckert said that the Board had a marked-up version that Ms. Pelletier and Mr. Dunkelberger have been working on.

Ms. Pelletier said that they made it through the first article; that there are two articles in the chapter. She added that they would be working on the second article soon. She said that they agreed on everything but one point.

Mr. Dunkelberger said that he and Ms. Pelletier had come to a meeting of the minds on all but one point and that was why they were bringing it to the PB. In §29.5 (d) *“If different from the prior year’s number of growth permits, the planning board shall*

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Town Clerk

*prepare and present to the board of selectmen a warrant article for the next annual or special town meeting vote. The warrant article shall include the planning board's recommended growth permits, expressed both as a percentage based on the last 10 years of growth, as set forth in subsection (a), and as a total number of growth permits for the calendar year.*" he felt that it should just have a number and that, if you include a percentage, you are talking apples and oranges. He added that if he read in a voting booth that 'this' number is 300% of the mean for the last ten years he would probably not be inclined to support that article because that's a scary number (300%) to him, regardless of what the actual number is and regardless of what the last three years might show.

Mr. Lentz added that one would not take the time to figure that out when in the voting booth.

Mr. Dunkelberger agreed, saying that the percentage really does us no good other than making sure we meet the 105% minimum required by State statute.

Ms. Pelletier said that that was why she felt that it should be in there because it would easily show to anybody who has been following the issue, and thought that the lay person has probably caught on by now, that the 105% is part of the statute and the important part, etc.; that she thought it would be a way to provide a little bit more information and show legal compliance with the statute.

Mr. Dunkelberger discussed comparing the percentage to the actual number and how both those numbers are derived, which is significantly different. He added that one uses some planning and informational input from the different sectors of the Town versus a percentage you use to compare to a 10-year mean. He reiterated that, to him, those were apples and oranges.

Mr. Duncan said that it seemed to him that, as the PB debates whatever that number is going to be, they would make sure that number was at least 105% of the 10-year mean, and he thought that during the public meeting that would be held on a change, which would be required if a change is made, there would be discussion on whether that was 106% or, say, 700%; that he didn't think that needed to be in the warrant article, itself.

Mr. Dunkelberger said that we established the floor as the 10-year mean at 105% so that, in no case, can the number of permits issued be less than that (paragraph a). He added that the ceiling is basically determined with input from the various sectors within the Town to the PB, who makes a recommendation as to the ceiling; that if that number is different from the previous year's number, then it needs to go to the Town for a vote. He said that he put in, under § (d) (1), *"If the warrant article is voted on the floor of an annual or special town meeting, the town shall be able to amend the number of growth permits up or down by majority vote, but in no case shall the number be less than the minimum established by subsection (a) above."*

Ms. Pelletier said that the PB discussed that at the last meeting; that the PB did (n't) agree with him

Mr. Lentz said that, in essence, (a) is the State statute.

Mr. Dunkelberger agreed that it is.

Mr. Duncan said that, in his opinion, the reference that is made to '105% or more' in this proposed paragraph (a) is satisfactory because all it's really doing is referencing the statute; that it isn't saying that we will have a number of '105% or more' with no bounds but is basically a quote out of the statute.

Mr. Lentz added that that was why, in his opinion, going to a number rather than a percentage is important.

Mr. Whalen discussed his concern for the word 'shall' in (b) "*Not later than June 30<sup>th</sup> of each year, the Planning Board shall solicit input...*", adding that he thought it might ought to be 'may' because he was concerned with what methodology the PB would use to solicit input and the matrix by which the PB would assess that input. He asked if, depending on what is happening in Town that year, wouldn't the PB have greater flexibility if it had the right to pick and choose as opposed to it being a requirement that all department heads, etc. have to appear.

Ms. Pelletier said that she thought that they would just send a memo to these entities by June 1<sup>st</sup> asking for the status of the department, what sort of growth each department could take on or is the department maxed out, and that sort of thing; that they could come in for one meeting or submit written comments.

Mr. Dunkelberger said that he put in 'shall' because we may not know what is going on within the planning or the budgetary preparation or even the hiring and retiring of personnel within the various departments that may affect what they can and cannot do the following year. He added that this was an easy process that was already in place to a certain extent and gives the PB an opportunity to get input from all the planning agencies to understand what other budgetary pressures might be coming up that would affect some projects that come in front of the PB.

Mr. Whalen suggested that, as an example, the BOS decided to slash the DPW by 50%, which necessitated a reduction in personnel, say, from 10 to 5 and the PB receives that input. He asked what criteria the PB would use in determining the number of permits in Town because of that; that to reduce the number of permits based on the level of employment or the school population, which happens to be decreasing on an annual basis. He asked if that translated into a need to increase permits; that he didn't know the correlation between the two and felt that was beyond the PB's paygrade. He added that, if this got recommend, maybe the PB would spend some time on figuring out the process by which we absorb and collect that data and information and, then, the criteria by which we judge the value of that information.

Mr. Dunkelberger said that he thought that possibly the best thing, if given that data, is that it would generate discussion. He added that someone may not be an expert but somebody here might have some ideas on what we need to think about; these are the potential ripple effects and, if not the PB considering these things, then who. He said that unless we are just going to pick a number we do need input and information; that what the PB does with that information is up to the PB.

Mr. Whalen said that, on the battlefield, it is referred to as 'mission creep'; that his concern was the unintended consequences of the PB finding themselves in a sort of roll of ombudsman for determining the fate of the permit recommendation.

Mr. Dunkelberger said that the PB was doing that already.

Mr. Whalen commented that he would love to not have a growth control ordinance in Town and this further enhances his position that what we are about to undertake, here, is extraordinary for this Board to get involved with and, therefore, he felt they really needed some structure.

Ms. Pelletier said that no one expects the PB members to be financial experts; that you are just making a recommendation based on the best input we have, which is from the department heads, as to the status of their departments to what the future growth rate is going to be the following year. She added that she didn't think the PB wanted to be too strict about a process because the PB might want to change it; that the PB didn't want to be too locked in if something wasn't working; that they could solicit input from people and didn't have to all be prescribed by law.

Mr. Beckert said that they would not stop growth; that the best they could do is control how fast it grows at a rate that is sustainable for the taxpayer.

Ms. Pelletier said that it is the voters that will control growth and the PB is just making a recommendation to them.

Mr. Dunkelberger went back to the DPW example and said that, if you have the potential for, say, 84 homes coming into a development and all the roads that go along with that and the PW staff is being cut, then what does that do to the number of permits – do you want those 84 homes and the roads that went along with that built. He added that some of it would be obvious and some things would not but the fact is that we will have the information. He said that in most cases the PB could act on the information as a group; that the PB could bring in an expert to help understand what particular information meant when needed.

Mr. Whalen suggested the DPW might say they couldn't handle another 84, the Police Department says they have excess capacity and can handle 184, and the Fire Department has a brand new ladder truck coming in and could handle a skyscraper so where does that put this PB in terms of placing emphasis.

Mr. Dunkelberger said that Mr. Whalen somewhat answered his own question; that in the Navy you go with the slowest ship – the least common denominator or the limiting factor.

Mr. (Jack) Murphy applauded the PB for seeking out the knowledge they would need to make this decision sort of all by yourselves because that is within your power. He suggested the PB not try to do it all by themselves; that there are other members of this government who are very much interested in this problem. He added that they had a new Town Manager with 23 years' experience managing a town, working with MMA, very bright guy, and he is going to be working constantly with all the departments solving various problems; that he knows which ones are understaffed, which ones will be growing and what the problems are going to be; that many of the Selectmen will know that, too, in various ways so the PB doesn't have to do this all by themselves.

Ms. Pelletier agreed that it starts the discussion; that if that one department can't handle the growth then, budgetary-wise, we need to know that so that we can start talking about how we can or where there is a deficiency; that it is a more holistic approach, she thought, to the whole process.

Mr. Lentz had a question on b (2) "...the planning board may recommend a flat or reduced number...for the next year."; that that is still as long as we are under the guise of '105% or more'.

Ms. Pelletier agreed, saying that in no way can the PB go below that.

There was discussion regarding the implications of this language and whether this language was necessary.

It was agreed to remove the 'up, down, flat' language.

In (d), the word 'and' was removed – "the warrant article shall also include ~~and~~ the number...".

Mr. Whalen asked if the PB had the authority to issue a warrant article.

Ms. Pelletier said yes; that that is what the PB does every time they amend an ordinance.

Mr. Dunkelberger asked if, when the PB prepares a warrant article, the BOS have the authority to change that warrant article.

Mr. Beckert said no.

There was discussion regarding the process a warrant article goes through.

Ms. Pelletier will ask if the BOS can change a PB warrant article and, if so, under what circumstances.

Mr. Pomerleau said that, as far as he had read, he is satisfied that there are controls in place regarding the number of permits in any given year. He added that he thought the language was awful complicated to get there but it does the job. He said that he thought the language in this draft did not allow the BOS to change it. He added that, regarding citizen's petitions, there are court cases out there that have given BOS authority to reject a citizen petition under very specific circumstances (Home Rule).

Mr. Beckert agreed that the BOS rejecting a petition or warrant was highly unlikely and they would need substantial facts as to why.

Mr. Duncan asked, in b (1), should we consider broadening the language to include Southern Maine (SMRPC), for example.

Mr. Beckert said that the PB had the authority to call in other agencies, if there was a need.

Ms. Pelletier said that she could broaden the language to include 'other entities', or language like that.

Mr. Whalen asked for clarification regarding the timing standpoint for this to become effective, if approved.

Mr. Dunkelberger said that we were initially looking at June Town Meeting that this would happen but the reality is that every two years we have a November election so we could have a vote on a new number at the November election.

Ms. Pelletier said that we initially were going to put this on the fiscal year but decided to stay with the calendar year and it would be retroactive for the first year back to January 1<sup>st</sup>; that it would be effective the day it is adopted. She added that the growth permit number would be evaluated on June 30<sup>th</sup> of each following year.

Mr. Duncan asked what the number would be for 2015.

Ms. Pelletier said that the PB still needed to determine that number.

Mr. Beckert clarified that the PB would have to do two calculations.

Ms. Pelletier said that the PB would have to look at the number again in June and, if you want that number to change, then you would propose a warrant article for the next vote. She added that, if you don't, nothing needs to go to Town vote. She said that we had to get the framework (process) down, first, then we can fill in the blanks. She added that we needed article 2 finished.

There was discussion regarding using the proposed process to come up with a number for 2015; to submit that number, as well as the new ordinance, at the June Town vote.

Mr. Lentz had a question regarding §29.3 Exemption. He said 'replacement' was crossed out and asked why.

Ms. Pelletier said that she beefed up 'replacement' in the following paragraph. She explained that we have had a growth ordinance for 30+ years and there are properties that have had houses on them that have been removed, for whatever reason, and not immediately replaced. She added that there is currently no guidance in the ordinance regarding replacement structures and because it comes up so often she added this paragraph; that the reason to exempt this was that the growth was already figured at one point and accounted for with the growth permit issued. She said that if they can supply that, showing evidence that they had a valid growth permit, then she didn't think we should require them to get another one.

Mr. Dunkelberger added that there is no mechanism that subtracts that so the growth has already been planned for.

Mr. Duncan asked if this would cover the conversion of a non-dwelling unit to a dwelling unit.

Ms. Pelletier said no; that that is growth; that conversion of an ADU to a primary residence would also require a growth permit.

Mr. Murphy asked about structures that pre-existed any growth permit.

Ms. Pelletier said that those would need a growth permit because it would be very difficult to prove; that they needed to stop somewhere.

Ms. Horner discussed soliciting input from various departments and her concern for safeguards being put in place to ensure that happened into the future.

Ms. Pelletier said that she was not a fan of getting too specific about that but she could if the PB wanted that.

Ms. Horner said that, if we are soliciting input from departments without giving them a number to shoot for, then that seems counterproductive to even ask in the first place.

Mr. Dunkelberger said that when we send out a query to the departments he suggested they say last year's allowable permits were '48' and trying to decide what next year's will be, could the department head give the PB an idea of what that department can support.

Ms. Pelletier suggested they could set up a policy instead of putting it in the ordinance for how to do that.

Mr. Whalen said that the department could come back and say that if the Selectmen were to underwrite two more pumpers they could sustain 100 houses. He added that it

goes back to the discussion of criteria and how to apply input; that using the 'reasonable man' rule would probably be the best they would get at this stage.

Mr. Lentz said that a letter back from each of those sources saying they are good, at least there is a basis; that he didn't like throwing a number out there.

Mr. Beckert agreed, saying that was why he thought they put the words 'we shall solicit'.

Ms. Horner reiterated her concern for future boards not soliciting input.

Ms. Pelletier suggested the words "The PB shall solicit, through the Town Manager..."; that that was how they were supposed to be doing things now, anyway.

The PB was in agreement with this option.

Mr. Pomerleau said that because we are a small town we don't have some of the tools and resources available but there are ratio models out there that would be of help. He discussed doing some long-term projections, say five years, to better plan.

Mr. Beckert said that one of the things that has been discussed is doing a build-out; what the build-out numbers are for the Town under the existing acreage zoning in the different districts; recognizing that that could change if the zoning changes, as the Comprehensive Plan recommends in certain parts of Town. He added that that was something that SMRPC could help us with.

Ms. Pelletier said that she thought their GIS guy would be far better suited for that task than SMRPC; that he is very analytical and a whiz with that kind of data and the PB has money in their budget for these types of things.

It was the consensus of the PB to have Ms. Pelletier to get a quote from the GIS guy to do a residential build-out maximum under current zoning.

Mr. Pomerleau asked why they made the first year retroactive.

Ms. Pelletier explained that not only do we have the max number of permits for this year, which is 18, but additionally we would add atop any new growth permits decided on in June; that you could have 30 plus the 18 or 40 plus the 18 so we would just deduct whatever has been issued out of the new number.

Mr. Duncan asked what good is making it retroactive.

Ms. Pelletier said that in one year you will have exceeded the growth rate that you set for yourself, which is 18 permits currently; that in one year you will have 18 plus and will have a lot more growth than just that number that you are coming up with if you add

the 18 we allow now. She added that it would make any growth permits that have been issued subject to the same rules everyone else is.

Mr. Pomerleau commented that he thought retroactivity raised legal problems; that, in his experience, the law is in effect at the time the action is taken and rarely do courts allow you to go back.

Ms. Pelletier said that that was not true.

After some discussion, the PB directed Ms. Pelletier to ask the attorney regarding this issue.

Mr. Beckert said that out of all the discussion we've had and the different ideas that have come out he thought this was a good viable draft ordinance.

Mr. Whalen asked about (e) under Exemptions regarding an additional 10% of permits being allocated to affordable housing.

Ms. Pelletier said that that was a State minimum and was based on whatever York County describes as an affordable housing cost for HUD; that of whatever number of growth permits were allocated 10% above that would be allocated to affordable housing (50 growth permits would allow an additional 5 affordable housing growth permits).

Mr. Beckert thanked Ms. Pelletier, Mr. Dunkelberger, Mr. Murphy and everybody for their input, thus far; that he thought they were on the right track with this draft.

Mr. Murphy complimented the PB for recognizing that the approach you ought to take is to think how many houses the Town needs and, then, apply this 10-year average, which can go up and down like mad, and know how to adjust that in order to achieve the number you think Eliot ought to have.

Mr. Lentz asked if we decided on whether to use a percentage or number.

Mr. Beckert said that it sounded to him like everybody wanted to use a number.

The PB agreed.

#### **ITEM 7 – DISCUSS STATUS OF OUTSTANDING ACTION ITEMS**

No discussion.

#### **ITEM 8 – CORRESPONDENCE AND PLANNING ASSISTANT, AS NEEDED**

Mr. Beckert said that he had a correspondence from the Chair of the Charter Commission regarding an invitation to the PB to discuss appointment versus election of PB and BOA members at the Charter Commission's meeting January 14<sup>th</sup>. He added that

he would recommend that the PB approve tonight the ability of its members to go and speak as members of the PB to the Charter Commission on January 14<sup>th</sup> if the members so desire.

Mr. Duncan moved, second by Mr. Whalen, that the Planning Board approve the ability of its members to speak as members at the Charter Commission Meeting on January 14, 2015.

**VOTE**  
**4-0**  
**Chair concurs**

**ITEM 9 – SET AGENDA AND DATE FOR NEXT MEETING**

The next regular Planning Board Meeting is scheduled for January 20, 2015 at 7PM.

**ITEM 10 – ADJOURN**

There was a motion and second to adjourn the meeting at 8:20 PM.

  
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**Steve Beckert, Chairman**  
Date approved: 1-20-15

**Respectfully submitted,**

**Ellen Lemire, Recording Secretary**