

TOWN OF ELIOT – BOARD OF APPEALS MEETING

March 20, 2014

ROLL CALL

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

Others Present: Interim Code Enforcement Officer Kate Pelletier; three appellants from the February 20 appeal.

CALL TO ORDER

Chairman Cieleuszko called the meeting to order at 7:00 PM. He stated that there were no public hearings for the meeting and that there would be little input from the audience.

APPROVAL OF MINUTES

The minutes of the February 20, 2014 meeting were approved as amended.

OTHER BUSINESS - Appellate vs. De Novo Reviews

Chairman Cieleuszko stated that there had been questions at the February 20, 2014 meeting about whether an appeal should be heard as an appellate review or as a de novo review. Mr. Hamilton asked Chairman Cieleuszko to explain the difference.

Chairman Cieleuszko stated that de novo is when a decision by the Code Enforcement Officer or the Planning Board is appealed by a resident or residents and the BOA hears the appeal. He stated that when the BOA conducts the hearing, they reopen the hearing as if the decision had never been made. He stated that the BOA takes the place of the officer being questioned and start the case over again, hearing all of the original evidence again and including any new evidence that had come up at any time before the hearing.

Chairman Cieleuszko stated in a de novo review, the BOA does not have to prove that the CEO or the Planning Board was clearly contrary to the code. The BOA has to come up

with its own clear decision on the application. He stated that if the BOA decision matches what the decision of the CEO or Planning Board had been, the appeal is denied. He stated that the BOA does not have to grant or deny an administrative appeal because they make their own decision on the case. He stated that the appeal is not viewed as pass/fail but instead as the BOA's own decision.

Mr. Marshall asked if that would require a site review and the whole process of a new review. Chairman Cielezsko stated that if a site review was required for the decision, then it would be conducted. Mr. Marshall clarified that the BOA would have to look at the ordinance in the same way as the CEO or Planning Board had looked at it and basically start the whole process over again. He stated that essentially the BOA would be acting as if it was the CEO or the Planning Board. Chairman Cielezsko concurred.

Chairman Cielezsko stated that if a group of citizens comes before the BOA with an administrative appeal of a decision by either the CEO or the Planning Board, the appellant has to prove the case again. He stated that if the CEO had denied someone the use of their land for some reason, when the BOA looks at the case as an administrative appeal in de novo, the owner has to prove his case again.

Chairman Cielezsko stated that if the BOA was hearing the appeal from citizens who did not like the CEO's decision, the owner of the land has to reapply before the BOA for his permit. Mr. Marshall asked how the de novo is determined. Chairman Cielezsko stated that, in the rare case that the BOA hears the case, it would be in the Shoreland Zone.

Mr. Billipp asked if the nature of the reviews was spelled out in the Maine Municipal Association (MMA) Board of Appeals Manual. Chairman Cielezsko stated that the information was on pages 60 and 61 of the manual.

Chairman Cielezsko stated that de novo is a very intricate process. Mr. Marshall stated that he still wondered how that process gets kicked in instead of hearing the case as appellate. Chairman Cielezsko cited page 61 of the MMA as:

“To determine whether the ordinance under which a decision is being appealed creates an appellate review role or a de novo review role for the board of appeals, the board should seek advice from the municipality's private attorney or from the Maine Municipal Association's Legal Services Department. In the *Stewart, Yates* and *Gensheimer* cases cited above, the court interpreted virtually identical appeal provisions from the Sedgwick, Southwest Harbor and Phippsburg ordinances; the language was basically the same as the language in an earlier version of the DEP model shoreland zoning guidelines. In *Stewart*, the court found that the language required a de novo review, but in *Yates* and *Gensheimer*, the court found that essentially the same ordinance language required an appellate review.

Chairman Cielezsko stated that the Supreme Court had looked at the same ordinance for three different towns and came up with a decision one way on one case and the other way on the other two.

Ms. Lemire stated that it was her understanding that in order to conduct a de novo review, the language has to be in the ordinance. Chairman Cielezsko stated that that was correct to a point.

Chairman Cielezsko stated that the last sentence of the paragraph he had cited states that, "There was no explicit reference to appellate review in any of the ordinances; the court reached this conclusion based on its interpretation of the ordinance language. See also *Mills v. Town of Eliot*, 2008 ME 134, 955 A.2d 258, where the court interpreted language as requiring appellate review."

Chairman Cielezsko stated that he could not find minutes of the mentioned meeting. Ms. Lemire stated that there are hard copies but that they are not available online. Chairman Cielezsko stated that the information from Mr. Vaniotis had noted that the BOA was looking at the issue incorrectly but that it did not say why. He stated that in the minutes, there was discussion about why.

Chairman Cielezsko stated that Ordinance Sections 44 and 45 are both used to come to a determination as to how the BOA is supposed to look at appeals. He cited Section 44-47 as:

"Administrative appeals: To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the planning board in the administration of this chapter..."

Chairman Cielezsko stated that the citation only applies to the planning board. Ms. Lemire clarified that it also only applies to Shoreland Zoning and Chairman Cielezsko concurred.

Chairman Cielezsko stated that the second half of the cited sentence states that:

"...and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the code enforcement officer in his or her review of and action on a permit application under this ordinance."

Chairman Cielezsko stated that the Planning Board requires an appellate review and the CEO requires a de novo review. He added that the CEO requires a de novo review in the Shoreland Zone.

Chairman Cielezsko stated that Section 44-47(c) Administrative Appeals addresses de novo appeals against the CEO in the first paragraph. He stated that the second paragraph states that, "When the board of appeals hears a decision of the planning board, it shall hold an appellate hearing and may reverse the decision of the planning board only upon finding that the decision was contrary to specific provisions of the ordinance or contrary to the facts presented to the planning board. The board of appeals may only review the record of the proceedings before the planning board." He stated that the BOA could accept written or oral arguments but could not accept new evidence.

Chairman Cielezsko stated that the court had looked at the language of the ordinance in Section 45 and determined that the appellate review was incorrect. He cited Section 45-49(a) Administrative Appeals as:

"The board of appeals shall hear and decide whether an aggrieved person or party alleges error in any permit, order, requirement, determination, or other action by the planning board or the code enforcement officer. The board of appeals may modify or reverse action of the planning board or code enforcement officer by a concurring vote of at least three members, only upon a finding that the decision is clearly contrary to specific provisions of this chapter."

Chairman Cielezsko stated that the language "clearly contrary to the ordinance" is identical to the language in Section 44 in what is considered an appellate review, but in Section 45 it applies to both the Planning Board and the CEO. He stated that the determination by the court in *Mills v. Eliot* meant that the BOA hears all cases of administrative appeal in Section 45 by appellate review.

Mr. Marshall stated that Chairman Cielezsko had said that when the BOA did appellate reviews, they looked only at the minutes and took no new evidence. He asked if he was hearing that correctly. Chairman Cielezsko stated that he had been referring to a Planning Board appeal in Shoreland Zoning. Mr. Marshall asked if that meant the BOA could only look at the minutes and could not take testimony. Chairman Cielezsko stated that the BOA could take testimony but that it could only be someone helping with the interpretation of the minutes of the Planning Board meeting.

Mr. Rankie cited the MMA manual as stating, "The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board of Appeals shall not receive or consider any evidence which was not presented to the Planning Board." Chairman stated that they meant the full evidence that had been presented, not just the minutes. Chairman Cielezsko stated that the BOA could not take new evidence but it could take interpretations. Mr. Marshall asked if that meant that BOA questions would be allowed but volunteer testimony would not be allowed. Chairman Cielezsko stated that the BOA could take testimony.

Mr. Hamilton stated that it would be a matter of the BOA's determining from all of the testimony whether or not the Planning Board acted contrary to the ordinance. Mr. Marshall stated that it sounded to him more like a work session than a public hearing. Chairman Cielezsko stated that it would be a full public hearing. He stated that the February 20, 2014 meeting had been an appellate review.

Chairman Cielezsko stated that, hypothetically, if someone said that, on the day before the meeting, they had found some information about the land in question that nobody had known about before and the information would totally fix the case, it would not matter because the information had not been presented to the Planning Board when they made their decision. He added that the BOA could hear it but that they could not use it in the deliberations.

Mr. Marshall asked if the case would be referred to the court if new information was presented. Ms. Lemire stated that the case would go back to the CEO or the Planning Board. Mr. Hamilton stated that the information would need to be a significant change to the original application. Chairman Cielezsko stated that it would then become a moot application because all statements in a Planning Board application have to be true, as they do in building permits.

Mr. Rankie again cited the MMA manual as stating, "If the Board of Appeals determines that the records of the Planning Board proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding." Chairman Cielezsko stated that the BOA could not remand a case back because of new information but could only look at what the Planning Board had had available to them. Ms. Lemire stated that an appellate review is a review of the original proceedings.

Mr. Hamilton stated that to him the cited statement meant that if the Planning Board had taken poor notes or presented inadequate information, then the case could be remanded back to them.

Chairman Cielezsko asked the CEO if the information which had been discussed was a good synopsis of the issues or if there was something different that she would like to add. Ms. Pelletier stated that she did not have anything to add.

Mr. Rankie stated that Chairman Cielezsko was the person who sets the agenda for the BOA meetings. He stated that when Chairman Cielezsko reviews what the BOA would be hearing, it would be helpful to him to have it stated up front what sort of review it would be. Chairman Cielezsko stated that he states right at the beginning of a meeting and also in the Findings of Fact what sort of review it is. Ms. Lemire stated that the BOA members need to know before the meeting. Mr. Rankie stated that knowing before the meeting would give the members an opportunity to study the issues and to be more informed.

Chairman Cielezsko stated that it would be a good idea to put the nature of the review in the agenda. Ms. Lemire stated that then the BOA members would be focused in the right direction. Chairman Cielezsko stated that he would note that information on every case in the future.

OTHER BUSINESS – Consent Agreements

Chairman Cielezsko stated that the Board had been talking about Consent Agreements for months and had had a meeting with the Board of Selectmen which really got the BOA nowhere. He stated that that the Town was waiting for the BOA to come up with what it thinks should be the direction for the Town. He added that the Town could use or not use the guidelines, but that he wanted to offer them something.

Mr. Rankie asked what Chairman Cielezsko meant by “Town” and the Chairman stated that he did not know that yet and that that also had to be determined. Mr. Rankie asked who was directing the BOA to make the determination. Ms. Lemire stated that it was the BOS but then agreed with Ms. Pelletier that the BOS was not directing.

Mr. Marshall asked if they were looking for a solution to a problem that has not yet existed. He stated that he had reviewed the Selectmen’s Consent Agreement Guidelines and that he thought they were acceptable. Chairman Cielezsko stated that if there were no necessary changes, that would be fine.

Chairman Cielezsko stated that if the consensus of the BOA was that everything was acceptable, then that would be what the BOA presented to the Town Manager, Dana Lee. He stated that whatever the BOA came up with that evening would be presented to Mr. Lee and the BOS.

Ms. Lemire stated that she thought that the Consent Agreement as it stands is pretty clear. She stated that what had muddied the waters for her was the process with a particular group of people. She stated that in the BOS guidelines is the statement, “Each problem starts with some kind of wrong development action or actions done on one or more properties.” She added that essentially the purpose is to avoid litigation or anticipated litigation.

Mr. Marshall asked if the wrong would be something done wrong by the property owner or could it also apply to the CEO or the Planning Board. Ms. Lemire stated that that was her question as well. Mr. Hamilton stated that he thought it was very specific. He cited the first sentence of the BOS guidelines as, “A Consent Agreement is essentially a settlement, between the Town of Eliot and a property owner who has violated the Zoning Ordinance.” Mr. Hamilton stated that the property owner would already have received a Notice of Violation. He stated that the Consent Agreement has nothing

whatsoever to do with a dispute between the property owner and the Town and is only appropriate when a Notice of Violation has been issued by the CEO. He stated that at that point the BOS could intervene in the process, between the issuance of a fine and up through the Superior Court, for a determination between the offender who had been cited with the violation and the Selectmen in order to avoid costs, not only for the Town but also for the violator. He added that no other kind of resolution or agreement should be in a Consent Agreement.

Mr. Hamilton stated that he had a problem with a couple of the sentences in the guidelines. Mr. Rankie stated that the BOA could edit the guidelines and Mr. Hamilton agreed that that was needed. Mr. Hamilton stated that he also had a problem with the statement that “each problem starts with some kind of wrong development” which should be stated as “each problem starts with a violation.”

Mr. Cutting asked who had drafted the Consent Agreement Guidelines document, dated November 11, 2010. Mr. Hamilton stated that they had all worked on it and that they had thought it was clear. Ms. Pelletier stated that Jack Murphy claims to have written the entire document with Attorney Vaniotis.

Chairman Ciesleszko asked if the Consent Agreement document was considered a Town Ordinance. Ms. Pelletier replied that it is just the Selectmen’s policy. Chairman Ciesleszko asked her if, in her estimation, it could or could not be followed and if it was up to the discretion of the BOS. Ms. Pelletier stated that she did not believe that the BOS should be going around the BOA process or the court process. She stated that, at a minimum, someone would have to take an action to court in order to enter into a Consent Agreement. She stated that she did not believe the BOS should have that kind of authority and that the Town Manager also agrees with her.

Chairman Ciesleszko asked if the BOS could fail to abide by the guidelines. Ms. Pelletier stated that the BOS is not bound by the guidelines.

Mr. Hamilton stated that the guidelines are based on what Attorney Vaniotis determined was the prosecutorial authority of the Selectmen. He stated that the courts view a Consent Agreement as an exercise of the Selectmen’s prosecutorial discretion. Mr. Hamilton stated that the BOS could ignore the guidelines but that, from a legal standpoint and from what the courts had ruled over the years, part of the Selectmen’s authority under State Statute is the authority of prosecutorial discretion to enter into Consent Agreements if there is a violation, but not for any other reason.

Mr. Rankie stated that Mr. Hamilton had referred, in prior BOA meeting minutes, to the Charter Commission meeting where Consent Agreements were discussed. Mr. Rankie stated that Mr. Hamilton had essentially agreed to give something to the Charter Commission in writing about what the BOA wished for the Charter Commission to look at. Mr. Hamilton stated that he did not mean to speak for the BOA, only for his own personal thoughts.

Mr. Rankie stated that the Charter Commission has a huge job. He stated that the Charter is basically a constitution for the Town of Eliot and that the Charter can do anything that the Town wants it to do except something against the Constitution of the United States or the Constitution of the State of Maine. He stated that if the BOA were to present a rule that the BOS has to follow regarding Consent Agreements and the Charter Commission liked the rule and included it in the Charter and the votes approved it, the BOS would then have absolutely no choice than to follow what the rule stated. He stated that at that point what is now a list of guidelines would become a law.

Mr. Cutting stated that maybe that would be the right avenue to pursue. Mr. Rankie stated that he thought it would be easier for the Selectmen because it would be like a union contract in black and white and there would be no need to make crazy decisions. Chairman Cielezsko stated that he had never seen a black and white union contract. Mr. Marshall stated that most of the union contracts are built in with appropriate wiggle room so that they could be manipulated.

Ms. Lemire stated that she thought the Consent Agreement guidelines had a lot of wiggle room. Chairman Cielezsko concurred.

Mr. Rankie asked if anyone had reviewed Consent Agreement rules from any other towns. He stated the Charter Commission is looking at other charters and taking pieces from each one.

Chairman Cielezsko stated that Chapter 44 of the Ordinances already spells out Consent Agreements. He cited Section 44-48(c), Enforcement actions in the Shoreland Zone as,

“Legal actions. When the above action does not result in the correction of abatement of the violation or nuisance condition, the municipal officers, upon notice from the code enforcement officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this chapter in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this chapter and recovering fines without court action. Such agreements shall not allow an illegal structure or use to continue unless there

is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.”

Chairman Cielezsko stated that the citation contains the whole Consent Agreement.

Mr. Rankie stated that there is a section in the Charter that states that the Board of Selectmen is a select board. He stated that the cited paragraph could be one included as one of their authorities.

Chairman Cielezsko stated that his recommendation would be to include the paragraph across all of the ordinances, not just those of the Shoreland Zone. Mr. Rankie stated that if a paragraph is included in the ordinances, it could be changed. He added that if the paragraph is included in the Charter, it could only be changed if the Charter Commission reopened the whole Charter.

Mr. Hamilton asked if there could be amendments to the Charter. Mr. Rankie replied that it would not be possible unless the process was started all over again. He stated that the Charter should refer to an ordinance because then the ordinance can be changed. He added that there is some wiggle room in the Charter, but that there is not very much. Mr. Marshall stated that one has to be careful regarding what details are put into the Charter just in view of the laws of unintended consequences. Mr. Rankie stated that the Charter Commission is being quite careful.

Ms. Lemire stated that one of the things that she was concerned about was the possibility that a violation occurred which was not the person’s fault and the person could not correct the situation. Mr. Rankie stated that, for example, if they fill a wetland, they could remove the fill. Ms. Lemire asked, “What if they can’t afford to?” Mr. Rankie replied that they should not have made the mistake. Ms. Lemire stated that she did not agree with that and that the issue was not that black and white. Mr. Hamilton stated that ignorance is not an excuse. Mr. Rankie concurred.

Ms. Lemire stated that it does happen that people think that they have done all that they needed to do and they still end up doing something wrong. Mr. Cutting stated that the provision should be added. He stated that he had someone build his own house one foot over from where the property line was and that he had needed to cut it back. He stated that he did not think he liked the fact that he was voted down because he wanted a bigger house than the lot required and had then been granted a Consent Agreement. He added that he thought that there was a huge difference between the wants and needs.

Ms. Lemire agreed with Mr. Cutting but stated that she did not want the ordinance to crush someone who really could not meet the requirements.

Mr. Marshall stated that he did not want to take the wisdom out of having a board make decisions on things rather than having a cut-and-dried formula that everybody falls into regardless of the circumstances. He stated that projects live or die depending on the technicalities of the lot. He stated that some wisdom needs to be applied and he feared that sometimes that is taken out by the attempt to codify everything to the point where there is no wiggle room. He stated that he did not want a situation where "one size fits all."

Ms. Lemire stated that she was concerned about the statement that the municipal officers are directed to institute actions, either legal or equitable, including seeking injunctions of violations and the imposition of fines. She stated that in law, "equitable" falls on both sides. She added that the way the ordinance is written, "equitable" falls on the side of the municipality. She stated that she did not sense any wiggle room for the violator.

Mr. Rankie stated that he did not get the chance to respond to Mr. Marshall and Ms. Lemire. He stated that he totally disagreed. He stated that the Town has a Code Enforcement Officer and Ms. Pelletier's office. He added that Ms. Pelletier sits down with an applicant and tells him the rules, how to find the setbacks, where wetland is and where it is not. He stated that he agreed with Mr. Hamilton that ignorance is no excuse. He stated that if someone fills a wetland and then someone else gets flooded, that is not right.

Mr. Billipp stated that the third sentence of Section 44-48(c) states that, "...the municipal officers, upon notice from the code enforcement officer, are hereby directed to institute any and all actions and proceedings" which seems to give them the ability to come up with a creative solutions. He stated that they have a lot of leeway. Mr. Marshall stated that he would caution not to make the ordinance concrete.

Chairman Ciesleszko stated that his recommendation would be to take the paragraph (Section 44-48(c)) and make it an ordinance for the Town. Mr. Billipp stated that he thought that was a great suggestion and that the BOA should look at that very carefully and review it at the next meeting.

Ms. Lemire stated that currently she had no qualms about the issue being fairly adjudicated by the Town, but that she did not know what would happen ten years down the road when there is a completely different staff.

Chairman Ciesleszko stated that the ordinance was a layer of government beyond the Board of Appeals and the preliminary court. He stated that the Consent Agreement is a last-ditch effort on an existing violation.

Mr. Hamilton stated that an important aspect of Consent Agreements is that they cannot be appealed to the Superior Court, the Town or the BOA. He added that it is a serious piece of legislation. Ms. Pelletier stated that the reason for that was that the terms are agreed upon by between both parties before the signatures and that is why they are not appealable. Chairman Cielezsko stated that there is no argument between the parties.

Mr. Hamilton stated that the fact that there is no argument is not the case. He stated that it may be the case between the violator and the Town, but what about the abutters. He stated the process of Consent Agreements requires a public hearing and that fact is not spelled out in the ordinance chapter. He stated that there is a need to go beyond the chapter and that the Selectmen's Consent Agreement Guidelines are already good.

Chairman Cielezsko stated that the Selectmen get voted in. He stated that the more detail put into the ordinance the more it approaches Mr. Marshall's concerns that an all-inclusive policy almost makes sure that there is no give. He added that the Selectmen are trusted either to do nothing or to "knock their socks off" regarding the violation that has occurred.

Mr. Hamilton stated that that would be fine for the violator and the Town, but his concern was for the abutters. Mr. Marshall stated that the guidelines specify that there is supposed to be a public hearing. Mr. Hamilton stated that the Shoreland Ordinance 44-48(c) does not specify any of that.

Mr. Hamilton stated that he was trying to understand a situation where a developer has committed a major violation and has agreed with the Town to pay a fine. He stated that the abutters would be stuck with a terrible piece of work that they have to deal with for the rest of the time they would be there. He added that the abutters had nothing to say about the situation with the Selectmen or with the violator. He stated that there needs to be a public hearing.

Ms. Pelletier stated that Consent Agreements are not approved by the Selectmen but by the courts. She stated that having a public hearing has no effect on what the court does. Mr. Hamilton stated that a public hearing is designed to give voice to all of the parties and that is the agreement that should be delivered to the court. Mr. Hamilton stated that the agreement should not be just between the Town and the violator but that it should be between all of the concerned parties. Ms. Pelletier stated that there is no agreement with the abutters.

Mr. Hamilton stated that it is the abutters who are affected by the violation. He stated that it seems only fair. He stated that if one were living next to someone who committed a major violation which affected one's quality of life and the violator made a

deal with the Selectmen which was approved by the courts and the abutter was left out of the picture, the abutter would feel left out of the picture and would feel rather displaced.

Mr. Rankie stated that he wanted to respond to the idea that the ordinance might tie the Selectmen's hand. He stated that everyone does not have the same knowledge and the ordinance should be a guideline for the Selectmen. He stated that a Selectman may have knowledge of selling insurance but not on the filling of flood plains. He added that when a Selectman is elected to the office, he would be expected to read the guidelines and that that would not be tying his hands.

Chairman Cielezsko stated that if the guidelines maintained the intent of the ordinance, they would lead a new Selectman to follow the ordinance.

Mr. Rankie suggested that the BOA digest the presented information and address the issue again. Chairman Cielezsko asked if anyone had a different opinion on the Consent Agreement subject. He stated that the BOA would conclude the Consent Agreement issues at the next meeting.

OTHER BUSINESS – Permits

Chairman Cielezsko stated that Mr. Rankie had mentioned, with agreement from the BOA, trying to get building permits listed online. He asked the CEO what was happening with that request. Ms. Pelletier stated that they are now online. Chairman Cielezsko asked when they were posted in relation to when they were approved. Ms. Pelletier stated that they were updated once per month.

Mr. Rankie asked if they could be updated once per week, adding that once per month was inadequate because an abutter has 30 days to appeal. Ms. Pelletier stated that she would be more than willing to give the notices to the person who does the website posting. Mr. Rankie stated that if the posting was done once per month, a person could get a building permit and a neighbor would not even know or suspect that it had been issued. He stated that the permits should be updated once per week. Ms. Pelletier stated that it was not her decision to make.

Mr. Hamilton asked how other towns provide visibility for the permits. Mr. Billipp stated that he thought the information could be posted in a lobby. Ms. Pelletier stated that she always has the paper copy posted in the hallway much more frequently than once per month.

Chairman Cielezsko asked if Kittery posted building permits on their website. Ms. Pelletier stated that they also post them once per month.

Chairman Cielezsko stated that he would check with Dana Lee to see if there were logistics involved that would not allow the posting more than once per month. Mr. Rankie stated that if he had agendas that were going out (for the Charter Commission), he could email the agenda to the Town Clerk, Wendy, one day and have it posted on the website the next day. He stated that the vehicle for posting is in existence and how Mr. Lee chooses to allocate the time to the staff would be his decision.

NEW BUSINESS

Mr. Rankie stated that he felt that Mr. Marshall had been completely out of line with statements made in the February 20, 2014 meeting. He cited the minutes from page 31:

“Mr. Marshall stated that when someone buys a piece of land, they buy that piece of land with the idea, given what the ordinances were at the time, that it was a good investment or a good use of his resources under the rules in existence. He stated that if the rules change, there are grandfather clauses that do not allow the rules to change for the owner.

Mr. Marshall stated that, though it might be legal, he considered it unethical to take away the use of someone’s property. He questioned whether the appellants were aggrieved. He stated that might be possible. He stated that he thought there was something else going on in the case other than whether a back lot is usable or not. He added that he would not get into that issue.

Mr. Marshall stated that the issue under discussion was whether or not the person’s land could be used. He stated that it was pretty obvious that there was bad blood in the case but that there was a precedent going on that could affect many people in the Town on the 1,000-foot limit. He stated that the issue was whether or not it was proper to take away the use of an existing lot of record and which may have existed for hundreds of years. He stated that because of that, he would be voting against the motion to grant the appeal.”

Mr. Rankie stated that later on in the February meeting, Mr. Marshall had said that he believed it was within his purview to make those statements. Mr. Rankie stated that he totally disagreed. He added that there was no place for that and that it was a statement of personal feeling.

Mr. Rankie stated that during the hearing for Mike Kelley’s variance in November 2013, Mr. Marshall had counted the number of people in favor of the variance in the audience. Mr. Rankie submitted that that action had no place where the BOA sits. He added that their job is to determine if a request fits the ordinance or if it does not. He added that he thought the actions were improper.

Chairman Cielezsko asked if Mr. Rankie thought the whole line of reasoning was improper. Mr. Rankie replied that the job of the BOA was to interpret the ordinance. Chairman Cielezsko asked what Mr. Rankie wanted out of the conversation. Mr. Rankie stated that it frightened him to think that when Mr. Marshall made a decision, he was using logic that it was not fair for the Town to take land but that it was legal to do so and that Mr. Marshall was going to make a decision to make something right that is not in the ordinance. He stated that that is not the job of the BOA.

Chairman Cielezsko asked Mr. Rankie again what he wanted to get out of the conversation. He asked if Mr. Rankie wanted a reprimand. Mr. Rankie stated that he wanted the BOA to follow the ordinance and to follow what their job is. He stated that he did not see how Mr. Marshall could make a clear decision based on what the ordinance says if his thinking was what it appeared to Mr. Rankie to be. He added that he wanted all of the BOA members to make decisions based on the ordinance, not on what they feel. He stated that there are a lot of things they don't like, but that does not determine what their job is.

Chairman Cielezsko stated that, during open hearings, the BOA members are bound by protocol in asking certain questions to the hearing appellants, to anybody giving testimony and to the officers of the Town. He stated that they maintain great decorum. He stated that once the hearing is closed, he wanted everyone to believe that the opinions of anyone on the public side of the dais do not affect what the BOA members discuss among themselves.

Chairman Cielezsko stated that during deliberations, he had said many things that were very wrong or mistaken. He stated that all of the members had been dumb on occasion, but that mistakes get flushed out. He stated that he did not want to stifle anyone in the stating of his opinion. He added that if someone went down the wrong track, and he was not indicating that he thought Mr. Marshall had done so, he would let the person go as far as they wanted as long as they were not wasting anyone's time.

Chairman Cielezsko stated that he did not want restrictions on what the BOA members say. He stated that the members do not limit themselves to just the ordinance. Mr. Rankie stated that such a conversation belonged at Dunkin' Donuts. Chairman Cielezsko stated that the conversation belonged right in the appellate hearing.

Chairman Cielezsko stated that if someone said that the Town was stealing someone's land and then that statement became a finding of fact, the BOA would be brutalized in court. He added that Mr. Marshall had strong feelings and that all of the members had strong feelings on certain aspects of Town life. He stated that Mr. Marshall's statements never made the findings of fact. He added that if there was something in the findings of fact that was not true or was irrelevant, the BOA would be in trouble, but that they could say anything they wanted to say in the deliberations in an appropriate public decorum because the audience would be listening.

Chairman Cielezsko stated that he would not accept limitations that the BOA members could only talk about things if they pertain to the ordinance and that they have to be specifically about the ordinance. He added that when the BOA looks at variance appeals, they look at and talk about a lot of things.

Mr. Rankie stated that on the other side of the bench there is a winner and there is a loser. He stated that there is no place for the BOA members to say that they know there is bad blood in a neighborhood or that something is legal but also unethical. Chairman Cielezsko stated that there is a place for that.

Mr. Hamilton cited Chairman Cielezsko's statement in the minutes of the February 20, 2014 meeting that, "Mr. Marshall's argument for voting against the motion did not address the ordinance" and also stated that he, "did not want an appellant to take a denied appeal to Superior Court and make a statement that he had lost the appeal because a BOA member had stated that it was a 'taking of land'."

Mr. Hamilton stated that Chairman Cielezsko had clearly stated that in the minutes of the meeting. Mr. Hamilton stated that he thought it was incumbent on Chairman Cielezsko to direct the conversation that the members have, within both the public hearing and within the discussion, to basically not allow the sort of discussion at issue. He stated that the minutes of a meeting also become evidence in a court situation. He added that he thought it was incumbent upon the meeting chairman to rule inappropriate conversations out of order.

Mr. Billipp stated that he agreed with Mr. Hamilton and that he thought the members should keep their own opinions and biases out of the discussion and adhere more to the facts and the testimony.

Mr. Cutting stated that he also felt the same way. He equated the issue to that of a judge in a murder case standing up and stating that he thought that everybody who kills should be treated in a certain way, which would sway the whole jury. He stated that a comment which is erroneous to the facts of the matter could sway someone in a different direction. He stated that he thought the BOA members should be able to speak their minds but that they also needed to be cognizant that there are two sides and two people hoping to be able to prove their cases. Mr. Cutting stated that the question would be whether or not the members were keeping open minds all of the way through the decision rather than closing minds and not listening to the facts presented.

Ms. Lemire stated that she somewhat agreed with Mr. Cutting and that there needs to be reasoning. She stated that she thought Chairman Cielezsko did a very good job at monitoring because there are times when someone gets out of hand. She stated that she agreed with Mr. Cutting's wording and also did not think it was a good idea to stifle

conversation. She stated that there is a need for discussion and there are times when understanding comes out of the some of the comments that are made.

Mr. Hamilton stated that he thought it was also incumbent on other board members to make a point of order to the Chairman if they felt that someone was heading in a wrong direction. He added that the responsibility is not only the Chairman's but also is that of the members. He added that he thought Chairman Cielezsko kept the members on track. He stated that he appreciated Mr. Marshall's feelings regarding the taking of land, but that those feelings had nothing to do with what the BOA was deciding.

Chairman Cielezsko apologized for letting the conversation in the February meeting get too far, but he thought he had made it clear in his statements that the BOA should not use Mr. Marshall's comments in a decision. Ms. Lemire stated that she thought that he had. Mr. Rankie stated that it is a recurring issue and that the BOA needs to conduct itself professionally, have a good discussion and to set an example. He stated that the biggest issue is that there is a winner and a loser. He stated that he had been on the losing side and had also seen some dumb things said on the BOA side.

Mr. Hamilton stated that he commended Chairman Cielezsko for running a good meeting. Ms. Lemire agreed, stating that she thought he did a fabulous job. Mr. Cutting stated that he thought it was also up to all of the BOA members to keep the meeting at a professional level.

Michael Fielder of 18 Barnard Lane, Eliot, Maine, an abutter from the February 20, 2014, stated that he was part of a group who had taken offense at Mr. Marshall's comments. He stated that he felt that the decision on the issue had been one-sided.

Chairman Cielezsko asked if the members had received a copy of the BOA report for the Town Annual Report and they had not. Chairman Cielezsko stated that it was basically the same with the welcoming of the new Associate Charlie Rankie. Ms. Lemire asked if there had been an acknowledgement of Mr. Lytle's service. Mr. Billipp agreed that doing so would be nice. Chairman Cielezsko stated that he would write that into the report and that Mr. Lytle had been a great contributor to the BOA and to the Town.

ADJOURNMENT

The meeting was adjourned at 8:24 PM.

Respectfully Submitted,
Linda Keefe
Recording Secretary

Approved by: _____

Ed Cielezsko, Chairman,

Date Approved: _____