

TOWN OF ELIOT – BOARD OF APPEALS MEETING

April 17, 2014

ROLL CALL

Present: Chairman Edward Ciesleszko, Vice-Chairman Peter Billipp, Secretary Bill Hamilton, Ellen Lemire and Associate Member Charles Rankie.

Absent: Jeff Cutting, Associate Member John Marshall

Others Present: Town Manager Dana Lee, Code Enforcement Officer Kate Pelletier

CALL TO ORDER

Chairman Ciesleszko called the meeting to order at 7:00 PM. He stated that there were no public hearings for the meeting.

APPROVAL OF MINUTES

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

Mr. Rankie questioned the reference to associate members as opposed to alternate members. He stated that the webpage refers to alternate members. Chairman Ciesleszko stated that in the BOA ordinances, every reference to a member who is not a full member calls that member an associate member. Mr. Rankie stated that the difference between the two titles had been debated in past in various forums. Mr. Rankie stated that he would like to see the ordinance Chairman Ciesleszko had referenced.

Chairman Ciesleszko stated that Section 45-47(a), Appointment and Composition, states that “The board of appeals shall consist of five members and two associate members appointed by the board of selectmen.” Mr. Rankie stated that he stood corrected.

The minutes were accepted as amended.

OTHER BUSINESS – Consent Agreements

Chairman Ciesleszko stated that he would like the Consent Agreements to be tight and almost non-existent.

Mr. Hamilton stated that there was a great deal of background information in discussions about Consent Agreements. He stated that there was a meeting with Attorney Vaniotis on January 28, 2010 with the BOA. He stated that there was a meeting with the BOS during which the selectmen asked that the BOA make suggestions. The BOA made those suggestions on February 19, 2010. He stated that there was a subsequent meeting on February 21, 2010 as an additional workshop where the suggestions were fleshed out.

Mr. Hamilton stated that the discussions about Consent Agreements have been going on for a long time. He stated that he guessed that everyone assumed that all were on the same page. He added that that apparently was a wrong assumption.

Chairman Cielezsko stated that the BOA did receive from the BOS the procedure drawn up by Jack Murphy, who referenced all of the BOA's work. Mr. Hamilton stated that the guidelines from Mr. Murphy were partially based on the suggestions made in the BOA letter of February 19, 2010 and resulted in a four-page document.

Mr. Hamilton stated that with all of the background, including a lengthy meeting with Attorney Vaniotis on December 17, 2009, it seemed as though everybody was in agreement as to how Consent Agreements were to proceed.

Mr. Hamilton stated that what initiated the current discussions was the implication that someone who was dissatisfied by a BOA decision, a CEO decision or a Planning Board decision would have yet another option which would be to go to the BOS. He stated that that would be equivalent to someone not liking what Mom said and going to Dad instead. He stated that he thought that the situation annoyed the BOA because it basically undermined the function of the Board of Appeals.

Mr. Hamilton stated that he felt as strongly as ever that a Consent Agreement should not even be considered unless there is a violation issued by the CEO to an applicant, which may trigger a request for consideration. He stated that the consideration would need to follow the guidelines, for example that the violation is not willful. He added that the process is not designed for the type of situation where someone is willing to pay a \$10,000 fine as long as he is allowed to do what he wants to do. He stated that if a violation is willful, it should not be considered.

Mr. Hamilton stated that the Consent Agreement procedure is for situations where there had been an accident or mistake, like someone having built too close to a property line or having done something incorrectly but honestly. He stated that that procedure follows what Attorney Vaniotis had said in that there is a prosecutorial function of the BOS which essentially enables them to settle and make a judgment, intervening to avoid having to take the case to court and thereby saving everybody a lot of money.

Chairman Cielezsko stated that Mr. Hamilton had provided the background to the present time.

Ms. Lemire stated that there are no policies in the guidelines to allow for a Consent Agreement to be issued where there is no violation. Chairman Cielezsko stated that the Selectmen were saying that there is such a policy. Chairman Cielezsko asked Mr. Lee and Ms. Pelletier if they were aware of any correspondence with the Town's attorney indicating that the BOS was within bounds to possibly interpret the Consent Agreement guidelines as granting the BOS the authority to let someone do something wrong. Mr. Lee stated that he had not seen any correspondence.

Mr. Lee stated that, in preparation for the meeting, he had had the opportunity to talk with all of the Selectmen on a one-to-one basis with the exception of Mr. Dunkelberger who was away. He stated that, to a person, he believes that the Selectmen understand that they should not enter into any Consent Agreements by taking the role of Dad. They understand that someone should not be able to get turned down by the Board of Appeals and to then present the argument to the BOS for a Consent Agreement in order to save the appellant money.

Mr. Lee stated that each Selectman seemed to understand very clearly that the answer to someone who had been turned down by the BOA would be to take the case to Superior Court. He stated that if the court for some reason then suggests that a Consent Agreement may be in order, then and only then would the Selectmen feel that they should be involved in some sort of discussion.

Mr. Lee stated that he did not know what had previously happened in terms of misunderstandings but that his own understanding about how the Selectmen feel about Consent Agreements is very, very similar to what he has heard from the BOA.

Mr. Hamilton stated that there had been recent discussion with the BOS and an appellant who had been turned down by the BOA. The appellant went to the BOS and the Selectmen entertained the notion, though there had been no violation and no step taken in accordance with the State of Maine laws and the Town of Eliot laws. He stated that the next step the appellant took after the BOA hearing was to make an appointment with the BOS and that the BOS had been pretty much in agreement that they had the ability to enter into a Consent Agreement. He added that they did choose a different road when the Town's attorney determined that perhaps there may be other interpretations to the BOA's decision. The attorney indicated that maybe the CEO should reconsider his decision, which the CEO then did, thereby circumventing the need for a Consent Agreement.

Mr. Hamilton stated that the fact that the BOS had even been considering a Consent Agreement surprised the BOA because in their own guidelines, the first sentence states that, "A Consent Agreement is essentially a settlement, between the Town of Eliot and a property owner who has violated the Zoning Ordinance, in lieu of anticipated litigation." Mr. Hamilton stated that that was where it all came about, once again.

Chairman Cielezsko stated that, in a round-about way, the Selectmen did not enter into a Consent Agreement. He stated that things go in a wrong direction sometimes but come back through everybody working together. He stated that the Selectmen came to their senses.

Mr. Lee stated that he was in agreement with Chairman Cielezsko 100%. He stated that he thought that there had been a heightened awareness that the BOS was going down the wrong avenue. He added that he thought there had been a maturity in their thinking about Consent Agreements and the very, very limited use in which they should ever play a role. He stated that he has been in town management for 23 years and has never entered into a Consent Agreement or been asked by a court to enter into a Consent Agreement. He stated that "a violation is a violation is a violation." He stated that he thinks the BOS understands that.

Mr. Lee stated that he thought it had been helpful that the Consent Agreement issue had been raised again and focused on again. He stated that he thought the BOS realized that they may have been in the wrong place at the wrong time.

Chairman Cielezsko asked if the BOA wanted to make any changes to the Consent Agreement guidelines. He asked Mr. Rankie, a member of the Charter Commission, if there was something he had wanted to codify. Mr. Rankie stated that that would be a possible vehicle but that he had not seen anything presented.

Mr. Rankie stated that one thought he had was that Chairman Cielezsko could send correspondence to the legal department of the Maine Municipal Association and ask them if there was anything stated in a Charter regarding Consent Agreements. He asked Mr. Lee if there was something in any of the 75 or so Charters addressing the issue.

Mr. Lee stated that he did not think there was. He added that he did not think that Consent Agreements were a matter for a Charter but instead would be a policy or guideline that had been adopted. He stated that he had only seen a few Charters but had never seen anything about Consent Agreements in a Charter.

Chairman Cielezsko stated that the Consent Agreement Guidelines were working, even though they came dangerously close to not working. He asked if there were any recommendations for changes to what the guidelines currently are.

Mr. Billipp stated that he wanted to bring up for discussion the last sentence of the first paragraph of the Selectmen's Consent Agreement Guidelines which states, "Each problem starts with some kind of wrong development action or actions done on one or more properties." He stated that he thought that the sentence could easily be deleted because the first sentence of the paragraph describes what the Consent Agreement is used for, which is a settlement between the Town and a property owner who has violated the Zoning Ordinance.

Mr. Billipp stated that maybe it was nit-picky, but that the last sentence to him seemed not to be in concert with the rest of the paragraph. Chairman Cielezsko stated that he was assuming the language was legalese. He stated that there are many lots in Town which violate the Zoning Ordinance.

Chairman Cielezsko stated that Consent Agreements get on the table after a notice of violation has been issued. He stated that the notice of violation is referenced by that last sentence. He added that he thought there was a subtle difference between the first sentence and the last sentence.

Mr. Billipp stated that if everybody seemed to feel that the guidelines were going to be followed in the correct manner from here on out, then maybe the BOA did not have to make any recommendations.

Ms. Lemire stated that the guidelines work when the Boards are paying attention to each other.

Mr. Hamilton stated that if the guidelines are followed as written, there is no problem. He stated that he did not see anything in the guidelines that was contradictory or confusing.

Chairman Cielezsko asked Mr. Lee if there was anything the BOA could address for him. Mr. Lee stated that he had read through the guidelines and that he thought that they were good. He stated that he thought that they may have been forgotten or remembered incorrectly at some point. He stated that now that the Town has a stronger administration, the guidelines will come up any time anyone thinks they are going to get an agenda item with the BOS for the reason that, "Mom said no."

Chairman Cielezsko asked the CEO if she had input. Ms. Pelletier stated that she was in complete agreement with Mr. Lee.

Mr. Hamilton cited Paragraph F on the last page of the Selectmen's Consent Agreement Guidelines as stating, "Nothing in this policy limits the authority of the BOS to enter into Consent Agreements, to approve Consent Orders or to otherwise resolve pending,

threatened or contemplated litigation when the BOS determines that it is in the best interest of the Town to do so.” He stated that the statement is too wide-open.

Ms. Lemire concurred with Mr. Hamilton and stated that she thought that that was the pertinent piece in the recent case. Mr. Hamilton asked if she thought it was good to keep the paragraph in the guidelines. He stated that the rest of the guidelines are very specific and Paragraph F basically allows that certain situations may be fuzzy and the BOS would still have the Consent Agreement authority. He added that maybe the paragraph should not be in the guidelines.

Ms. Lemire stated that the paragraph was somewhat subjective. Mr. Hamilton concurred and stated that he did not think that there was a place for subjectivity in the guidelines. Ms. Lemire stated that she would agree with that only because a notice of a violation has to happen first.

Chairman Cielezsko stated that Paragraph F supersedes anything in the guidelines to that point. Ms. Lemire concurred and stated that the paragraph refers to “threatened or contemplated litigation” so anybody could threaten to sue if not granted a Consent Agreement.

Mr. Hamilton stated that he was not even sure the paragraph anticipated a violation principle because the paragraph states that nothing limits the authority of the BOS to enter into Consent Agreements or otherwise resolve pending, threatened or contemplated litigation when the BOS determines that it is in the best interest of the Town to do so. He stated that maybe that is where everyone was getting confused because it indicates that the Town can avoid litigation by entering into a Consent Agreement, forgetting about the violation part. Ms. Lemire wondered how to tell the difference between a real threat and a bogus one.

Mr. Hamilton stated that maybe the BOA recommendation should be to at least discard that paragraph.

Mr. Rankie asked if Mr. Hamilton was referring to both Paragraph F and Paragraph G. Mr. Hamilton stated that he was not sure about Paragraph G. Ms. Pelletier stated that the wording in Paragraph G sounded familiar as to what is and what is not a Consent Agreement. She stated that it was part of a definition she may have read in the MMA manual for either the Planning Board or the BOA.

Mr. Rankie stated that he concurred with Mr. Hamilton regarding Paragraph F. Mr. Hamilton stated that the paragraph indicated that if something did not fit with the other tenets of the guideline, the BOS had the authority to consider another way to approach it. Mr. Rankie stated that he interpreted the issue as meaning that the BOA had not been wise enough to see some little nugget that somebody else did see.

Mr. Lee stated that he was not a fan of that paragraph either and that it appears to undermine the entire Consent Agreement. He stated that that sentence might remain if there was a preface to it stating that it was “subject to all of the limitations in the guidelines above (referencing all of the other stipulations and limitations on Consent Agreements otherwise described in these guidelines), the BOS may still...” He added that for something unforeseeable, the BOS could still grant a Consent Agreement subject to all of the other limitations.

Mr. Hamilton stated that the way Paragraph F was written negates the limitations. Mr. Lee stated that he would understand why Mr. Hamilton wanted it removed. He stated that he would be happy to check with MMA to find out if the language was something that was standard (a get-out-of-jail-free card) so that the BOS was not hemmed in and unable to grant a Consent Agreement when it was obviously in the best interest of the Town somehow.

Chairman Cielezsko stated that the BOA could easily make the recommendation to remove the paragraph and the BOS could accept the recommendation or not.

Mr. Hamilton asked about Paragraph G which states that, “Nothing in this policy creates any right of appeal from a decision by the BOS to approve or decline a proposed Consent Agreement or Consent Order. Such determinations constitute the exercise of discretion concerning the enforcement of the Town’s ordinances and are not subject to appeal.” Chairman Cielezsko stated that that provision is State law.

Mr. Hamilton stated that he would support removing Paragraph F of the Board Policy and Procedures.

Ms. Lemire referenced Section 4452, Appendix C of the Statutes. Mr. Hamilton stated that, from his reading of that provision, it basically outlines the type of fines that can be rendered and what the limitations are. Ms. Lemire stated that Section 4452 describes penalties that are all on the same title.

Chairman Cielezsko asked if there was consensus to recommend to the Selectmen to remove Paragraph F. All were in agreement and there was consensus. Chairman Cielezsko stated that he would send a letter to the Selectmen recommending that Paragraph F be removed in its entirety.

Mr. Rankie recommended that the letter be written in support of the Consent Agreement Guidelines with the exception of Paragraph F because everything else looks good and the BOA accepts everything else except for Paragraph F.

Chairman Cielezsko stated that the letter would state that the Board of Appeals has a consensus that the Board of Selectmen’s Consent Agreement Guidelines are in good

standing other than Paragraph F, which the BOA recommends be removed in its entirety.

Mr. Lee asked if consensus was enough or should the BOA vote on the agreement. Chairman Cielezko stated that they had done it as consensus before and that a vote was not needed.

OTHER BUSINESS – Meeting with Selectmen April 10, 2014

Mr. Hamilton provided the BOA members with the draft of a letter regarding the public hearing at the last BOS meeting. He stated that he felt very disappointed at the Selectmen's resolve at the end of the meeting. He stated that his feeling at the end of the meeting was that the conclusion by the Selectmen, even though they stated that they did not think the BOA did anything wrong, was insulting. He stated that the message from one BOS member was that the BOA should take some classes to figure out how to run a meeting or conduct themselves in public. He stated that he felt that that statement was pretty insulting, since all of the BOA members had attended classes.

He stated that another BOS member made the statement that the BOA members should try to see things more clearly. He stated that that was almost like saying, "Go back to the sandbox and try to play nicer." He added that that was not what he had expected the BOS to say.

Mr. Hamilton stated that he felt insulted by the actions of the Selectmen and he did not feel that anything was resolved. He stated that he did not feel that the newspaper article that talked about the meeting afterward had portrayed a total sense that the BOA did nothing wrong. He stated that he felt that no one on the BOA did anything wrong. Ms. Lemire concurred.

Mr. Hamilton stated that the impression from the newspaper article indicated that the BOA members were no longer in the hot seat. He stated that he had never felt that he was in the hot seat because he did nothing wrong. He stated that he felt that the Selectmen should have acknowledged that in a much stronger fashion.

Mr. Rankie stated that he thought that the BOS showed a distinct lack of support for the BOA. He stated that he thought it was pretty bizarre to even allow some of the statements and allegations that were made against the BOA. He added that it went as far as allowing the accuser to read an email from a person from another state who had watched the video streaming. He stated that he completely agreed with the Mr. Hamilton and that he thought sending the letter was a great idea.

Mr. Billipp stated that he was puzzled by the whole proceeding. He stated that he wished he had had the presence of mind to say to the audience that the BOA members all chose to have the complaints aired in a public forum because they had nothing to hide or fear. He stated that the whole meeting was confusing and upsetting. He stated that he agreed that the outcome was far from what the BOA might have expected.

Mr. Billipp stated that he had never been through anything like that meeting before so he did not know what to expect the Selectmen to do, but he thought that they did not come down forcefully on the BOA's side. He stated that they heard everything and made some comments but concluded that they were not going to censure any of the BOA members. He added that it was less than satisfying. He added that he did not know how to react to Mr. Hamilton's letter to the BOS.

Ms. Lemire stated that she concurred with Mr. Billipp. She stated that she was not pleased with the end result of the meeting either. She stated that the hearing was beyond anything that had ever happened to the BOA. She stated that all of the members have feelings and opinions but that they leave them at the door when they enter the room. She stated that the BOA does not make decisions based on feelings or personal preferences.

Ms. Lemire stated that, in support of the Selectmen, she thought that they were trying to defuse the situation and to allow an airing. She stated that she did not think that was an easy thing to do for any group of people. She added that she did feel that the BOA was left hanging and that their integrity had been compromised.

Mr. Hamilton stated that not making a statement to that effect would be basically saying that the BOS conclusion was enough, adding that he clearly thought that it was not enough. Ms. Lemire stated that she knew that there were people around Town who were making negative comments about the BOA as a result of the hearing.

Mr. Rankie stated that it is hard to understand what the BOA does and on what the members based their decisions when such comments are allowed. He stated that, in his case, he was accused of working for the attorney in a blatant, black-and-white manner. He added that the accusation was totally ridiculous and 100% unfounded.

Mr. Rankie stated that the BOA did not get support from the BOS and that the BOA works for the BOS at their pleasure. He stated that the BOS members acted like politicians and that that was disappointing.

Chairman Cielezsko stated that the letter from Mr. Hamilton to the BOS did not ask for an action. Mr. Hamilton stated that the letter was a reaction and was his perspective of disappointment. He stated that the letter was not asking the Selectmen to do anything.

He added that the letter was a statement of his disappointment that the BOS did not do anything.

Mr. Hamilton stated that he thought that the process leading up to the hearing was regarded by a lot of people as a true test of what is wrong with Eliot in that the old boys in the back room are making assumptions and he thought that that was insulting. He stated that that is not what is happening on the BOA and all of the members know that. He stated that the BOA had been dragged into the muck in spite of the fact that there had been absolutely no ex parte communication.

Chairman Cielezsko stated that he had concerns. He stated that he had expected dismissal and he was disillusioned with the outcome.

Mr. Rankie stated that he thought there had been some wisdom in not allowing public comment (referring to Mr. Hamilton's statement in his letter that the public should have been allowed to speak). He stated that there had been a police officer present and things could have gotten out of control. He added that he thought that part of the letter could be deleted.

Mr. Rankie stated that the comment that the BOA members should take classes was made with the lack of knowledge because there are very few classes for the BOA and they are all the same class containing basic information. He stated that the only other class that would have any relevance would be that on the Freedom of Access Act. He stated that to make that statement indicated a lack of knowledge of what is available for classes.

Ms. Lemire stated that the BOA had called Attorney Vaniotis to conduct a workshop to educate the members.

Mr. Rankie stated that not allowing the public to speak in the BOS hearing was probably wise. Mr. Hamilton stated that he could understand why it was the case and it would not have been a pleasant evening if that had happened. He stated that it at least should have been a consideration. Mr. Rankie stated that it really would not have been relevant because the relevant matter was that the BOA had been accused of things. Mr. Hamilton concurred.

Mr. Hamilton asked if Mr. Rankie thought the BOA should not do anything. Mr. Rankie stated that they should do something. He stated that if the BOA let it pass, it would be the same situation as the Consent Agreement. He stated that if the BOA had not been involved in that, who knew where they would be. He stated that he did not know how the other BOA members felt when they went home the night of the hearing, but he did not feel very good at all. Mr. Rankie stated that the members were present at the current hearing and had prepared for it and would prepare for future meetings.

Chairman Cielezsko stated that he could also understand the BOS Chairman not letting the public speak. He stated that the BOS was looking for evidence and that the sad part of the hearing was that there was no evidence.

Mr. Rankie asked Mr. Hamilton if he would remove from the letter to the BOS the two sentences which referred to allowing the public to speak. Mr. Hamilton agreed.

MOTION

Mr. Rankie made a motion to strike the two sentences regarding not allowing the public to speak in and to have Chairman Cielezsko send the letter to the Board of Selectmen on behalf of the Board of Appeals. Mr. Billipp seconded the motion.

DISCUSSION

Ms. Lemire stated that she had reservations. Mr. Rankie stated that Ms. Hardy had not accused her of anything. Ms. Lemire stated that that did not matter. Chairman Cielezsko stated that everything that is done on the BOA represents the whole Board and Ms. Lemire agreed. She stated that one of her concerns was how the BOS would receive the letter. Mr. Rankie stated that it did not matter. Ms. Lemire stated that it did matter because the action needed to be something that was going to be productive rather than beating up the BOS. Mr. Rankie stated that it would not be beating them up but just telling them that the BOA was disappointed with the way the members were treated. Mr. Rankie stated that there was no other calm, collected way of stating the disappointment than the way Mr. Hamilton had stated it.

Mr. Rankie stated that Mr. Hamilton's opening statement in the hearing had been eloquent and wonderful. He added that none of the BOA members should even have had to speak after his statement because Mr. Hamilton had said it all.

Chairman Cielezsko stated that his only reservation was that the Selectmen are also the Selectmen for every citizen of the Town. He stated that Ms. Breen and Ms. Hardy felt that they had trouble.

Mr. Rankie stated that the whole class should not be punished just because one person was bad. He stated that Ms. Breen and Ms. Hardy, no matter what their reasons were, accused the BOA of false things and then the BOA did not get support from the so-called "parent group." He stated that everybody was punished because somebody made a false allegation and that that fact needed to be recognized. He stated that when one takes the job as a Selectman that person has to be able to see when someone is wrong.

He stated that you can't say everyone is right in order not to lose a vote. He stated that you have to see it the way it is.

Chairman Cielezsko stated that he would be terrible at being a Selectman because he feels that everyone has to be treated with the utmost respect. He added that when and if Ms. Breen and Ms. Hardy come before the BOA again, they would be treated with utmost respect.

Mr. Rankie stated that when the BOA decides on an appeal, somebody wins and somebody loses. He stated that the BOS hearing was a similar type of situation where the BOA members were accused of something that they did not even come close to doing and they were sent away with the message that they needed to be nice to everyone. He stated that if the BOA conducted business in that way, there would be no resolve.

Mr. Hamilton stated that once someone makes an accusation it should be up to the judicial board (in this case the BOS was acting in a judicial capacity by conducting a public hearing) to make a decision as to whether or not the accusation is true. He stated that by saying the BOA should learn to get along better or pay more attention or be more considerate, they had not made a conclusion that anyone was right or wrong. He stated that the BOS did not find anything to substantiate any of the allegations. He stated that the next logical step would have been for the BOS to say that they were sorry the BOA members had been accused, that they found no reason for the accusations, that they found the accusations not credible, that they supported the BOA in their work and wished them luck in the future. He stated that they should have stated that if the BOA was accused again and acted in the same way, they would support them again.

DECISION

The vote in favor of the motion to send the letter was unanimous.

Mr. Billipp asked if the letter was something each member should sign because it states that it is from "we, the following members of the Board of Appeals..." Mr. Hamilton stated that the letter could say "we, the Board of Appeals." Ms. Lemire noted that Mr. Marshall and Mr. Cutting were not present. Chairman Cielezsko stated that for the current meeting, those present constituted the Board.

Mr. Rankie asked Mr. Hamilton if he could draft the letter for Chairman Cielezsko's signature. Chairman Cielezsko stated that he would present the letter to the BOS and read it at their next meeting for which he could get on the agenda. Mr. Hamilton stated that he would send the new draft to Barbara Thain.

Mr. Billipp asked if the letter should include the fact that the letter was discussed and the Board voted unanimously to send the letter to the BOS. Mr. Rankie stated that if the BOA followed the Rules of the Boards, Committees and Commissions, it would not be possible for Chairman Cielezsko to present the letter if the aforementioned had not happened. He stated that Chairman Cielezsko could not present the letter on his own without having been granted the authority by the BOA, so the vote would be assumed.

Mr. Rankie stated that when Chairman Cielezsko told him at the March 20, 2014 meeting that he would not accept emails from BOA members, Mr. Rankie had felt upset. He stated that he had since realized the wisdom of that statement. Mr. Rankie stated that the BOA was accused of things that were bizarre when Chairman Cielezsko would not even accept an email of notification about a class. He commended Chairman Cielezsko publically.

OTHER BUSINESS – Charter Commission

Mr. Rankie, Chairman of the Charter Committee, stated that there was very strong sentiment on the Charter Commission that Planning Board and Board of Appeals members should be elected. He stated that he personally could not support that, at least at the present time. He stated that he could not see any way in which he could support the idea. He added that it expresses a lack of understanding about how long it takes to really learn the information necessary to be a Board member.

Mr. Rankie stated that the example of the BOA having to appear before the BOS because they had been accused is what it was all about. He stated that a BOA member could be removed by the BOS and the BOS should have the wisdom not to put anyone on the Board of Appeals who is not truly capable of being on the Board.

Mr. Rankie stated that he found the issue very troubling but that he wanted to let the BOA know that that was what was going on. He stated that, as Chairman of the Charter Commission, he would not let the topic come up unless he was overruled. He stated that he could not work hard for the Charter knowing that that was going to be a part of it because that would mean that he would not support the Charter.

OTHER BUSINESS – Appellate vs. De Novo Reviews

Mr. Billipp stated that one of the topics at the last BOA meeting was appellate vs. de novo reviews and he did not think the discussion was really finished. He stated that he was still very confused because it says one thing in the Ordinance and another

elsewhere. He asked why it could not be simple and just be one way or the other so the BOA members always know.

Chairman Cielezsko stated that previous to any public hearing he would identify in the agenda whether the case was appellate or de novo. He added that that would be verified in the discussion at the start of the case. He stated that he could make up a packet of the facts that the members could then mull over.

Mr. Billipp stated that he had read the minutes from the March 20, 2014 meeting and still found the issue very confusing. He stated that they had typically, in the past, used appellate review for the CEO and that they had not had a case with the Planning Board since he had been on the BOA.

Chairman Cielezsko stated that the Planning Board in all cases is an appellate review. He stated that in the Ordinance and verified by the courts, every Planning Board decision is appellate review. He added that every CEO decision in Chapter 45 is appellate review and a Code Enforcement Officer's decision in Shoreland Zone is de novo which is the only time the BOA uses de novo.

Mr. Hamilton clarified that a Planning Board decision in the Shoreland Zone is still appellate. Chairman Cielezsko stated that de novo is only for a CEO decision in the Shoreland Zone.

Mr. Hamilton asked what the logic was behind the distinction. Chairman Cielezsko stated that there is some twist to the logic and that it took Mills vs. Eliot to have it made clear. He stated that the CEO could make an incorrect decision. He added that the biggest concern is that in the Shoreland Zone there is so much worry about what could happen that a more extensive review is warranted. He stated that the courts figured that five people could get a better handle on the issue than one person.

Chairman Cielezsko stated that appellate reviews are fairly easy because they only use information that the office holder had at the time the decision was made. He stated that new information could arise a month later, but that new information could not be used. He stated that after the decision is made, any action after that is a civil or court action. He added that the BOA has to go by what the official knew at the time of the decision.

Chairman Cielezsko stated that de novo is a long road. Mr. Rankie stated that de novo is essentially starting a case from scratch as if the appellant applied to the BOA, up to and including a field visit. Chairman Cielezsko clarified that anything that the CEO would need to know in order to arrive at a decision would also need to be known to the BOA in de novo.

OTHER BUSINESS – Chairman Position

Chairman Cielezsko stated that he was dropping the Chairmanship as of June 2014. He stated that he does not want to be Chairman because he does not have the time and that he has a lot of things going on. He stated that he was going to start on another Board, but that would be like relearning and starting from scratch. He stated that if the BOA members could put up with him, he would like to stay on the BOA and drop the Chairmanship. He added that he could be helpful with questions and he knows how to sit back and leave an issue alone unless asked for input. Chairman Cielezsko stated that anyone on the Board could be a better Chairman than he is.

Ms. Lemire stated that his desire to remain on the BOA was good news. Mr. Rankie stated that it would be a tremendous loss if Chairman Cielezsko left the Board. He added that before he sat through the first meeting, he had thought that the issues before the BOA were a lot less complicated than they are.

Chairman Cielezsko asked the CEO if she had any issues to bring up. Ms. Pelletier stated that there were none.

ADJOURNMENT

The meeting was adjourned at 8:02 PM.

Respectfully Submitted,
Linda Keeffe
Recording Secretary

Approved by: _____

Ed Cielezsko, Chairman,

Date Approved: _____