

**TOWN OF ELIOT, MAINE
BOARD OF APPEALS MEETING**

June 16, 2011

PRESENT: Edward Ciesleszko, Chairman; Peter Billipp, Vice-Chair; William Hamilton, Secretary; Philip Lytle; Ellen Lemire and John Marshall, Associate Members

ABSENT: Jeffrey Cutting

OTHERS PRESENT: James Marchese, CEO; Barbara Boggiano, Recording Secretary; Atty. Sanford Roberts; Ted Long; Michele Duval and others

1. 7:00 P.M./ROLL CALL

Chairman Ciesleszko called the meeting to order at 7:00 p.m. and introduced the Board members. He asked if the appellants were present. Atty. Roberts stated they were and Michele Duval said she was present.

Chairman Ciesleszko announced that at 10 o'clock, if the Board has not gotten to the second hearing, there is an option to continue it to the next meeting. The appellants agreed.

Chairman Ciesleszko outlined the procedure for the hearing. He said that any variance granted must be recorded at the York County Registry of Deeds within 90 days and a copy of the variance be given to the Code Enforcement Officer, but that four criteria proving undue hardship had to be met. He said any decision by the Board can be appealed to Superior Court within 45 days.

2. PUBLIC HEARINGS:

A. Request for Variance by Ted Long and Ted Long Inc. and Bolt Hill Associates, LLC for extension of time for substantial completion of each phase of the development, Article 33, Section 59. Property located on Bolt Hill Road, Eliot (Map 17, Lot 31).

Chairman Ciesleszko opened the hearing at 7:05 p.m. He said that in July 2008, this request for a variance was heard, and at that time, Peter Billipp and Bill Hamilton had recused themselves from hearing the request. Mr. Hamilton said he had to recuse himself again as he felt he had a conflict.

Mr. Billipp stated that at the time, he was marketing the property, which is why he recused himself, but felt he did not have any conflict at this point whatsoever. Chairman Ciesleszko asked the other Board members if they felt comfortable with Mr. Billipp's response and the Board agreed that he could stay seated.

Chairman Ciesleszko said that the voting members would be John Marshall, Peter Billipp, Phil Lytle and Ellen Lemire and that he would vote in case of a tie.

Chairman Ciesleszko said the Board of Appeals has authority to hear this case under Sec. 45-49(b).

Chairman Ciesleszko addressed the issue of standing for the applicant because the Board did not have a record of the deed for the property prior to this meeting.

Atty. Roberts said he was surprised and did not realize there was a discrepancy with the plans for Map 17, Lot 29 and 31 until this evening, but he can represent to the Board that Ted Long is the owner of the property.

Atty. Roberts said would it be appropriate to continue with the hearing, and, assuming the Board decides favorably on their behalf, that approval would be subject to them verifying with the CEO the deeds to prove ownership. The Board agreed.

Jim Marchese said he would not have a problem with that.

Chairman Cielezsko said that needs to be straightened out. Atty. Roberts said he would do that within seven days, the timeframe allotted for him to receive a Notice of Decision.

Atty. Roberts said there is a letter he submitted along with the application which gives the Board a brief history of the situation, and the Planning Board had approved the plan for elderly housing in 2007. He said their appeal was filed, but the resolution took time for the work to begin.

Atty. Roberts said Bill Cullen and himself were the principal partners of Bolt Hill associates and have already spent \$500,000 on this site. He said that elderly housing and assisted living is dependent upon the ability of the people to sell their existing homes as well as financing. He said they could not move forward because of the market condition, but they were able to obtain additional funding.

Atty. Roberts said today they have met with the marketing coordinator for the programs but they are waiting for a quote from the modular home company for purposes of putting up a model home. He said they hope to continue work on this project. He said the road has been cut and utilities are at the site.

Atty. Roberts said the next step is to complete the entrance way, finish the landscaping and putting up the home so they can begin marketing. He said the next portion will be putting in \$300,000 to get the first phase completed, but they cannot do that without an extension of time.

Atty. Roberts estimated that, once they get the project going, it will take anywhere from 2-5 years for these units to sell in this economy. He said nothing has changed regarding the scope of the project and the plans are still the same. He said he has some additional ideas that may make it more cost effective for people coming in; however, they will need to have the feasibility study updated from 2006.

Atty. Roberts said that the findings of fact, which are contained in the Notice of Decision letter dated July 28, 2008, granting their request for a variance for extension of time are essentially the same, but time has marched on. He said he would be glad to answer questions.

John Marshall wanted to know if the water and sewer have been brought to the site, or is it throughout the site.

Atty. Roberts replied that they have been brought to the site, not throughout the site.

Atty. Roberts said they had some (financial obligations) small items left over from their last appeal they would like to address.

Peter Billipp said he checked the tax records and noted Map 17, Lot 29 is a 49 acre parcel owned by Ted Long Irrevocable Trust, which is not the name that appears on the application for a variance as the applicant.

Atty. Roberts said that the only thing he could think of was that a couple of months after this original plan was submitted, Ted Long had done some estate planning and all the property is now in trust, so the record got changed. He said he made an error when he put Ted Long's name on the application.

Mr. Billipp questioned the acreage.

Atty. Roberts said that the parcel is two parts and the subdivision plan was preceded by the boundary survey which was done by Attar Engineering.

Ellen Lemire thought it was by Civil Consultants.

Atty. Roberts guessed that is where the acreage comes from.

Mr. Billipp said that it is a mystery that {Lot} 31 disappeared. He said it is a separate lot on the road, with six acres divided into three 2-acre lots.

Chairman Cielezsko said this was a project encompassing 47 acres.

Mr. Billipp thought it was 49 acres minus 6.7 acres for wetland.

Mr. Billipp said he does not see anything in the tax record tying it to the owner.

Atty. Roberts said that Bolt Hill Associates had a written agreement with Ted Long Inc. and now have a verbal agreement, but the next step will be to put it in writing. He said he already has \$600,000 into the property. He said as far as he is concerned, the agreement is just as binding as if it were written.

Chairman Cielezsko said at the prior meeting, Atty. Roberts indicated it was a Purchase & Sale Agreement and wanted to know if it had expired.

Atty. Roberts replied that is correct, and that is why he had Ted sign along with Bolt Hill Associates.

Chairman Cielezsko said it would be moot if Atty. Roberts' group is on the appeal. He said they can address this application and the discrepancy by removing Bolt Hill Associates and Sanford Roberts and just leave it Ted Long.

Atty. Roberts said that is correct and if the trust is the legal owner, then he will amend that as well.

Chairman Cielezsko asked if they were referring to all the lots.

Mr. Billipp replied just lot 29.

Chairman Cielezsko asked if he was referring to the 49 acres.

Mr. Billipp responded yes.

Atty. Roberts said unless the Planning Board stipulated that as part of the approval, it must be combined.

Chairman Cielezsko said the 49 acres are all under the ownership of Ted Long Irrevocable Trust.

Atty. Roberts said that he did not know there was an issue, and Attar, as he understood, checks tax cards, so he was reasonably confident that the files show two separate lots.

Mr. Billipp said that six acres are not part of the plan.

Atty. Roberts said no, they never were.

Mr. Billipp said it has been three years since the Board of Appeals saw this application, and we already gave them an extension. He said a lot of things have happened and there are questions we may need to dig into.

Chairman Cielezsko told Atty. Roberts that he is on shaky ground because of this issue of ownership.

Atty. Roberts replied if the Board needs them to come back next month, he can address the issue.

Chairman Cielezsko asked Ted Long if he owned the property.

Mr. Long replied that he did. He said last fall, everyone said he should do financial planning, so he had a trust drawn up. He said he had a previous trust, and he updated it, after the original agreement with Bolt Hill Associates had expired. Mr. Long said he put the property in trust.

Mr. Long said he checked the tax records and he pays taxes on the property.

Chairman Cielezsko asked Mr. Marchese if the tax maps show Ted Long as owner.

Mr. Marchese replied that the town recently is updating the tax cards, and ran into a glitch, but the Assessor is working on the problem. He said he has not heard how the error occurred, but he believed it is with the Assessing office and not the applicant.

Chairman Cielezsko said this information should have been presented to the Board before the meeting started and wanted to know whether or not the Board wished to proceed to hear this case.

Mr. Billipp said he is concerned about the name change. He said he would like to have them come back next month so the Board has the correct name on the application. He said the Board has not started to hear the case and he believes the burden is on the applicant to present their application correctly. He said he has reservations about it.

Mr. Lytle agreed.

Mr. Marshall said he would like to hear the case tonight.

Ms. Lemire asked without the proper documentation, how could the Board make a decision, even if they do hear it, or could they make a decision, and what would this say to future applicants.

Chairman Cielezsko responded that every case is unique and the Board does not set precedent.

Ms. Lemire asked if the Board could make a decision without factual information.

Chairman Cielezsko said they would be the laughing stock of Superior Court if they do not know who the owner is before they hear the case.

Mr. Billipp wanted to know who the Board would grant the variance to, if they chose to hear the case.

Atty. Roberts asked if he could amend the application.

Chairman Cielezsko replied no, the deed should have been in the Board's packets.

Mr. Marshall asked if it was going to make any difference in the Board's decision.

Chairman Cielezsko replied, as Peter Billipp indicated, the Board does not know who they are writing the Notice of Decision to.

Mr. Billipp said the onus is on the applicant to present a correct application.

Ms. Lemire thought that the name needs to be correct, and maybe they could incorporate that into the findings of fact.

Mr. Billipp asked why the Board should assume anything.

Mr. Lytle asked Mr. Long if the Board could postpone hearing the case until next month, and if that would be a problem.

Mr. Long replied yes, it would be, and he would like to see the project proceed.

Mr. Lytle asked who owns the trust.

Mr. Long replied that he did, and the Board is being nit-picky with all this stuff. He said this is the town's problem – with their tax cards – and wanted to know if he could still appeal this because the town did not have the information.

Mr. Long said that it will make a difference for him, to get started, because the project has been "dead" for a long time.

Chairman Cielezsko declared a five-minute recess at 7:35 p.m. to allow the CEO time to research the ownership issue.

At 7:40 p.m., Jim Marchese returned and Chairman Cielezsko called the meeting back to order. He asked Mr. Marchese if he had any luck resolving the ownership issue and Mr. Marchese responded no.

Chairman Cielezsko asked what does the Board want to do?

Mr. Billipp asked if the Chair would like a motion.

Chairman Cielezsko asked the other Board members how they felt. Most of the members indicated they did not want to proceed.

Chairman Cielezsko told the applicant he has not shown standing in this case by a majority of the Board and informed the applicant that he must reapply and that the application packet should never have been accepted.

Mr. Marshall wanted to know why the applicant could not submit the paperwork.

Mr. Lytle said the application is incomplete and the Board needs to reschedule the hearing.

Mr. Long said that if the Board hears his appeal, he will furnish them with the ownership documentation within seven days.

Chairman Cielezsko said the Board does not wish to pursue this appeal at this time.

Atty. Roberts asked rather than re-apply, could the Board postpone the hearing so they could modify the application and proof of ownership because it is important to have the application on file prior to the end of the month.

Chairman Cielezsko replied the Board will not be meeting again until next month, but he will let the application stand until the next meeting. He told Atty. Roberts that he must submit a complete packet to the Board before then and that he would not be sending him a Notice of Decision letter.

Chairman Cielezsko informed the applicant there would be no further advertising and that this announcement will be the only indication that the Board will hear their case at the next meeting.

Mr. Long wanted to know if the town would have this matter resolved before then {tax cards}.

Chairman Cielezsko replied that they {Mr. Long and Atty. Roberts} must have a copy of the deeds in the Board's packets.

Atty. Roberts said he will get this resolved with the Code Enforcement Officer, and thanked the Board.

At that time, Mr. Hamilton joined the other Board members.

**B. Request for Variance by Michele Duval to allow use to include auto sales, Article VI, Sec. 45-290.
Property located at 820 Dow Highway, Eliot (Map 79, Lot 21)**

Chairman Cielezsko opened the hearing at 7:45 p.m. and read the hearing request. He said the voting members for this hearing would be Bill Hamilton, Peter Billipp, Phil Lytle and John Marshall.

Ms. Duval said that the property is the old Eliot Feed store, which she bought from Dave Kinkade in 2002. She was planning on developing five office spaces in that building, which was approved by the Planning Board.

Ms. Duval said she had to clean up the property, but she got it into shape. She put up a sign and posted ads.

Ms. Duval said the first response was from a nice couple who wanted to sell used trucks, but the supply dried up and the Ryder Company decided to send the trucks to auction. She said she would not go through every tenant and their intent, but most people inquire about car sales.

Ms. Duval thought that Route 236 supports car sales well at this time.

Ms. Duval said currently, she has a tenant who went to the Planning Board and requested to do car repair and sales.

Ms. Duval said that this was approved two summers ago and the tenant had an auto body business, and she has had a hard time getting tenants. She said Route 236 is a tough road to keep tenants. She said she was surprised to find out that used car sales was not an allowed use, and that is why she is present tonight.

Ms. Duval said that auto recycling, auto body and auto repair are all allowed uses in that zone, but she cannot sell automobiles there and she does not understand why it is not an allowed use.

Chairman Cielezsko asked Ms. Duval to go through the four criteria for a variance..

Ms. Duval responded, in reply to number 1, "the land in question cannot yield a reasonable return unless a variance is granted" that this is true because she has been supporting a building with taxes and repairs without much revenue and it has remained predominantly vacant since 2002. She said she has tenants who have signed an intent to lease and they are the only viable real option she has.

Ms. Duval said she has listed this property with three real estate agents and Century 21 Newson Associates is presently handling the transactions for her. She said that this couple would like to put used car sales at the site. She said the property abuts a lot that used to be Del's Auto Sales.

In response to #2, "the need for a variance is due to the unique circumstances of the property and not the general condition of the neighborhood," Ms. Duval stated that the property lends itself natural to auto sales because it is a large piece of land, visible off Route 236, but because it is set back more than 100 feet from the road, it does not have "curb appeal."

Ms. Duval said most often she gets that question – because there are other car sales businesses on Route 236.

#3) Ms. Duval said that granting a variance for the property will not alter the essential character of the locality because many auto sales businesses are already in the neighborhood. She said she would not be changing much at all on the property and a used car business would be more appealing than a junkyard. She said she would keep it neat.

Ms. Duval said it does not make sense that an auto recycling shop is an allowed use, so they could legally take cars apart and sell them piece by piece, but not in their whole state.

Ms. Duval noted that the Gulf gas station is "two doors" away.

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

Ms. Duval said that the hardship was not a result of any action taken by her, and that she has not changed anything on the property. She said she bought this lot as a commercial property and it has been that way since the 1960's when it was King Tut's farm stand.

Ms. Duval said that currently the tenant is repairing autos and selling them. She said it makes sense that auto sales should be included as an allowed use on this property.

Chairman Cielezsko asked the Board if they had any questions of the applicant.

Mr. Lytle asked Ms. Duval what district the property was in.

Ms. Duval replied that it is in the Rural District, but on Route 236, there are different allowed uses, and on this property, the allowed uses are auto recycling, auto repair and auto body work.

Mr. Lytle said the property is not in the commercial zone.

Ms. Duval responded that it has other allowed uses because it is on Route 236.

Mr. Hamilton said that she had mentioned her tenant had car repair and sales.

Ms. Duval said that he is there now, and has the automobiles in the barn.

Ms. Lemire said they were old autos.

Mr. Hamilton asked if Ms. Duval's tenant had a permit to sell automobiles.

Ms. Duval replied that her tenant has done this privately and not as a dealer. She said on his application he wrote "auto recycling" and "auto sales" and the Planning Board approved his application.

Mr. Hamilton asked when was the Planning Board meeting held.

Ms. Duval responded October 30, 2009.

Mr. Hamilton asked when did the Planning Board approve the truck sales.

Ms. Duval replied it was some time in 2002, and she did not have the exact date. She said they went through the steps and was granted approval.

Mr. Hamilton asked was there ever any suggestion by the Code Enforcement Officer to seek a permit for a similar use to other uses, even though it is in the Rural zone.

Ms. Duval replied that she met with the Code Enforcement Officer and he advised her to come to the Board of Appeals meeting.

Mr. Hamilton said under Sec. 45-290, uses to allowed uses similar in a Commercial /Industrial or rural zone goes to the CEO.

Ms. Duval said that the CEO counseled her and told her to come before the Board.

Mr. Billipp said that Mr. Hamilton asked the questions he was going to ask and told Ms. Duval that it would be nice if the Board had a copy of that Planning Board application before them this evening.

Ms. Duval said that did not come out in the discussion. She said she had a copy of the second application because she had it amended.

Mr. Billipp said that this does not have clarification in Sec. 45-290, or anywhere there is a commercial zone on Route 236.

Ms. Lemire said that other board members had asked the questions she was going to ask.

Chairman Cielezsko asked the CEO for his input.

Mr. Marchese said, in looking at the table, auto sales is not allowed in the rural zone.

Mr. Marshall asked the CEO where did it say that. He said he did not see anything stated.

Mr. Marchese apologized to the applicant and said it does not say auto sales. He said he directed her down the wrong path.

Chairman Cielezsko asked if auto sales is in 45-290. Mr. Marchese replied no, it is not there.

Chairman Cielezsko said that a retail establishment is in there.

Mr. Marchese replied yes.

Chairman Cielezsko asked if there was a site plan review in the Rural zone.

Mr. Marshall asked what district it was in.

Chairman Cielezsko responded that according to the map that the CEO has, it was in the rural zone.

Mr. Billipp said this specifically refers to autos.

Mr. Marshall said that it seems like auto sales are recycling them, and there should be a site plan.

Chairman Cielezsko said it is all encompassing – if it is a retail store.

Mr. Marshall asked about the definition of “retail store.”

Chairman Cielezsko said that a “retail store” is an allowed land use.

Mr. Billipp indicated SPR4.

Chairman Cielezsko said that this issue is not for the Board of Appeals and that Ms. Duval does not need a variance.

Ms. Duval stated she lost out on \$100.

Chairman Cielezsko said the Board is done hearing this case and it has to be addressed differently. He asked if that is a valid assumption. He said that Ms. Duval may have to go back to the Planning Board.

Mr. Marshal wanted to know if the permit was still valid.

Mr. Marchese replied if used cars have been sold during the last year, the permit would be valid.

Chairman Cielezsko said the Board has no jurisdiction and Ms. Duval does not need a variance.

Chairman Cielezsko asked if there was anything else the CEO wanted to add.

Mr. Marchese replied no.

Chairman Cielezsko said that Ms. Duval could have an administrative appeal and she could pursue this.

Ms. Duval stated that meant it would be another month of lost business.

At 8:10 p.m., as Chairman Cielezsko was closing the public hearing, a woman who identified herself as Tracy Shejan asked when she applies for her license, can she bring in a paper, if it's allowed.

Chairman Cielezsko said that if she has Planning Board approval for the use.

Mr. Hamilton said that in the Eliot Code, Sec. 45-290, a use similar to the allowed uses, which is what she has, are granted by the Code Enforcement Officer.

Chairman Cielezsko said that is the issue she would have to take up with either the Planning Board or the CEO. He said Ms. Duval does not need a variance.

Mr. Hamilton asked where should the Board go next.

Mr. Billipp said he thought that refers to the table – if the use is allowed in a zone in an operation, rather than Mr. Hamilton's interpretation, at least that is his read.

Chairman Cielezsko outlined the Findings of Fact:

- The applicant is Michele Duval, and her mailing address is 170 Brixham Road, Eliot, Maine;
- The owner of the property is the applicant, Michele Duval, through deed, registered in the York County Registry of Deeds in Book 11969, Page 298;
- The location of the property is 820 Dow Highway, in the Rural zone, consisting of .68 acres; identified as Tax Map 79, Lot 21;
- The application was dated May 16th, but received and accepted by the town on May 31, 2011 (NOTE: the application is not stamped with the seal of the town on the application);
- The request is for a variance to Article VI, Sec. 45-290 from the Table of Land Uses - Permitted and Prohibited Uses to allow the use to include auto sales;
- It has been testified by the applicant that the property has been used commercially since the 1960's;
- The applicant testified that she currently has a tenant with a Planning Board approved auto repair and sales business;
- The applicant testified in 2002 she applied for, and received, approval for a truck sales business from the Planning Board;
- It was testified by the Code Enforcement Officer that there is nothing in the Table of Permitted and Prohibited Uses that denies the applicant the ability to sell autos at that property

Discussion:

Mr. Billipp said the use for auto sales does not appear on the Table of Land Uses and is not allowed.

Ms. Lemire said it is a similar use.

Mr. Marshall noted under #18, requirements on a retail store, anything on Route 236 goes back to Planning Board.

Mr. Billipp said at the end of the Land Use, there are notes, but Mr. Marshall did not see SPR4. There was a brief discussion on the table and this being a similar use.

Mr. Marshall said that is a tough similar use – they would have to have all the cars inside.

Mr. Marshall said it is retail sales.

Ms. Lemire said there would be a definition and there is none. She said private sales are permitted, and the tenant asked if he could sell cars.

Chairman Cielezsko asked if the Board members had any other findings of fact.

Mr. Billipp offered the applicant testified that she received Planning Board approval on 10-30-09, but a copy of that is not before the Board.

Mr. Hamilton said that the date on the truck sales is 2002, but the auto body is 2009 and that should be included as an approved use. Mr. Hamilton said it was testified by the applicant that she received Planning Board approval in 2009 and asked Ms. Duval if that was correct.

Ms. Duval replied yes, that her tenant, Robert Burleigh has it.

Mr. Billipp said another finding of fact should be that the Code Enforcement Officer agreed he made a mistake by not recognizing similar uses on the list of the Table of Land Uses and would never have encouraged the applicant to come before the Board of Appeals if he had recognized that.

The Board had no other findings of fact.

Peter Billipp moved to deny the request for a variance by Michele Duval to allow use to include auto sales at the property located at 820 Dow Highway, seconded by Phil Lytle.

Discussion on the motion:

Mr. Billipp said the Board established the fact that the applicant does not need a variance, and the Board cannot grant the use from Sec. 45-290, viz a viz they cannot do anything else about this application. He said the only thing they can do is vote up or down because the applicant has not met the four criteria to prove hardship.

Mr. Hamilton said he wondered if the Board should vote to deny the request, or just state that the Board has no jurisdiction in this matter.

Mr. Marshall agreed, and said that should be a finding of fact – that the Board of Appeals has no jurisdiction in this case.

Mr. Billipp agreed to withdraw his motion and Mr. Lytle withdrew his second.

Mr. Hamilton said the Board should refuse to hear the case.

Mr. Marshall said they should refuse to hear it because of this mistake by the CEO.

Bill Hamilton moved, based on the fact that, after hearing the case, it was determined that the Board had no jurisdiction, seconded by Phil Lytle.

Chairman Ciesleszko asked if the Board could still grant her relief.

Mr. Billipp said the CEO made a mistake.

Mr. Hamilton added that the CEO did not give the applicant a written decision.

Mr. Billipp said by the CEO's own admission, he made a mistake and that is why the applicant is here tonight.

Some Board members asked if Ms. Duval could be reimbursed.

Chairman Ciesleszko replied that the money has been spent on advertising and notification of abutters.

Vote was taken by a show of hands and the motion passed, 4-0. The Chair concurred with the majority.

Chairman Ciesleszko said that he would send Ms. Duval a Notice of Decision and told her that the Board of Appeals is sending her back to the Code Enforcement Officer to address this issue, and perhaps she would be going back to the Planning Board.

Mr. Marshall said she already went to the Planning Board, but Chairman Ciesleszko said this is a new business and a new use.

3. REVIEW AND APPROVE MINUTES

Chairman Ciesleszko said the Board had the minutes of May 19, 2011 before them and asked for any corrections, omissions or deletions. Several were noted.

Peter Billipp moved to accept the minutes of May 19, 2011 as amended, seconded by Ellen Lemire. Vote was taken by a show of hands and the motion passed 4-0-2 (Bill Hamilton and John Marshall abstaining).

4. OTHER BUSINESS AS NEEDED

Chairman Ciesleszko referred to an e-mail that Barbara Thain had sent to the Board concerning the principles articulated by the Eliot Shores vs. the Town of Eliot decision. He said he came up with this "position paper" because the minutes reflected some confusion. He read through them and asked the Board for their comments:

1. A Notice Of Violation letter (NOV) is a determination of violation with accompanying remedies presented by the Code Enforcement Officer (CEO) to an applicable party.

Mr. Billipp wanted to know if "accompanying remedies" always occurs and Chairman Ciesleszko replied no.

2. A NOV can be appealed to the Board Of Appeals (BOA) who can uphold or deny the validity of the NOV through an Administrative Appeal.

3. A NOV has no legal consequences to the parties and is considered an advisory opinion.

4. The conclusions of the BOA on an NOV appeal have no legal consequences and are also an advisory opinion.

Mr. Marshall said that a NOV could not be construed as a stop work order.

Chairman Cielezsko said that the CEO has more enforcement authority under the shoreland zone.

Mr. Marshall asked if the Board of Selectmen could issue a stop work order.

Chairman Cielezsko said yes and they can set a fine and are the source of any remedial action. He asked if that was the Code Enforcement Officer's understanding.

Mr. Marchese replied yes.

5. Judicial review is not available to decisions that have no legal consequences.

6. The CEO must refer a NOV to the Board Of Selectmen (BOS) for any enforcement actions.

7. If the BOS initiates enforcement actions on a reported NOV, then any appellate review lies with the courts and not with the BOA.

A brief discussion ensued.

Mr. Hamilton said in most cases, before a case goes to court, the court requires that all remedies at the local level need to be exhausted. He said if the court considers a NOV advisory, and a NOV should go directly to the court and not through the Board of Appeals, would this satisfy the court's requirements?

Chairman Cielezsko said that may come up if someone tries to pursue that, but it was not addressed in the Eliot Shores decision.

Chairman Cielezsko said the CEO's Notice of Violation had no consensus in law, only in terms of State laws.

Mr. Billipp said the CEO would have to go to the Board of Selectmen.

Mr. Marchese said the town attorney told him he does not issue a Notice of Violation and that he can only issue an advisory notice.

Mr. Hamilton asked if it was appealable to the Board of Appeals.

Mr. Marchese replied yes, it states that on the advisory notice.

Chairman Cielezsko said if someone comes to the Board of Appeals and the Board turns them down, they cannot appeal their decision.

Chairman Ciesleszko said the Board of Selectmen make the decision, like with the entertainment licenses.

Ms. Lemire reminded everyone about the Special Town Meeting on Saturday at 6:30 pm regarding the proposed adult entertainment lounge.

Mr. Lytle asked where he could get a copy of the language of the proposed ordinances. Ms. Lemire responded at the Town Hall or online.

Jim Marchese apologized to the Board for the mistakes he made tonight with the applications and said he would work on resolving these issues in the future.

Mr. Billipp asked why they had received this form from Atty. Roberts and it was not on the town's application form.

Chairman Ciesleszko said Atty. Roberts has done the same thing on every case he has brought before the Board.

Mr. Billipp said the town should not accept this application unless it is on the town form. He said that this generic form was not accepted by anyone from the town.

Mr. Hamilton said that everything must be complete in the Board's packets and given to the Board before the meeting.

There was no other discussion.

5. ADJOURN:

John Marshall moved to adjourn the meeting at 9:05 pm, seconded by Ellen Lemire. All were in favor by a voice vote. Meeting adjourned.

Respectfully submitted,

Barbara Boggiano
Recording Secretary

Approved by: _____
Edward Ciesleszko, Chairman, Eliot Board of Appeals

Date Approved: July 21, 2011