

SPECIAL BOARD OF SELECTMEN'S MEETING
June 18, 2014 7:00 PM

Quorum noted

7:00 PM: Meeting called to order by Chairman Moynahan.

Roll Call: Mr. Moynahan, Mr. Beckert, Mr. Hirst, Mr. Fernald and Ms. Davis.

Pledge of Allegiance recited

Moment of Silence observed

This is a Joint Public Hearing with the Board of Selectmen and Planning Board for consideration of the Growth Permit Ordinance and the 1,000-foot Maximum Dead End Road Length.

Consideration of the Growth Permit Ordinance

7:01 PM Mr. Moynahan opened the Public Hearing. He said that there was some frustration as there were no growth permits available and that the BOS was looking for feedback to see if this growth cap worked for the Town, or not. He added that the Planning Assistant and Planning Board members were present to speak to any questions regarding this.

Mr. Beckert clarified that Eliot's Growth Ordinance allowed 48 permits from the start (24 – private homes, 24 – subdivisions) and, at the end of the year, any leftover permits went into a pool and could be drawn on a first-come-first-serve basis; then the State stepped in in 2007 and told municipalities with growth ordinances that they had to follow a specific formula each year to determine what the town's new number would be for the following year.

7:03 PM Ms. Pelletier agreed with Mr. Beckert. She explained that the formula was that one took the mean number of permits for new homes issued in the last 10 years and multiply that by 105%, maximum, and that is what the town's rate of growth is per year so, in no year could there be more than 5% growth. She added that the State formula did not allow any deviation from that; that the Town used to have 48 and Eliot is now down to 22; that Eliot is out this year for non-subdivision lots and there are currently 11 people on a waiting list.

It was asked what the consequences would be if Eliot got rid of the growth ordinance.

Ms. Pelletier said that she didn't think there were any consequences when one looks at the growth that has occurred in the last 30 years; that it would be hard to say a growth ordinance was really needed, in her opinion, with, on average over 30 years, 29 new dwelling units constructed per year.

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Mr. Murphy asked if she knew if any towns had voted the growth ordinance away.

Mr. Lee discussed towns that revoked or did not have growth ordinances to include York, Wells, Ogunquit, Sanford, Kittery; that South Berwick has something similar to Eliot and Berwick puts the number of permits to be issued each year right in their zoning ordinance, district by district, in lieu of the State's Growth Permit Ordinance.

Ms. Pelletier said that, if this was something Eliot wanted to keep, another option would be to have it for specific areas in Town; that about 90% of the Town is already zoned with a minimum lot size of 2-3 acres that, in her opinion, does a better job of controlling growth than anything else. She added that there are 20 growth permits available with 2 additional for affordable housing – 10, 10, and 2.

Mr. Moynahan said that, with that, was lost property value or property tax coming in; that they probably have \$40,000 waiting because of this cap on permits.

Ms. Pelletier agreed, saying that a lot of people had lots on the market for sale that were just finding out about this; that people were interested in buying and, all of a sudden, realized that they can't and sales fall through. She added that the State doesn't recognize a division in growth permits between private and subdivision; that that was done locally. She said that changing that would be an option the Town would have to vote to approve. She added that the Town ordinance limits any one subdivision to 8 growth permits per year.

7:10 PM There was some public concern regarding additional services needed if growth expanded with the revocation of the growth ordinance.

Ms. Davis asked if they could limit it in some other way as Berwick is doing.

Ms. Pelletier said that she didn't believe Eliot could do that.

7:12 PM Mr. (Bob) Fisher discussed his involvement in developing the growth ordinance in Eliot, the first Town to have a growth permit; that they worked hard to get the ordinance passed. He added that Eliot is a town everyone wanted to live in and didn't understand why anyone wanted to change the growth permit ordinance.

A member of the public discussed her concern for opening the door for lenience in variances that got around the rules for lot sizes.

A member of the audience commented that the growth permit ordinance was effective until the State took over and started decreasing it; that she thought that was the main problem right now.

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Mr. Moynahan agreed, saying that it was 50% of what it started so the intent has changed.

A member of the audience asked if there was a projection of when growth permits would hit zero.

Ms. Pelletier agreed that was the direction it was heading.

There was discussion that, if Eliot's growth hit zero, it would most likely stay there; that it could only go up 5% if every single growth permit were issued every single year; otherwise, the number just kept going down.

7:15 PM A member of the audience discussed the 11 on the waiting list and that they were paying house lot taxes, not taxes for raw land and asked if it was fair to have people paying those kind of taxes on lots that they can't build on.

Mr. Lee asked Ms. Pelletier to more fully explain the State impact.

Ms. Pelletier said that the State law was a few sentences on the matter and the formula was really very simple; that they looked at the last 10 years immediately preceding the year they were in, what the mean number of new homes constructed was, and multiply that by 105%, which gives the new rate of growth for the following year.

A member of the audience discussed the impact from the recession having a part in the number of growth permits, as well. She said that it seemed an unfair formula to benefit the Town. She added that she owned a lot and was ready to build, ready to pay taxes on a home on that lot, but she was now unable to do that at this point; that that was very frustrating.

There was discussion around having 48 permits be the number separate from the State, in Eliot, and that that was not allowed with the State growth permit language.

7:19 PM Mr. Lee said that one of the primary reasons towns use growth permit limitation ordinances was because of the impact on schools; that one thing the Town knew, currently, was that the number of students in Eliot schools was down and they were importing kids from other places to bring tuition revenue in to bolster the tuition amounts to support the schools; that they (MSAD #35) actually need students.

7:20 PM Mr. (Russ) McMullen said that this would have quite a serious effect on the Village Zone concept being currently discussed, as current growth permit limitations would make development almost impossible. He discussed the impact

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on the real estate market; that the limit increases the value of existing homes but seriously discounts the value of raw land; that the market becomes less and less affordable to Eliot's children and as a result they are leaving the area. He discussed the real conflict he saw in what the State was doing in limiting residential growth but encouraging TIF economic development in towns. He said that there was not a huge amount of buildable land left in Eliot. He added that he thought it was time for the Town to reconsider this ordinance for the benefit of the Town, for its youth and elderly people, and to prevent anymore taking of private property rights.

7:25 PM

Mr. (Bob) Pomerleau agreed. He said that he didn't understand why the State would place such a restrictive growth limiting formula on the towns. Regarding people's property rights, he thought there should be some pretty compelling 'public good' reasons; that he didn't like the 2-acre and 3-acre limitations or the Growth Permit Ordinance. He added that he has seen communities without caps and faced with potential issues with too much growth simply put on a moratorium; that the communities then went back and resolved the issues.

Mr. Hirst commented on the audience member's problem – that she can't build on the lot that she has and, if she looks to sell it, it would be a depressed selling price; that that is effectively a taking of property to have that in place.

There was discussion around the way Berwick is dealing with this issue; that Berwick may be taking some chances by doing that (apportioning permits to specific zones) and might be challenged. Also said was that the Town cannot vote out the ordinance and keep the 48-permit limit; that it would be either or. Additionally, a six-month moratorium could be used while the Town figured out how to slow growth, if that becomes an issue.

A member of the audience asked if there was any way to help the 11 people on the building permit waiting list.

Mr. Moynahan said that that would have to go for a Town Meeting vote.

There was discussion regarding lessening the tax burden on these folks; holding a Special Town Meeting earlier than November to get rid of the Growth Ordinance.

It was suggested that growth permits applied for versus building permits given would give some good information.

7:38 PM

Ms. Davis asked who decides to implement a moratorium, how is it done, and what reasons would one use to make oneself not open to challenge.

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Ms. Pelletier said that she thought that the Selectmen could enact a moratorium in an emergency situation.

Mr. Moynahan agreed it was without challenge.

A member of the audience encouraged the Board to call a Special Town Meeting and not wait until November, adding that she thought that was fair for those 11 people.

Several members of the audience were supportive of the Growth Permit Ordinance.

Consideration of the 1,000-foot Maximum Dead End Road Length.

7:43 PM

Mr. Moynahan said that this was brought up as problematic by the BOA and remanded back to the PB for their review as to where the 1,000-foot language came from and if it still worked for the Town; that the Board was looking for input from the residents.

Mr. (Bill) Hamilton said that he knew the BOA had decisions based on the 1,000-foot limit because it was part of the code and part of safety issues and creating safe neighborhoods. He added that he was curious where the impetus came from for reviewing this ordinance at this time.

Mr. Moynahan said that it came from feedback from residents and, in reviewing some of the BOA work, it seemed that was getting challenged more often than not, so it seemed as though that portion of the ordinance wasn't working.

7:45 PM

Mr. Lee said that, in part, this was staff-driven; that he was new here and heard this might be a bit of an issue; that he asked the Fire Chief if this had anything to do with the ability to get access to fight fires and the Fire Chief said that it might have in years gone by with lesser technology; that if roads were wide enough that trucks could be set up and run hoses, then length shouldn't be an issue but many roads are fairly narrow and that prevented free-flowing traffic. He added that the Fire Chief said that if the ordinance called for either a 1,000-foot limitation or widening of the roads, such that there could be two-way traffic, then he didn't think there was a technical firefighting issue, necessarily, that would strongly support why it is limited to 1,000 feet.

Mr. Murphy discussed the history of land use adoption, which were adopted October of 1982 – Land Use Ordinances, including Site Review, Subdivision Review and Road Design. He said that his understanding, stemming from that date, is that the plan of that ordinance revision came from SMRPC who picked up what was being done along the east coast stemming from social/political studies

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coming in from New Jersey in the '60's; that the Town started using the ordinances and trying to make it work. He added that he thought the impetus was from safety concerns. He added that, with changes that have occurred, it seemed to him that they needed to look at it again and maybe reduce that limit and require a site review.

7:49 PM

Mr. Pomerleau commented that that explanation really didn't justify that restriction, reiterating his earlier comment on restricting property rights in that there appeared no valid reason for it and he thought it ought to be changed.

Mr. McMullen discussed the road depth issue as it related to driveways being restricted to 500 feet in length and the problem that creates with most of the land left being back land; that people's property rights were being taken away because they can't build a driveway to that land; that the Town was creating a useless piece of land.

Mr. Hirst said that he asked why the 1,000-foot limitation existed in the first place and the only thing he can come up with is that somebody said at the time that it was done to control growth.

A member of the audience who lived on a 1,000-foot road that is maintained by those who use the road and that road is a mess. She asked, if they continue to build off the end of that road, how they were going to recoup the money for the road upkeep from the people who are extending that road. She added that they have a court order that says they cannot widen the road beyond 15 feet and that there was no legal right to collect the money to maintain the road. She asked if the Town could come up with some way to resolve that situation.

There were several people who live on this same road that spoke their frustration.

Ms. Pelletier said that part of this discussion is that it is clear that the ordinance is unclear with what one does in these non-conforming situations where the road is already 1,000 feet or more; that that is part of this discussion; that it isn't just extending the road length and doing nothing else; that it is how do they clarify the ordinances and what to do in these situations where there are non-conforming roads.

Mr. Hamilton said that it seemed the whole issue was overburdening sub-standard roads that exceed 1,000 feet; that there seemed to be some logical thinking and not just fire protection or an ambulance getting in there. He added to extend that circumstance, to extend the amount of development, additionally beyond 1,000 feet doesn't seem to make a lot of sense, particularly since most of these are private roads.

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There was no more discussion.

7:59 PM Mr. Moynahan closed the public hearing.

The Board thanked the public for their input.

Adjourn

There was a motion and second to adjourn the meeting at 8:00 PM.

VOTE

4-0

Chair concurs

DATE

Mr. Grant Hirst, Secretary