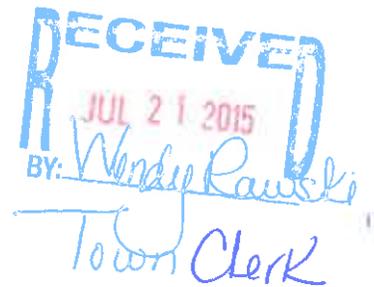


**TOWN OF ELIOT – BOARD OF APPEALS MEETING**

June 18, 2015



**ROLL CALL**

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

Others Present: Code Enforcement Officer Heather Ross, Attorney Matthew W. Howell, appellant; Thomas Pritchett, appellant; abutters and other interested parties.

**CALL TO ORDER**

Chairman Hamilton called the meeting to order at 7:00 PM. He stated that the meeting was being streamed live on the internet.

Chairman Hamilton opened the first of two public hearings. He stated that the first public hearing was for Matthew W. Howell of Clark & Howell, LLC, requesting an Administrative Appeal against the decision of the Code Enforcement Officer, for property owned by Lillian H. Crowell Heirs, c/o Debbie Berthiaume, in order to divide a lot and construct a single dwelling unit on property located at Odiorne Lane, Map 83, Lot 2.

Chairman Hamilton stated that the BOA members who would be voting were the regular members. They were Mr. Cutting, Ms. Lemire, Mr. Billipp and Mr. Cielezsko, with Chairman Hamilton only voting in case of a tie.

Chairman Hamilton established that there were no conflicts of interest for any of the voting members with the issue of the current appeal.

Chairman Hamilton stated that the procedure for the public hearing would be as follows:

- The meeting will be opened.
- Voting members will be determined.
- The request will be summarized.
- The parties to the action will be determined.
- The jurisdiction, timeliness and standing of the appellants will be determined.
- The appellant will present uninterrupted testimony and may take as much time as he would like to present as long as it is pertinent to the case.
- The Board will question the appellant.

- Code Enforcement Officer will present testimony.
- The Board will question the CEO.
- Other parties to the action, including abutters, will present testimony.
- The Board will question the parties.
- Other interested observers will have a chance to testify.
- There will be rebuttal of any previous witnesses by all parties.
- The appellant will make the last statement and take any last questions from the Board.
- The non-voting members of the BOA will make statements regarding the appeal.
- The public hearing will be closed.
- The Board will begin deliberations starting with the findings of fact. They will discuss their duties and what authority they have. They will then make a motion, discuss the motion and, hopefully, come to a conclusion.
- If the decision goes beyond the current hearing, the next date to hear the case will be determined and that determination will be the only notice given. There will be no mailings to abutters regarding further meetings.
- If a decision is reached, the appellant will receive a Notice of Decision within seven days.
- Any decision can be appealed to the Superior Court within 45 days.

Chairman Hamilton asked that any questions be directed through him.

Chairman Hamilton stated that an Administrative Appeal in the Town of Eliot is an appeal based on a decision by the Code Enforcement Officer and that it is considered an appellate appeal as opposed to a de novo appeal. He stated that in a de novo appeal, the BOA could look at all information leading up to and beyond the decision. He added that in an appellate appeal, the BOA can only look at the information that the CEO used in issuing the denial of the initial application.

Chairman Hamilton stated that in the appellate appeal, the BOA was not interested in any historical information. He stated that the BOA, in the current appeal, was determining whether or not the CEO acted in accordance with or contrary to the Code of Eliot.

#### **TESTIMONY FROM APPELLANT**

Matthew Howell stated that he works at the law firm of Clark & Howell in York, Maine. He stated that he was at the meeting on behalf of the property owners, who are the heirs to the estate of Lillian Crowell. He added that Deborah Berthiaume, also present at the meeting, is the executrix of the estate.

Mr. Howell stated that the property is located on Odiorne Lane, which is off of Goodwin Road. He stated that the property is approximately 60 acres of land and that his client's plan, which had been discussed with the CEO for quite some time, is to take the 60 acres and divide it into two separate parcels.

Mr. Howell stated that the plan that he was showing on the easel was done by Easterly Surveying of Kittery, Maine in 2008, a reduced version of which was included in the packets to the BOA. He stated that the plan did not show the proposed delineation between the two lots and only showed the entire lot, indicated as Tax Map 83, Lot 2.

Mr. Howell stated that he thought that Heather Ross's (CEO) denial letter was made in error. He stated that the CEO had said that the particular lot was non-conforming because there was not sufficient frontage. He noted that in the Rural District, 200 feet of frontage is required per lot and that there was no dispute about that issue. He added that what he did dispute is that the proposed parcels would not have adequate frontage.

Mr. Howell stated that Odiorne Lane is an established road and has been in the same location for a number of years, predating the existing code which Eliot currently uses. He stated that, in fact, historically speaking, the used way actually went from Goodwin Road all the way back to Brixham Road.

Mr. Howell stated that Ken Wood, of Attar Engineering in Eliot, Maine, created a plan in which he took the proposed division of the lot and overlaid it onto the GIS map (Plan 4 in the provided packet). He stated that the information on the GIS had been in use since back in 1916. He stated that Mr. Wood had sent a letter to the CEO explaining where he got the information in which he stated that the plan for the Crowell parcel included 1916, 1918 and 1941 USGS topical overlays. Mr. Howell stated that the dotted line indicated in the overlay is what is now called Odiorne Lane, but that he could not say for certain whether or not that was what it was called back in 1961.

Mr. Howell stated that Odiorne Lane is a way that has been used, although presently it is not being used, as access between Goodwin Road and Brixham. He stated that it is not currently a public access way but that it is a private access way. He added that the fact that the way had been on the face of the earth and has existed for close to 100 years or more is significant. He stated Odiorne Lane was not just a tote road that had sprung up recently but that it has been in the Town for quite a while.

Mr. Howell stated that the denial from the CEO stated that Ms. Ross thought that the lot was non-conforming because of inadequate street frontage. He referred to the plan which Mr. Wood had put together (Tab 3 in the provided packet). He stated that Deborah Berthiaume, her real estate broker and Mr. Wood had had a number of

meetings with the CEO and others to discuss the idea of dividing the 60-acre lot into two parcels, seeking information as to what it would take to make the lots buildable.

Mr. Howell stated that, through those conversations, it was determined that a 50-foot wide access would need to be included in order to meet code. He stated that Mr. Wood divided the lot into two, with proposed Lot 1 being 8 of the approximately 60 acres and proposed Lot 2 being 51.2 acres, and Lot 2 would be just north of Lot 1.

Mr. Howell stated that what Mr. Wood proposed was expanding Odiorne Lane and making it wider in order to comply with the code. He stated that that was significant for a very important reason. He stated that the existing language of the code containing the definition of frontage is meant to be a guide in terms of what is, and what is not, frontage.

Mr. Howell stated that in Section 1-2, Definitions, street frontage is defined as, "the horizontal distance between the intersections of the side lot lines with the front lot line that abuts a town way or a private way meeting the minimum standards of a town street." He stated that in reading the definition, one knows that two things must be accomplished: that there must be at least 200 feet abutting either a private or a public road and that the private or public road has to meet Town standards.

Mr. Howell stated that proposed Lot 1 and Lot 2 do abut at least 200 feet of a public or private way. He stated that according to Mr. Wood's layout, in which he included measurements, there are 200 feet of frontage for proposed Lot 1 and that there would be far more than 200 feet of frontage for proposed Lot 2.

Mr. Howell stated that he would like to address the section of the code which specifies what does and what does not qualify as a viable street for the Town of Eliot. He referenced Section 37-70, Street Design Standards, which has more stringent standards for roads accessing 15 lots or more, as opposed to roads accessing 15 lots or less. He stated that even using the more stringent standards, the minimum width would be 50 feet, which Mr. Wood had designed and implemented. He added that the minimum width of the traveled way would be 20 feet, which Mr. Wood had also implemented in his design.

Mr. Howell stated that when one looks at the continuation and expansion of Odiorne Lane, Mr. Wood had designed it in such a way that it does meet the requirements of the code. He stated that just south of the Crowell property, Odiorne is not 50 feet wide. He noted that the definition of frontage specifies that the horizontal distance between the intersections of the side lot lines with the front lot line that **abuts** the Town way meet minimum standards. He stated that where the two lots abut Odiorne Lane, the lane does meet the standards. He stated that there is no mention in the definitions about how far out of how long the way has to be in order to meet the standard.

Mr. Howell stated that the Easterly Survey done in 2008 by Raymond Bisson indicates that the vast majority of Odiorne Lane is only 20 feet wide, with the traveled way being less than 20 feet and more likely in the range of 12 to 15 feet.

Mr. Howell stated that Goodwin Road, according to the Easterly Survey, is also not 50 feet wide and is not even 40 feet wide. He added that even Goodwin Road is not meeting current standards for what is needed for frontage.

Mr. Howell stated that it would be easy to see just by driving around that there are many roads, not only in Eliot but also in every town, that do not meet the current and present-day standards for width. He noted that that is a function of the way in which the towns were settled because a lot of the streets used for travel today were originally horse or cart paths and the towns were built up along those paths and that, as time has gone on, there is no availability to expand because there is no additional room.

Mr. Howell stated that the historical way, Odiorne Lane, goes clearly into the Crowell property and did so even in the 2008 plan. He stated that the traveled way goes clear through the Crowell property and does not stop at the property. He added that even if one looks at Google maps or Google Earth or another on-line map service, those services do not show Odiorne Lane ending at the Crowell property but do show Odiorne Lane going through the property.

Mr. Howell stated that Mr. Wood had taken an existing road and expanded it to make it adhere to the Town's current standards. He stated that the Zoning Board, Planning Board or any other of the municipal boards are bound by the language of the ordinances without extrapolating or interpreting meaning. He stated that it is necessary to use the language that is actually drafted because that is what the citizens are bound by. He added that it is a legal maxim that if there is any type of law or code that is vague, ambiguous or uncertain, those ambiguities and uncertainties get construed against the drafting party, which in this case would be the Town.

Mr. Howell stated that if there is any confusion about what the frontage definition means, that confusion has to be construed in his client's favor. He stated that there is an existing, laid-out right-of-way used by Ken Wood that satisfies the Town code. He stated that he would ask, "How far do you extrapolate out?" because it meets it in the setting in question, but further down Odiorne the width is not 50 feet.

Mr. Howell stated that Odiorne is not 50 feet wide for its entire length, but that not many of the Town roads are laid out with that width. He added that, if looked at through a microscope, almost every piece of property on Goodwin Road would be non-conforming and could not be expanded for lack of adequate street frontage. He stated, "I don't think that is the road (excuse the pun) that the Town wants to travel down."

Mr. Howell stated that he did not think that the land of Map 83, Lot 2 is non-conforming and that it is conforming. He added that what Ken Wood has proposed does meet the definition laid out in the ordinance.

Mr. Howell stated that he wanted to turn the testimony over to his broker, who had been part of the sit-downs with the CEO and could speak to the build-up to the conversation which took place in which Mr. Howell's client was led to believe that the property was a viable plan and that they were able to build. He stated that that belief was the reason his client took the step to have Ken Wood do the lay-out work to create the parcels and the proposed expansion of Odiorne Lane.

#### **QUESTIONS FROM THE BOARD TO THE APPELLANT**

Chairman Hamilton stated that before proceeding, he would like to determine whether the BOA had questions for Mr. Howell.

Mr. Cutting stated that he had taken a ride down Odiorne Lane to view the area. He asked whether or not the property was to the left or to the right of the fork in the road. Mr. Howell asked for clarification. Mr. Cutting stated that the road seemed to stop at an apex with a road on either side and that it looked like there was a private lot on the right side and a driveway on the left side. Mr. Cutting asked if there was a visible marking for the road location because all he saw was two driveways at the end of the road.

Mr. Howell stated that what was laid out on the plan he had provided was what is on the face of the earth today. He stated that Mr. Wood had taken Odiorne Lane where it crosses into the property and straightened it out. He stated that there is the historical travel way. Mr. Cutting asked if the travel way went through the woods in the middle. Mr. Howell concurred. He stated that the historical traveled way does veer off to the left to access Ms. Berthiaume's sister's property. Mr. Cutting stated that he had thought that there was a house up in back. Mr. Howell concurred.

Mr. Howell stated that the Cowells had owned all of the property and that what Mr. Crowell had wanted to do was to partition off 10 acres for each child. He stated that the historical traveled way, which was seen in the 1916 and 1918 plans, is not used currently. Mr. Cutting clarified that there was no existing road in that location currently. Mr. Howell concurred, stating that at one time the way was an access point from Goodwin Road to Brixham but that it is not used today.

Mr. Cutting asked for the distance between the property which would become Lot 1 and Goodwin Road. Mr. Howell stated that he would need to add the various lengths which comprise the curved road.

Mr. Cutting stated that in the second packet which the BOA received, there was a note dated December 20, 1996 that indicated that the property owner had appeared before the BOA and that they were turned down at that time. He asked if that understanding was correct. He asked for information regarding that appeal.

Mr. Howell asked for information about what specifically was being sought in the appeal. Mr. Cutting stated that he did not know but that the note stated, "At their meeting on November 21, 1996 your appeal was denied for variance in the width of the access road to a back lot or lots on Odiorne Lane. Ref: Article 3 Section 305 Subsection P2."

Deborah Berthiaume, 432 Goodwin Road, Eliot, Maine, stated that she was the court-appointed, personal representative of the Crowell estate. She stated that in 1996, her parents were still very actively involved in managing their own affairs. Ms. Berthiaume stated that she was given Power of Attorney in 2000 so that the appeal predated her Power of Attorney to represent them. She added that it was her belief that at that time, her parents were trying to sell a portion of the land. She stated that she believed that the amount to be sold was around 10 acres, somewhat equivalent to the eight acres in the current plan. She stated that both of her parents were deceased and that she thought it was a moot point.

Mr. Howell stated that what he would need to know was whether or not the 1996 appeal was for something similar to the current appeal. He stated that he had not seen anything in the property files to indicate that there had been previous appeals on the current issue. He stated that if there was historical, archived information relating specifically to the current appeal, it would need to be addressed. Mr. Cutting stated that the 1996 appeal referenced the width of the access road to a back lot on Odiorne Lane. Mr. Howell asked if there was a listing on Findings of Fact. Mr. Cutting stated that the note only stated that the appeal was denied.

Chairman Hamilton stated that the current appeal was not a de novo review and that the relevant information was only for the nature of the appeal and the nature of the decision made by the current CEO.

Mr. Cutting stated that the reason he had asked the question was that he was under the impression that the 1996 appeal had been discussed between Mr. Howell and the CEO. Mr. Howell stated that he had not had a discussion on the appeal. Ms. Ross stated that it was an abutter who had asked for any information that had transpired between the Town Attorney, Bill Saucier, and the CEO's office. She stated that she went through all of

her emails for the abutter as required by the Freedom of Information Act. Mr. Cutting clarified that the prior appeal was not part of the CEO's decision process. She concurred and stated that she did not consider previous decisions made regarding the property. Mr. Cutting withdrew the question.

Chairman Hamilton stated that he was aware that there was a lot of historical information on the property and decisions made regarding the property, but that reviewing that information was not the purpose of the current hearing. He stated that goal was for the BOA to determine the nature of the decision of the CEO in the current appeal.

Mr. Billipp stated that he did not have the information to which Mr. Cutting was referring. He received an extra copy.

Mr. Howell pointed out that the previous court case regarded a different piece of property than the current appeal regarded.

Mr. Cutting asked if Mr. Howell had determined the distance between the property and Goodwin Road. Mr. Howell stated that the distance was 1,122 feet to the beginning of the property. An additional 61 feet would get fully out of Odiorne Lane. Mr. Cutting clarified that the distance would be 1,183 feet. Chairman Hamilton clarified that the distance was from the beginning of the property line to Goodwin Road. Mr. Howell concurred.

Mr. Billipp stated that he was confused because Plans 2 and 3 had different scales. He stated that he had been at the property that afternoon and had come to a sign that said "Meyer & Weeks." He asked for the location of that sign on the plans. Mr. Howell stated that he was not sure where the sign was located. Mr. Billipp stated that the sign was at the fork where one road goes to the left and the other goes straight up a hill and then bends around.

Mr. Howell stated that neither the Meyer house nor the Weeks house was depicted on the plans, but he did indicate where they would be. He clarified that Mr. Billipp was referring to the Easterly Survey. Mr. Billipp concurred and also stated that the survey was neither signed nor stamped. Mr. Howell stated that he understood that fact but that it did not invalidate the plan. He stated that just because the plan is not registered, it is not invalid because the measurements are still accurate.

Mr. Billipp stated that the dotted line outlined in yellow on the survey shows the curve and asked if that was Odiorne Lane. Mr. Howell stated that technically that is Odiorne Lane and that on-line mapping, such as Google Earth, identify that portion as Odiorne Lane going up into Tax Map 83, Lot 1.

Mr. Howell stated that, on Ms. Berthiaume's sister's tax card for mail, the road is identified as Odiorne Lane. He added that people who live along the road have an address of Odiorne Lane. The location of the Meyer house was indicated by Russ McMullen who also stated that the Meyers have a garage across the street. He stated that the fork in the road indicates a change that took place many years ago. He pointed out the location of Mrs. Weeks' house. Mr. Howell stated that the original portion of Odiorne, which went to the location of Mrs. Weeks' house, was discontinued back in the late 1960s or early 1970s.

Mr. Billipp clarified that what was being proposed was to divide the 60 acres into an eight-acre lot on the bottom, with the remainder being the location of the proposed house. Referring to Map 3, Mr. Billipp clarified that the proposed house would be situated in the upper left corner. Mr. Howell concurred.

Mr. Cielezsko stated that there appeared to be a discrepancy in the way Mr. Howell was looking at Section 37-69(g), Street Layout Requirements, which states, "The distance between the closed end of a dead-end street and the nearest non-dead-end street shall not exceed 1,000 feet." Mr. Cielezsko stated that Goodwin was the first non-dead-end to the property. He stated that 1,000 feet from Goodwin Road would only get as far as Tippy Lane. He added that he did not understand how Ken Wood envisioned building a road that was against ordinance.

Mr. Howell stated that he thought Mr. Wood did not view Odiorne Lane as ending at the property line but viewed it as coming into the property. He was using the measurement of 1,000 feet off of that measurement. Mr. Cielezsko stated that, unless he was completely misunderstanding, Mr. Howell would have to explain the situation better because "that doesn't cut it." Mr. Howell stated that his interpretation is simply that they can extend 1,000 feet off of that. Mr. Cielezsko asked from what the extension would be made. Mr. Howell stated that it was not technically a dead-end street and that they would simply be extending it.

Mr. Cielezsko stated that the end of a dead-end street cannot be more than 1,000 feet away from a non-dead-end street and that Odiorne Lane is a dead-end street. Mr. Cielezsko asked if Odiorne Lane was over 1,000 feet long. Mr. Howell answered in the affirmative. Mr. Cielezsko stated that that answered his question.

Mr. Cielezsko referred to Section 37-70, Street Design Standards, and stated that there is no mention of tar in the proposed plan and that the minimum design standards require tar. Mr. Howell stated it is a fact that there are countless streets in the Town that are not tarred. Mr. Cielezsko asked whether Mr. Howell was asking for a Variance or an Administrative Appeal. Mr. Howell replied that he was asking for an Administrative Appeal.

Mr. Cielezsko asked whether Mr. Howell was asking the BOA for a reinterpretation of the ordinance or an exception to the ordinance. Mr. Howell stated that he was not asking for a reinterpretation of the ordinance at all. He stated that the only issue before the BOA was the interpretation of frontage by the CEO because that was the only reason the appellant was denied. He stated that the appellant was not denied for the section Mr. Cielezsko had just read. He stated that because that issue was not before the BOA, they could not technically even discuss it. He added that they were limited to discussing frontage. He stated that he thought he had made that argument, had made it very clearly, and that the appellant now prevailed.

Ms. Lemire clarified that Mr. Howell was arguing that Odiorne, as it runs past Lot 83, was established back in 1916 and went all of the way to Brixham. Mr. Howell stated that it did go all the way to Brixham. Ms. Lemire asked if he was relying on that as an open road as opposed to a dead-end road. Mr. Howell stated that, as had already been discussed, that was not how the road was used currently but that was how it was used historically. He added that it is not currently a public access road which could be used to get to Brixham. He stated that it has existed and has been there and that Odiorne Lane in the present day is what that way had been, whether or not it had been called Odiorne back then. He added that, technically, it has existed for over 100 years.

Mr. Howell stated that Ms. Berthiaume's sister has used that road to access her property since long before the code was instituted. Ms. Lemire asked for clarification regarding which line on the provided map was the driveway to that house.

Mr. Rankie stated that he saw a survey plan that was not stamped as being no more than a pencil sketch. He stated that Google Earth is some sort of a tool, but that it was not official in his mind. Mr. Rankie stated that that was not a question but was an observation.

#### **FURTHER TESTIMONY FROM APPELLANT**

Mr. Howell stated that he wanted to turn the meeting over to Russ McMullen, his broker. Mr. McMullen, 371 Beech Road, Eliot, Maine, stated that the only additional information he could offer was to explain where they had been with the issue of the right-of-way. He stated that the current right-of-way, which goes into the Crowell property, has existed for 45 years. He stated that the right-of-way is totally on the Crowell property and services the home of an abutter, several hundred feet into the Crowell property, as a continuance of the old Odiorne Lane, which originally went to Brixham.

Mr. McMullen stated that, in discussions with Ms. Ross and the prior CEO, the use of the road frontage as the Odiorne Lane continuance was all that was ever discussed. He

stated that there had never been any contention. He stated that they had discussed whether the property had frontage or was a back lot. He added that the issue was discussed over several months.

Mr. McMullen stated that, at the time, they had two buyers who had both talked to Ms. Pelletier and Ms. Ross and that all had agreed that the property was a frontage piece of real estate because of the old Odiorne Lane. He added that many things were supplied, such as old mappings that showed Odiorne Lane going all the way from Goodwin Road to Brixham Road. He stated that the plan for the 50-foot wide portion of the right-of-way would preserve the nicest part of the land and would also allow for a 500-foot driveway to come off from the right-of-way.

Ms. Lemire asked for the length of the entrance to the existing house. Mr. McMullen pointed out on the map the location of Ms. Berthiaume's sister's house. Ms. Lemire stated that she thought he had referenced another house further up. Mr. McMullen stated that breaks in the stone wall show and prove where the original right-of-way existed and that the stone walls had probably been there for over a century.

Mr. Cutting clarified that the original road that went through to Brixham Road was no longer in existence and that the driveway to the existing house goes off to the side of the right-of-way. Mr. McMullen stated that there were actually two rights-of-way that went through the property. Mr. Cutting stated that they existed on paper but asked if they exist in actuality. Mr. McMullen stated that the first right-of-way was broken off and stopped and that the second right-of-way went up to the driveway for the existing house.

Mr. McMullen stated that the right-of-way over the Crowell property that services Ms. Berthiaume's sister's house, which is a separate entity of property, is in the vicinity of 700 to 800 feet. He stated that there was a separate right-of-way, as proven by the breaks in the stone wall, and that that right-of-way penetrates into the Crowell property currently. Mr. Cutting noted that the right-of-way had not been used for 45 years. Ms. Berthiaume stated that the right-of-way has been used for farming purposes.

#### **TESTIMONY FROM PARTIES TO THE ACTION**

Chairman Hamilton stated that the next testimonies would be given by abutters or parties who were either for or against the proposed project.

Jay Meyer of 58 Odiorne Lane, Eliot, Maine, stated that since the appeal was an administrative appeal, he thought it would be appropriate to talk to Ms. Ross before more historical matters were discussed. He stated that his testimony would likely get into historical matters and asked if he should discuss those first.

Chairman Hamilton stated that the CEO was definitely on the agenda but that the BOA would like to get a sense of the audience at this point in the hearing.

Mr. Meyer handed out a packet of information to the BOA, including a letter he and his wife had prepared which read:

“Dear Mr. Chairman, Mr. Vice-Chairman and Board Members,

This letter is in opposition to the Appeal filed by the Estate of Lillian H. Crowell regarding the property, Map 83-2. We are the owners of the abutting property, and the only access to the Estate’s property is over our land by means of a deeded right-of-way. We strongly dispute the Estate’s claim that the Code Enforcement Officer erred in her April 6, 2015 Notice of Decision.

The CEO correctly found that there is not the required street frontage that meets the Town’s minimum street standards to allow for the requested lot division. The crucial issue here is that access to the proposed lot division is only available over Odiorne Lane, a private right-of-way that measures 20 feet as it crosses our land. Attached is a copy of the easement deed that explicitly limits the width of the way to 20 feet, which includes the right to install utilities within that 20 feet. This property is held by a conservation easement, which strictly prohibits the widening or paving of this way across our property.

The Estate’s letter of Appeal dated May 4, 2015 by Attorney Howell attempts to avoid the crucial fact that the sole access to the property is over this narrow, unimproved dirt right-of-way. The letter states that there does exist a 200-foot long right-of-way that is 50 feet wide, but this portion of the way only exists within the boundaries of the Estate’s property. The deciding issue here is that there does not exist a 50-foot right-of-way that abuts a Town way or a private way that meets the minimum standards of a Town street. The CEO was absolutely correct in her decision.

We would also like to remind the Board that the Estate has already been denied a variance on this exact issue by the Board of Appeals at their June 20, 2013 meeting. The purpose of the request for a variance at that time was because of the fact that the right-of-way narrows to only 20 feet for a significant stretch of the way to the Estate’s property. The then CEO testified in opposition to the variance stating that it would create a ‘very dangerous situation’ because of how narrow the way is. The denial of the request for a variance was not appealed at that time, yet the Estate is now attempting to get around that denial.

We urge the Board to uphold the CEO's Notice of Decision, as it was the correct determination based on all of the relevant facts.

Sincerely

Michele and Jay Meyer"

Mr. Meyer stated that Mr. Howell's measurements were quite a bit off. He stated that from Goodwin Road to the sign referenced by Mr. Billipp (Meyers & Weeks) is a distance of 750 feet. He added that from that point to the Crowell property of Map 82, Lot 2 is 1,150 feet. From that point to the new proposed home would be over 1,500 feet.

#### **QUESTIONS FROM THE BOARD**

Mr. Billipp stated that he was trying to locate the Meyer property and asked if it was identified as Map 75-4. Mr. Meyer showed the BOA a map and explained where his property, Mrs. Weeks' property, the old right-of-way and the new right-of-way were located.

Chairman Hamilton asked if there was a larger map so that all could view the locations and one was located. Mr. Meyer indicated the locations and distances on the map. He demonstrated that the right-of-way comes into Map 83, Lot 1 but does not come into Map 83, Lot 2 and that there is a stone monument on the corner.

#### **TESTIMONY FROM OTHER PARTIES TO THE ACTION**

Jennifer Fox, 34 Drake Lane, Eliot, Maine, stated that she would first like to speak as a member of the Board of Directors of Great Works Regional Land Trust to let the BOA know that the Land Trust holds the conservation easement for Back Hill Farms. She stated that, if necessary, she could answer questions on the easement. Ms. Fox stated that, in general, the easement includes language that restricts the right-of-way to the property to 20 feet. She stated that it applies to the original granting of the right-of-way and it also restricts the road from being tarred, paved or graveled.

Ms. Fox stated that she would also like to speak in the capacity of being a resident of Eliot. She stated that the reason the Town has ordinances in place is to allow for the reasonable development and that the Town is not overburdening the capacity of the roads and resources. She stated that Eliot code has very specific language about the purpose of the Rural District. She cited the code from Section 45-286(2) as stating, "The purpose of the rural district is to protect, from suburban development pressures, agricultural and forest land capable of economic production, so as to safeguard this

section of the town's economic base and to avoid the irretrievable loss of land well-suited for food and fiber production; and to help maintain the essential rural and open character of the district."

Ms. Fox stated that that there is very clear language in Eliot for the rural zone to ensure that the roads are maintained for agricultural and other endeavors.

Ms. Fox noted that it had been stated that the appeal is only focusing on the issue of frontage, but that she thought that some of the questions addressed the point that the requirement of the frontage is that it must meet the standards established in Section 37, Road Standards. She stated that the standards which are not being met are that the dead-end road would be further than 1,000 feet from a non-dead-end road and that it would be restricted to 20 feet in width.

Ms. Fox stated that she would like to highlight Mr. Rankie's point that Google maps are only a tool and not necessarily what should be considered for documenting the status of a road. She stated that if one took the map from the Town's data base for planning and lot description, it actually shows Odiorne Lane ending at the beginning of Connie Weeks' property. She stated that that should also be taken into consideration regarding where the road ends and access ways or driveways actually begin.

Chairman Hamilton asked whether Ms. Fox could demonstrate on the map where the Great Works Land Trust has the conservation easement. Ms. Fox stated that the conservation easement is on the entire property that had been Mrs. Weeks' property and is now the Meyers' property. Mr. Hamilton clarified that the easement included everything south of the proposed lot under discussion. Ms. Fox concurred.

Ms. Fox stated that the right-of-way to the parcel being considered is the right-of-way over Back Hill Farms, currently owned by Meyers, with the conservation easement which includes the restriction that the right-of-way can be no greater than 20 feet. She stated that that restriction is based on the deeding of the right-of-way. She added that the owners of the property would not be allowed to expand the right-of-way, even if they would like to do so, because the right has been relinquished via the conservation easement.

Mr. Rankie clarified that the lot under discussion was Lot 75-4.

Deborah Berthiaume, 432 Goodwin Road, Eliot, Maine, stated that Mr. Meyers had made reference to a 2013 visit made to the BOA. She stated that at that time, it was the desire of the Estate to divide the property into three parcels and that was what had been presented to the BOA. She stated that the denial was issued because they were told that the property could not be divided into three parcels. She stated that they let that denial stand.

Ms. Berthiaume stated that the Estate was not currently appealing for the same reason but for a different matter and was not requesting three parcels. She stated that she wanted to clarify that fact because reference was made to a previous appearance before the BOA.

Kristin Merrill, 77 Odiorne Lane, Eliot, Maine, stated that she wanted to make a clarification regarding her driveway. She stated that she grew up on the corner of Odiorne Lane and Goodwin Road and that, in her lifetime, there were people who traveled from Brixham all the way down Odiorne Lane to sell goods to her mother. She stated that she tore down a house that was on Odiorne Lane and that she had shown a picture of that house to the CEO in March 2015. She added that she had torn the house down because she was afraid that her child could get hurt on the decrepit building with the rusty nails. She stated that the house was on Odiorne Lane at a point, which she illustrated on the map.

Mrs. Merrill stated that, during her lifetime, her family did use the illustrated portion of Odiorne Lane for haying the fields and bringing the hay down to their house on Goodwin Road. She stated that after her parents stopped using the property for hay for their livestock, the lane had grown up but that the roads had still been used, as illustrated by the rock walls that show the sides of the roads. She stated that her family has used portions of those roads for accessing wood, selling wood, and for their own purposes.

Mrs. Merrill stated that her driveway diverts from Odiorne Lane at a granite post at the edge of the Meyers' property. She stated that her driveway goes off to the left and Odiorne Lane continues on the right. She added that it had overgrown and only portions here and there were used. She stated that there had been questions regarding her driveway location and Odiorne Lane and that she had just wanted to add some clarity.

Chairman Hamilton asked whether Mrs. Merrill was saying the road that goes to the left is not Odiorne Lane. Mrs. Merrill demonstrated where Odiorne Lane went through the woods, stating that the rock walls were still visible. She stated that her family has used parts of Odiorne Lane for getting wood.

Mr. Marshall asked if Tippy Lane was still in use. Mrs. Merrill stated that it was. Mr. Marshall asked if people were living on the Lane and she replied in the affirmative.

Mr. Marshall stated that he was confused about the piece of property referred to as the Meyers' property and asked whether it was the Meyers' property or the Weeks' property. Mrs. Merrill stated that it was the Weeks' property and is now the Meyers' property. Mr. Marshall asked for the number of houses on the property and Mrs. Merrill replied that there are two. He asked if there had always been two houses. She stated

that there had not always been two houses but that she could not tell what year the second house was build.

Mrs. Merrill stated that the curve in the road was designed so that the owner of the Weeks' house at that time would not have to be bothered by the Merrill's travel to their house and to the property for haying purposes. She stated that they created a loop that was twice as long as the straight section which is why it is narrower, because it evened out the amount of property.

Mr. Marshall clarified that the Merrill family has a deeded right-of-way through the property. Mr. Marshall asked if there were any serious restrictions on the right-of-way, other than the fact that they could not do anything with it. She stated that it has to stay the way that it is and that it is the utility easement.

Mr. Marshall asked who owns the portion of Odiorne Lane from Goodwin Road to Tippy Lane. He asked if it was a Town road. Mrs. Merrill stated that it is on property owned by the Crowell Estate for a portion where the Estate has one side and other owners are on the other side.

Mr. Marshall asked who maintains Odiorne Lane. Mrs. Merrill stated that her husband and other people who live on the land maintain it. She stated that it is a communal task, with different people who plow or grade it when they have time. She stated that the maintenance of both Tippy Lane and Odiorne Lane is done on a volunteer basis.

Mr. Marshall asked how many residents there are on Tippy Lane. Mr. McMullen stated that there are six. Mr. Marshall stated that he remembered two houses being there when he did logging several years ago.

Mr. Marshall clarified that the Crowell section of Odiorne Lane is used heavily by others. Mrs. Merrill concurred.

Chairman Hamilton asked whether Mrs. Merrill was speaking for, against, or just to the application. Mrs. Merrill stated that there seemed to be a lot of questions regarding the right-of-way and that she had just wanted to add some clarity to it. She stated that it has been her understanding that, for over 50 years, Odiorne Lane had been where she had indicated on the map. She added that she had been told by some people in the Town that Odiorne Lane was once a pony express route prior to the 1916 map. She stated that when she was a kid, people came down Odiorne from Brixham and that the other end was Bartlett Lane. She stated that Odiorne Lane got lack of use in the last 30 to 40 years between where her parents' property starts and the back side of their property. She added that it was only in that section where the road was only used by her family.

Michelle Meyer of 58 Odiorne Lane, Eliot, Maine, stated that she and her husband bought Back Fields Farm two weeks after the BOA met for the variance request in June of 2013. She stated that they purchased the farm from Connie Weeks on July 1, 2013. She stated that Mss. Weeks lives in the main house and that the Meyers live in the cottage.

Mrs. Meyer stated that, as a clarification as to what Odiorne Lane actually is, the section from Goodwin Road to Tippy Lane has a number of cars traveling to Tippy Lane frequently and every day. She stated that there are seven or eight houses on Tippy Lane. She stated that once Odiorne hits their property at Back Fields Farm, the situation is very different. She stated that it is used by the Merrills and by her husband and herself. She added that basically it functions as their driveway, over which Pat and Cricket have right-of-way. She stated that it is a narrow, dusty, private way across which she runs her livestock, her free-range chickens, and that her grandchildren also cross that way. She stated that Odiorne functions as their driveway over which the Merrills have the right to pass.

Mrs. Meyer stated that it is a very different scenario from Goodwin to Tippy because many people use that portion of Odiorne Lane basically as a public road. She stated that there is no reason for people to be coming onto the property of Back Fields Farm other than the Merrills, their guests and family and the Meyers. She stated that the road is a dead end, that the public does not travel on that section and that it is a private way to their property.

Mrs. Meyer stated that the outcome of the June 20, 2013 BOA meeting was the deciding factor in their purchase of their property. She added that if the decision had gone the other way, the deal would have fallen through because it was not their desire to have Back Fields Farm, a colonial farm that had been in existence since 1776, become a thoroughfare. She stated that the issue that was discussed at the June 20, 2013 BOA meeting was a request for a variance for road width and length in order to divide the property. She added that nothing had changed since that time.

Connie Weeks, 34 Odiorne Lane, Eliot, Maine, stated that she supported the judgment of the CEO and that she certainly supported the statements of Ms. Fox and Mrs. Merrill. She stated that shortly after she and her husband, Silas, moved to the farm back in the early 1970s, they took a hike up into what had been discussed at the hearing as the extension of Odiorne Lane. She stated that it had certainly not been used as of that time for many years because, on the straight-of-way, there was a huge tree growing right in the middle of the way. Mrs. Weeks stated that Odiorne does not end up connecting with Bartlett Lane but that it goes directly into the Bartlett farm land because that is where they ended up the day of their hike.

Ed Bideau, who lives in the very last house on Bartlett Lane in Eliot, Maine, stated that what Mrs. Weeks had stated was true. He stated that a few years ago someone tried to put a road across his piece of property to access the piece above him because they could not access the property through the narrow right-of-way because it was apparently deeded as a one-time variance to the house up there due to fire apparatus access. He stated that when they attempted to access through Bartlett Lane, they discovered that it was a private way and that it is a co-op where the neighbors pay to take care of it.

Mr. McMullen stated that upon listing the property, he had read over the exchange of the right-of-way, relocating it from being very close to Mrs. Weeks' house to what is now the 20-foot-wide right-of-way that is very close to the Meyers' house. He stated that he thought that it was unique that it was done and that it was done between the people who owned what he referred to as The Connie Weeks Farm and the Crowell family. He stated that the interesting thing that he found was that it granted utility easement over the land for the purpose of bringing utilities to a home site or home sites up there. He stated that the right-of-way is only on the Crowell property and is not on Cricket's property. He added that the existing right-of-way which accesses Cricket's property is on the Crowell property as well, as well as the power line easement.

Mr. McMullen stated that when the rerouting was done in 1970, everybody got together and granted the process to take place with the obvious intent that somebody was going to build on property up there. He stated that he thought that it was unique when he did the research in listing the property.

Mr. Cielezsko asked if the utility right-of-way went through the Meyers' property. He asked if that was the same easement that had been talked about that had to stay within the 20-foot width. Mr. McMullen replied in the affirmative and stated that the right-of-way has to stay within the 20 feet through the Meyers' property and all of Odiorne Lane.

Jo Nancy Gunn, 19 Central Drive, Sanford, Maine, stated that she is Deborah Berthiaume's sister. She stated that what she thought necessary to keep in mind was that the easement was a small and limited request for the back lots. She stated that the easement and the power line were planned for others who could live there, but it was done so on a restricted basis. She added that she was not talking about something that would grow to be something like Tippy Lane and that it would not be a development. She stated that there would be only one or two houses in addition to her sister's house.

Ms. Fox stated that if the BOA allowed the frontage, she did not know what would restrict it to one or two houses. She stated that frontage would then be allowed on an area that has 60 acres. She stated that, in keeping with the code, the area is in the Rural

Zone. She stated that by allowing frontage, the BOA would be opening access to 60 acres and that she was not sure how it could be limited to one or two houses.

#### **TESTIMONY FROM THE CODE ENFORCEMENT OFFICER**

Ms. Ross stated that Ms. Berthiaume submitted a building permit on behalf of the Estate of Lillian H. Crowell. She stated that the plan was to construct a single family dwelling unit on a portion of Map 83, Lot 2, located on Odiorne Lane, in the Rural District. She stated that it was requested that the review be conducted for the portion of the lot versus the entire lot.

Ms. Ross stated that Lot 83, Lot 2, book 1419, page 560, was a non-conforming lot created on August 23, 1960. She stated that the ordinance states that a non-conforming lot means, "a lot of record which, at the effective date of adoption or amendment of this chapter, does not meet the area, frontage, or width requirements of the district in which it is located." She stated that the ordinance also states that a lot of record means, "a parcel of land, a legal description of which is recorded on a document or map on file with the county registry of deeds." Therefore, she added, it was a determination of the Code Enforcement Office that this lot is a non-conforming lot and a lot of record.

Ms. Ross stated that if the lot were to remain a single non-conforming lot of record, per Section 45-194, the lot, provided it has a valid growth permit, could be built upon per that section which states:

"If a single lot of record on the effective date of the adoption or amendment of this chapter does not meet the area, road frontage or setback requirement of the district in which it is located, it may be built on provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, that all other provisions of this chapter are met and it conforms with all state laws and regulations."

Ms. Ross stated that the Rural District requires that newly created lots, which the appellant is proposing, are required to be a minimum of three acres in size and have minimum street frontage of 200 feet. She stated that the ordinance defines street frontage as, "the horizontal distance between the intersections of the side lot lines with the front lot line that abuts a town way or a private way meeting the minimum standards of a town street."

Ms. Ross stated that the appellant had originally claimed that there was an existing right-of-way or road. She stated that she asked for further information documenting the existing road or right-of-way so that she could review it and determine whether it met the minimum frontage requirements for the lot. She stated that she had received some

information from the appellant, one being a topographical map from 1941, which showed the connecting dotted line from Odiorne Lane to Brixham Road. She stated that she received a set of topographical maps from 1956, which no longer showed the connection, which had been removed from that section of the maps at some point during that time period.

Mr. Ross stated that she did do a lot of deed research herself in an attempt to find references to the right-of-way. She stated that there were some references in some of the older deeds going back through the 1800s to a right-of-way, but the references did not describe specifically where the right-of-way was and the right-of-way did not show back up on the topographical maps.

Ms. Ross stated that she found that, between the information submitted by the appellant and her own research, there was not sufficient information to show that there currently existed, or had continuously existed, some type of right-of-way that could be used as frontage. Therefore, she added, the application was denied.

Ms. Ross showed the BOA the maps from both 1916 and 1956, with the appropriate area circled.

#### **QUESTIONS FOR CEO FROM THE BOARD**

Mr. Cutting asked if it was customary to go back through files to see what other actions were taken on a piece of property. Ms. Ross stated that it is done on occasion but that she knew that there had been some controversy over whether or not the past actions had been correct. She stated that she wanted to review it entirely from start to finish, as she would with anything, particularly since she was new to this particular position in Eliot.

Mr. Cutting noted that the prior variance appeal was denied for the same reason. Ms. Ross stated that every appeal has to be taken as new and that an appellant cannot submit the same appeal or the same type of appeal within a year time period. She stated that the time period between the two appeals in question had been greater than a year.

Mr. Billipp asked what would have made the lot non-conforming, if it was just one lot rather than an eight-acre lot that had been divided off. She stated that that was because there was not sufficient street frontage and that she could not find information, either that she had found on her own or that the appellant had provided, that showed an existing street that would allow the frontage requirement to be met.

Mr. Billipp asked if the eight-acre lot had actually been created. Mr. Ross replied in the negative. Mr. Billipp asked if it would complicate matters if the lot had been created. Ms. Ross stated that they then would have been making what she considered to be a non-conforming lot of record into two non-conforming lots on which she could not issue a building permit because the new lots would not be lots of record. Mr. Billipp clarified that the lots would then be different and would need to conform to the current zoning. Ms. Ross concurred.

Ms. Lemire asked if the CEO would be able to issue a building permit if the lot remained a single lot. Ms. Ross stated that a building permit could be issued but that there could not be more than a 500-foot driveway.

Mr. Cielezsko asked if the CEO had limited herself to the 200-foot frontage issue in her deliberations. He asked if she had thought about the minimum street requirements. Ms. Ross stated that some of what she went back and forth on was whether there could be shown that there was some kind of existing street or right-of-way which had remained in place, allowing the lot to be looked at as a regular lot and divided off, but that if what the appellant was planning was to provide a new right-of-way going into the property, she was questioning whether or not that created a back lot which would bring up further provisions.

Ms. Ross stated that there were other questions that arose, too, but that there just did not seem like there was enough evidence to show that the street or right-of-way had been continuously in existence.

Mr. Cielezsko stated that for clarity, Ms. Ross issued the denial on the basis of the definition of 200 feet of street frontage. He asked what was lacking in the length of the road that accesses the property. Ms. Ross stated that the ability to allow the creation of lots by pulling in a right-of-way is addressed by the back lot ordinance as long as the specifications of that ordinance are met. Ms. Ross stated that an applicant could do what the current appellant is asking, but that it has to be approached in a different way.

Mr. Cielezsko asked if the CEO was doing too much work in looking up information for the claimants. He stated that he thought it was the appellant's responsibility to show where the rights-of-ways are. Ms. Ross stated that she wanted to be sure that the decision she was making was the correct one. Mr. Cielezsko thanked Ms. Ross and stated that she was doing a good job on that aspect.

Mr. Cutting asked if the CEO had been aware at the time of making the decision that the road could not be widened to more than 20 feet. She stated that she had not read the deed of the abutters. Mr. Cutting stated that the road could not be widened to 50 feet so that would be a "show stopper." Ms. Ross stated that if the appellant was able to show that there had been a continuously used road through the property, she thought

that they would have been able to have the frontage on it because it would have been an existing, non-conforming road that went all the way through the property. Mr. Cutting clarified that the denial was issued because the appellant could not show the existence of a continuous road. Ms. Ross concurred.

#### **FINAL TESTIMONY FROM APPELLANT**

Mr. Howell stated that he had no further comments.

#### **COMMENTS FROM ASSOCIATE MEMBERS**

Mr. Rankie stated that he concurred with the findings of the CEO and that she had done a fine job in explaining the issue.

Mr. Marshall stated that he thought the appeal regarded an issue that should be brought up with the Planning Board. He stated that it was a shame when people had bought land in the past and then the rules change on them so that they cannot use their land. He stated that it was a serious issue. He added that under the current zoning, he did not see any relief on the issue right now but that the issue needs to be addressed so that people who own land can use their land. He added that owners pay taxes based on the land being buildable.

#### **PUBLIC HEARING CLOSED**

The public hearing was closed at 8:45 PM.

#### **DELIBERATIONS**

Chairman Hamilton stated that the issue before the BOA was whether or not the CEO acted clearly contrary to the code or within the boundaries and interpretation of the code.

#### **MOTION**

Mr. Cielezsko moved, seconded by Mr. Billipp, to deny the administrative appeal brought by Matthew Howell and the owners of the Crowell Estate of the decision of the CEO regarding Map 83, Lot 2 in the granting of a building permit.

## **DISCUSSION**

Mr. Cielezsko stated that in Section 45-49, Administrative Appeals, states that, "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." He stated that there was no evidence presented that the CEO acted clearly contrary to any provisions of the ordinances.

Mr. Cielezsko stated that the attorney had raised an interesting point in that the whole denial was based on the issue of 200 feet of frontage and that he had made it a given that the right-of-way exists, that it is a road and that it is within all of the bounds of the ordinance. He stated that the CEO referenced the definition of a frontage street and that one cannot pick and choose parts of the definition. He added that the definition states that the applicant has to meet the minimum road standards in the frontage and that the road did not meet those standards by the 200-foot rule, the 1,000-rule, the composition rule or by any stretch of the imagination.

Mr. Cielezsko stated that he thought that there was no possible way in which the standards of street frontage could be met. He added that there was barely any merit to the administrative appeal.

Mr. Billipp stated that he supported the description of the appeal.

## **FINDINGS OF FACT**

- The property is owned by Lillian Crowell's heirs.
- The property is located at Map 83, Lot 2.
- The property is 51.2 acres.
- The property is in the Rural District.
- The appropriate ordinances are: Section 45-405, Dimensional Standards; Section 45-194, Non-conforming Lots of Record; Section 102, Definitions; and Sections 37-69 and 37-70.
- Part of Odiorne Lane is under Conservation Easement by the Great Works Regional Land Trust, which restricts the widening of the right-of-way to 20 feet and does not allow resurfacing with tar or gravel.
- Portions of the right-of-way, Odiorne Lane, are unchangeable.
- Goodwin Road has been established as being beyond 1000 feet from the proposed lot.
- The maps provided by the appellant were not signed or stamped.

## **DECISION:**

The Board of Appeals voted to deny the Administrative Appeal by unanimous vote.

## **SECOND PUBLIC HEARING**

Chairman Hamilton stated that the voting members would be the four standing members of the BOA, Ms. Lemire, Mr. Billipp, Mr. Cielezsko and Mr. Cutting.

Chairman Hamilton stated that the second public hearing was for Thomas Pritchett who was requesting a variance to the terms of Article 45, Section 405, Dimensional Standards, in order to construct a garage for property located at 53 Sargents Lane, Eliot, Maine, Map 30, Lot 34.

Chairman Hamilton stated that the appellant had established standing and that there was no timeliness issue.

## **TESTIMONY FROM APPELLANT**

Thomas Pritchett, 63 Sargents Lane, Eliot, Maine stated that the property for which he was requesting the variance was on 53 Sargents Lane. Mr. Pritchett stated that the property was first established before August of 1975 when Frank Sargent subdivided the lot.

Mr. Pritchett stated that the upper corner lot has a road on three sides and that that was part of the question which he was bringing to the BOA. He stated that the lot is a non-conforming lot under the new standards, rules, regulations and codes. He stated that the lot was created over 40 years ago but that to do anything with the lot currently requires a presentation to the BOA.

Mr. Pritchett stated that what he would like to do is to build a garage on the lot. He stated that he had provided a drawing to represent that the dimensions are well within the parameters of the code for setbacks off of each of the roadways. He stated that he had also provided an aerial shot which showed the present site as it looks today by satellite, with a single house in the middle.

Mr. Pritchett stated that the lot is a non-conforming lot because it is only 0.86 acres, not a whole acre, it is a rectangle, and it is only a little over 100 feet wide. He stated that it also has a roadway on three sides, which made the situation unique for both the CEO and himself in order to do anything with the lot.

Mr. Pritchett stated that he was requesting a variance on the lot because the lot does not meet any of the current standards.

Mr. Pritchett provided a new map to the BOA with highlights in orange showing that there are 10 garages, exactly the one he would be building, right on the same location as a house, with only one house and garage being attached and the other nine being detached. He stated that the detached garages are at street level beside each of the houses.

Mr. Pritchett stated that he had penciled in the position of the garage relative to the house and the lot on the aerial shot, which he had provided.

Mr. Pritchett stated that his plan would conform to the neighborhood and to all of the houses in the area, so that his plan would match everyone else's in the neighborhood and would not stand out as any different than anyone else's arrangements.

Mr. Pritchett stated that he understood that there were standards regarding setbacks from roadways. He stated that there is another house, further down on Hanscom Road, which shows a garage in front of the house and bordered on two sides by the road. He added that the house is actually behind the garage and meets the current standards. He stated that the house was built about five years ago.

Mr. Pritchett stated that he had spoken with the CEO on several occasions to try to come up with a solution for his unique lot. He stated that her recommendation was to bring the issue before the BOA to see if a better solution to the situation could be found.

Mr. Pritchett stated that the CEO thought that it would be appropriate to attach the garage to the house and that, if he did so, she could issue a permit at that time. He stated that his thoughts were that down the road, if he got rid of the trailer, it would be difficult to detach the garage. He added that he would rather keep them separate at this stage of the game, rather than detaching the trailer and then having to attach a house to the garage. He stated that having the garage detached would also contribute to better resale value in the future.

#### **QUESTIONS TO APPELLANT FROM THE BOARD**

Mr. Billipp asked the appellant why he needed a second garage on the property. Mr. Pritchett stated that it would be the first garage.

Mr. Cutting clarified that the appellant's property was Lot 30-34 and that it contained only a mobile home. Mr. Pritchett concurred. Mr. Cutting asked if the setback requested was a back setback or setbacks on all sides. Mr. Pritchett stated that if he built a

detached garage, it would be 10 feet off the property line and would be well beyond the 30 foot setback on each of the three roads. Mr. Cutting asked if moving the garage forward would cause the other setbacks to not work.

Mr. Cutting stated that he was trying to determine how the garage would fit on the lot and whether granting the variance was the only way that the garage would fit on the property. The CEO stated that she would address that issue during her testimony and Mr. Cutting stated that he would hold the question.

Mr. Billipp stated that he was not sure why the appellant was seeking a variance. Mr. Pritchett stated that it was his understanding that the new code requires the garage to be behind the house. He stated that because the lot is a rectangle and the house is so close to the property line, it would be impossible to put a garage behind the house. He stated that the lot is so unique that he and the CEO had had a bit of a problem trying to come up with a way to meet the new standards, but because the lot is so old, it does not meet any of the new standards.

Ms. Lemire stated that she wanted to know where Mr. Pritchett's mail box was located. He replied that his mailing address was 63 Sargents Lane and that the mailbox is on the corner of 53 Sargents Lane. Ms. Lemire clarified that the appellant does not have mail delivered directly to his house. He concurred.

Mr. Billipp asked what the discrepancy was between 53 and 63. Mr. Pritchett replied that 63 is Lot 30-35, the location of his house. He stated that he also owns 53, which is Lot 30-34 and contains the mobile home and on which he wants to build the garage. He stated that, at one time, there were several buildings and sheds on the property. He stated that he has eliminated all of the shanties and sheds and wants to build one presentable structure instead of having things scattered all around the yard.

Mr. Billipp clarified that the appellant lives on 63 Sargents Lane and the property for which he is requesting a variance is on 53 Sargents Lane. Mr. Pritchett concurred.

**TESTIMONY FROM ABUTTERS OR INTERESTED PARTIES**

There was no testimony from abutters or interested parties.

**TESTIMONY FROM CODE ENFORCEMENT OFFICER**

Ms. Ross stated that Mr. Pritchett submitted a building permit application in order to construct a garage on the property located at Map 30, Lot 34, on 53 Sargents Lane in the Suburban District. She stated that Section 45-405, Dimensional Standards, requires a

minimum 10-foot setback for an accessory building and further states: "Accessory buildings may meet this minimum requirement provided they are smaller in size than the principal use and are no less than 30 feet away from any principal buildings on adjacent property. An accessory building shall not be located within a front yard."

Ms. Ross stated that the ordinance defines the following:

- An accessory structure or use is "a use or detached structure that is incidental and subordinate to the principal use or structure."
- A corner lot is "a lot with at least two contiguous sides abutting upon a street."
- The front lot line is "on an interior lot, the line separating the lot from the street; on a corner lot or through lot, the line separating the lot from the other street."
- Front yard is "the area of land between the front lot line and the nearest part of the principal building."

Ms. Ross stated that when Mr. Pritchett applied for a detached garage, the dimensional standards allow the setback of the accessory building to go down to 10 feet but that the building cannot be between the closest part of the principal building and the street. She stated that, given that the corner lot is contiguous on multiple sides, that puts the front yard on three sides of the property.

Ms. Ross stated that if the garage was attached to the principal structure, it would become part of the principal structure and would only be subject to the regular setbacks for that particular zone. She stated that because the garage was proposed to be detached and in between the house and one of the front lot lines, the building permit was denied.

Mr. Marshall stated that he had had a discussion with the Planning Board before on this issue. He stated that he built his house on the back of his property in order to preserve the front fields. He stated that what the CEO was saying was that he could not build a garage on his property. Ms. Ross stated that the way the ordinance is worded would prevent his building a garage between the house and the street. She added that that is one of the issues she wants to have the Planning Board look at.

Mr. Marshall stated that the clarification to him was that one cannot build in the front yard setback. Mr. Marshall stated that he has 400 feet of setback and asked if that meant he could not use the additional 350 feet. Ms. Ross asked if Mr. Marshall had that in writing. He replied that he had talked to several members of the Planning Board several years ago trying to get it straightened out and that he had said, "You can't mean that." Ms. Ross stated that that was what she thought on reading the ordinance but, that consistently, that has been how it had been interpreted.

Mr. Marshall stated that it is not possible to call three sides of a house the front yard. Ms. Ross stated that the way that the definitions are structured do not make sense when applied to the current situation. Mr. Marshall stated, "What tangled webs we make when we practice to deceive." Ms. Ross stated that she was not practicing to deceive but was only trying to clarify and that it was not real clear. Mr. Marshall stated that he was sure that it was intended that way. Ms. Ross stated that she had three specific instances of this issue since she assumed the CEO position.

Mr. Marshall stated that he did not see what the problem was because there was a 10-foot setback and that there are two sides of the house that he would consider the front and that the proposed garage would obviously be in the back of the house.

Ms. Ross stated that it might be more beneficial to ask the appellant if he wanted to change his appeal to an administrative appeal rather than a variance. She asked if the appeal could be changed from the one that had been advertised. Mr. Marshall stated that they then would not be addressing the application which had been advertised and that it would have to be a separate application.

Mr. Cielezsko stated that he thought that the BOA needed to use caution because Mr. Marshall might have a very unique view of the situation. He stated that the BOA had been through the issue 100 times over the years and it was very clear. Mr. Cielezsko asked whether the CEO had found anything which she thought was in error in the ordinances. Ms. Ross replied that the ordinance did not seem functional but that it was clear.

Ms. Lemire asked if, when one builds a house on a lot, one had to have rear-, back- and side-setbacks. Ms. Ross replied in the affirmative. Ms. Lemire clarified that the owner has to clarify all of the setbacks for any piece of property where there is a house. She stated that there has to be a rear setback, side setback and a front setback. Ms. Ross stated that there are setbacks for principal buildings and different setbacks for accessory buildings.

Ms. Lemire stated that the house is located so that the front yard is located in such a way that the back of the house is facing the owner's adjacent piece of property. Ms. Lemire stated that the adjacent piece of property is located to the rear of the house. Ms. Ross stated that, by definition, a corner lot essentially has three front yards and one rear yard.

Ms. Lemire stated that the definition of the front lot line on a corner lot is the line separating the lot from the other street. Ms. Ross stated that the definition for a lot corner is that it have at least two contiguous sides abutting the street not two streets abutting two sides of the lot.

Mr. Billipp asked where the back lot line was. Ms. Ross stated that the rear of the lot would be at the rear of the house because the house is facing the only other line. Mr. Billipp asked why it was a problem if the appellant was 10 feet off that line because it is the rear lot line. Ms. Ross stated that the Table in Section 45-405, Dimensional Standards, accessory buildings have to have a 10 foot setback but that Section 45-405(g) states that an accessory building shall not be located within the front yard.

Mr. Billipp asked if the appellant was asking for a variance for the front yard rather than for the setback. Ms. Ross stated that, given that the application did not clearly state what the appellant was looking for, it would be a variance to allow an accessory building in the front yard.

Mr. Cielezsko stated that there are four criteria which must be met in order to grant a variance. He stated that the first criterion is the most difficult to meet but that the granting of a variance would not affect the neighborhood and that the appellant does have a unique lot.

Mr. Cielezsko asked when the appellant bought the lot. Mr. Pritchett replied that he did so two years ago. Mr. Cielezsko clarified that the appellant had owned the lot on which he lives, but that he purchased the lot behind that lot two years ago. Mr. Pritchett concurred.

Mr. Cielezsko clarified that the appellant bought the lot without a garage. Mr. Pritchett concurred and stated that prior to that there had been multiple sheds on the property. He stated that the buildings were removed, per his request, by the prior owner before he bought the lot. Mr. Pritchett stated that in one of the pictures provided in the BOA packet, three of four outbuildings are visible.

Mr. Cielezsko asked whether the appellant had discussed building a garage with anyone when he purchased the lot. Mr. Pritchett stated that when he bought the property, the prior owner had said that she had applied for a permit to build a garage. He stated that he check the records and found no permit actually issued. He stated that he checked the records after the property was purchased and found that there was no record of her pursuing a building permit other than just saying that she was going to have a garage built.

Mr. Cielezsko stated that he was delving into the details but that it was necessary in order to prove that the appellant met the four criteria. He stated that he was trying to determine whether or not the property could return the appellant's investment. He added that the appellant had to demonstrate that his investment could not be returned without the variance.

Mr. Pritchett stated that the reason he brought the application for a variance to the BOA was because of the unique nature of the small lot that is non-conforming to begin with and is bordered on three sides by a road. He stated that he only wanted to build a simple, two-car garage.

Mr. Cielezsko stated that the appellant could build the garage if it was attached to the houses. Mr. Pritchett stated that he really did not want to attach it to the house because he may get rid of the trailer and build a home and he did not want to run up against compliance issues at that time because the garage was a different unit. He stated that he did not know how the regulations applied when the building to which the garage was attached was removed and a new one built.

Mr. Cielezsko, addressing the CEO, stated that if the appellant attaches the garage to the house, he then has a primary structure. He asked if the appellant could replace that structure with one of the same dimensions under the current code requirements. Ms. Ross stated that the appellant could put another building on the property. Mr. Cielezsko clarified that the appellant could replace the entire structure and place it where he wanted to place it without a growth permit as long as the structure was within the setbacks. Ms. Ross replied in the affirmative and stated that the new structure would be a replacement structure.

Mr. Cielezsko stated that his questions had been answered and that he had reservations because he did not see the dilemma for the appellant to stay within the ordinance by attaching the garage currently. He stated that if the appellant had a grand garage which he did not want to disturb, he could move it if he wanted the house somewhere else or he could tear the whole thing down.

Mr. Pritchett stated that if he attached the garage to the house, it would then have to be within 10 or 15 feet of the house because otherwise it would have a 50-foot breezeway. Mr. Billipp noted that he would require a 30-foot setback from the back lot. Ms. Ross stated that the alternative was that it be no closer than the existing one. Mr. Pritchett stated that then the garage would not be beside or behind the house but would be in front of the house.

Mr. Pritchett referred to a house in Eliot that had been built five years ago that is bordered by 30 feet on two different roads. Mr. Pritchett stated that the issue was complicated, which is the reason he brought it to the BOA for help.

Mr. Billipp stated that the CEO had made a suggestion that the appellant could withdraw the application so that the BOA did not have to make a decision. He stated she was suggesting that the BOA could process the request as an administrative appeal dealing with the weird back setback which is called a front setback and gain relief in that manner. He asked if that might be a direction in which to go.

Mr. Billipp stated that he was not sure he could support granting a variance. Chairman Hamilton stated that if the BOA denied the variance, the appellant would still have the option of attaching the garage and may still have an option a year from now to apply for an administrative appeal. Mr. Cielezsko stated that the appellant could apply for an administrative appeal tomorrow. Mr. Billipp stated that the appellant had a couple of options, so he was not sure he could support granting the variance.

Mr. Cutting presented the situation where the appellant was granted the variance and built the garage and then hauled off the trailer. He asked if the appellant would then have to request a variance for building a house because the trailer was gone. Ms. Ross stated that as long as the trailer was replaced within one year, it would be a replacement structure under the growth ordinance.

Mr. Cutting asked if the structure would have to be in the same location as the prior structure. Ms. Ross stated that the appellant has to either meet the setbacks for that zone or to place the structure in the same location as the prior structure. She stated that if he could meet the front setback, he could put the structure somewhere else on the lot or he could replace it in the current footprint if the current footprint does not meet the requirement.

Ms. Ross stated that there were two ordinances that applied. One states that a non-conforming structure can be replaced if it is damaged or destroyed because the new structure would be no more non-conforming than it was before. The other deals with a replacement structure which conforms to setback requirements, which states that the structure can be whatever size the appellant wants as long as it meets the zoning requirements.

Mr. Marshall asked what it would take for the garage to be connected to the house. Ms. Ross stated that it could be an enclosed breezeway. Mr. Marshall asked if it would have to be enclosed as opposed to a runway deck. Ms. Ross stated that in order to be considered attached, there would need to be some sort of roof structure. She added that allowing something other than that, such as decking, would set precedent and she wanted to be consistent in the interpretation of the ordinances. Mr. Cielezsko stated that allowing decking as the attachment could affect things really badly in the commercial district.

Ms. Ross stated that the definitions do not address the issue, but that she does not normally use a deck to meet the requirement for attachment. She stated that a decking would not be considered to attach a house to a garage and that the attachment would have to be something else.

Mr. Rankie stated that he thought the discussion was going down a different path than deliberating what was brought before the BOA by exploring other issues.

Mr. Rankie stated that he believed that part of the lot was wet which would add to the hardship. He asked if there was a pond on the property. Mr. Pritchett replied in the affirmative. He stated that the pond had been there for 35 years.

Jeremy Pritchett, 63 Sargents Lane, Eliot, Maine stated that if the garage was attached, it would have to have a 30-foot setback off the property line, which would put the front of the garage in front of the house. He stated that the corner of the garage would be close to the existing pond.

Ms. Ross clarified how setbacks work. She stated that a primary structure has a front yard setback and a rear yard setback. She stated that the rear yard setback would normally be 30 feet but that the appellant's non-conforming garage would not be considered non-conforming as long as it was no closer to the line than the non-conforming house. She stated that the distance from the garage to the rear property line could be the same distance as that for the house to the property line. She stated that, if the garage was closer to the road, it would still be part of the principal structure and would only have to meet the front property line setback.

#### **STATEMENTS FROM ASSOCIATE MEMBERS**

Mr. Marshall stated that he had already made his comments.

Mr. Rankie stated that he thought the four criteria had been met by the appellant. He stated that the lot was unique and he doubted the BOA would ever see a lot like it again.

Mr. Billipp asked if Mr. Rankie thought that the appellant had met the first criterion in that the property could not yield a reasonable return unless a variance was granted. Mr. Rankie stated that, considering the rest of the lots in the neighborhood, he would think the appellant met the first criterion.

Chairman Hamilton stated that the variance had nothing to do with the rest of the lots and only applied to the lot in question. Mr. Rankie asked if the reasonable return was a function of the neighborhood. Chairman Hamilton replied that the return is a function only of the property under discussion.

Mr. Marshall asked what a reasonable return would be.

Mr. Billipp stated that there is a house on the property that has value and that selling that would obviously produce a reasonable return. He stated that the addition of a garage would add to the return but that if there was no garage, the current value would not be diminished.

Mr. Rankie stated that he was convinced that Mr. Billipp was correct.

## **PUBLIC HEARING CLOSED**

The public hearing was closed at 9:42.

## **FINDINGS OF FACT:**

- The property is owned by Thomas Pritchett.
- The property is in the Suburban Zone.
- The property is located on Tax Map 30, Lot 34.
- The property is 0.86 acres.
- The property is located at 53 Sargents Lane, Eliot, Maine.
- The relevant codes involved in this appeal are Section 45-49(b), Variances, and Section 45-405, Dimensional Standards.
- The property was purchased two years ago by Mr. Pritchett.
- The appellant is asking for a variance to allow the building of an accessory structure in the front yard.

## **MOTION**

Mr. Cielezsko moved, seconded by Mr. Cutting, to grant the variance for Mr. Pritchett to build an accessory structure in the front yard.

## **DISCUSSION**

Chairman Hamilton stated that he wanted to take a poll on the four criteria which must be met in order for a variance to be granted.

Mr. Cutting stated that the situation was a difficult one. He stated that the buildings had all been taken down with the exception of the trailer. He stated that it was difficult to use the lot the way it is, especially when there is a mobile home and there is no place in which to store anything. He stated that the appellant cannot use 100% of his property. Therefore, he agreed that the appellant met the first criterion.

Mr. Cutting stated that he thought the appellant met the other three criteria because the circumstances of the property are unique. He stated that granting the variance would not alter the character of the location because the appellant had already testified that there are many types of shed and garages in the neighborhood and one more would not make a difference. He stated that the hardship is created because many, many years ago the lots were sold and the ordinances have come up around them, leaving an appellant stuck between a rock and a hard place.

Chairman Hamilton clarified that Mr. Cutting agreed that the appellant met all four criteria.

Mr. Billipp thought that the appellant met the second, third and fourth criteria but had not met the first criterion because the appellant has a fully functional home on the lot. He stated that a garage would be nice, but he thought that the appellant has some options to attach the garage to the house or explore some other avenue with the CEO.

Ms. Lemire concurred with Mr. Cutting.

Mr. Cielezsko concurred with Mr. Cutting.

The poll results were:

*#1 – The land in question cannot yield a reasonable return unless the variance is granted.*

Mr. Cutting, Mr. Cielezsko, and Ms. Lemire agreed that the appellant met this criterion. Mr. Billipp did not agree.

*#2 – The need for a variance is due to the unique circumstances of the property and not the general condition of the neighborhood.*

All agreed that the appellant met this criterion

*#3 – The granting of a variance will not alter the essential character of the locality.*

All agreed that the appellant met this criterion

*#4 – The hardship is not a result of action taken by the appellant or a prior owner.*

All agreed that the appellant met this criterion.

## **DECISION**

The motion to grant the variance for Mr. Pritchett to build an accessory structure in the front yard was passed by a vote of 3:1. Mr. Cutting, Ms. Lemire and Mr. Cielezsko voted in favor and Mr. Billipp voted against.

Chairman Hamilton told Mr. Pritchett that he needed to record the BOA's decision with the York County Registry of Deeds within 90 days and give a copy of the registry to the CEO. He stated that the appellant would be given a Notice of Decision within seven days.

Chairman Hamilton stated that an appeal could be filed by anyone within 45 days of the decision.

Chairman Hamilton stated that the case was closed and thanked the appellant and the BOA members. Mr. Pritchett thanked the BOA for their time.

## **OTHER BUSINESS**

Chairman Hamilton stated that, since this BOA meeting was the first one after the Town elections, the first item of business was the election of the BOA officers. Mr. Rankie stated that he thought that the BOA needed to wait until the Board of Selectmen met at the end of the month. Mr. Cielezsko asked for the reasoning behind waiting. Ms. Lemire stated that the terms for the current officers did not expire until the end of the month.

Mr. Rankie stated that it was not appropriate for Mr. Billipp or himself to vote for officers of the BOA when they had not been officially appointed as members for the BOA for the term for which officers would be elected. He stated that would not occur until BOS meets to reappointment them. He mentioned that last year the BOS did not appoint Mr. Cielezsko at their first meeting after the Town elections, but that they did do so at their following meeting.

Mr. Rankie stated that until Mr. Billipp and he are reappointed, they are not officially members of the BOA. Chairman Hamilton thanked Mr. Rankie for the clarification.

## **APPROVAL OF MINUTES**

Ms. Lemire moved, seconded by Mr. Rankie, to approve the minutes of the April 16, 2015 meeting, as amended. All were in favor.

## **OTHER BUSINESS**

Chairman Hamilton stated that the only other item of business that he had was an items which had been sent to all of the boards by the TIF Alternatives Committee asking for feedback on the criteria for alternative projects for the TIF funds. He stated that the request was in the form of a spreadsheet listing alternatives.

Mr. Billipp asked if there was a date by which they were supposed to respond and Chairman Hamilton stated that they would like to have it by June 30, 2015. Mr. Billipp asked if the responses were something that could be done individually and turned back into the Town office. Mr. Rankie stated that he thought that that was the intent and Chairman Hamilton concurred.

Mr. Rankie stated that the questionnaire had been presented by Mr. Tessier and was sent out to the various commissions, committees and boards because those are essentially the people who are in a sort of quasi-leadership role in the Town and who might have the best input.

Chairman Hamilton stated that, unless there was further need for discussion on some of the items on the spreadsheet, the BOA members could fill out the forms individually and return them to the Administrative Secretary.

Mr. Rankie stated that two members had stated that they were not called with a notice of a meeting as the reason they were absent from a prior meeting. He stated that he personally felt that it was the responsibility of the BOA members to know that the meetings are held on the third Thursday of the month and that it is up to each member to be checking to see if there is a meeting scheduled. He stated that he did not think the members should be expecting someone to call them for a meeting, especially since the schedule is posted on the Town website and on the bulletin board in front of the Town Hall for those who do not want to have a computer.

Mr. Rankie stated that he did not feel that any of the BOA member's personal experiences belong in a hearing and he cited Mr. Marshall. He stated that he did not think it was appropriate for Mr. Marshall to say that he had had an issue with building a structure in the front of his property. Mr. Marshall stated that he had been making a comparison and that that was all it was. Mr. Marshall stated that that was his opinion just as what Mr. Rankie was saying was Mr. Rankie's opinion.

Mr. Rankie stated that he did not believe that it was appropriate when the BOA was hearing an appeal to have a member talk about his personal experiences. He stated that the relevant materials in a hearing are the zoning and ordinance requirements and not personal experience.

Ms. Lemire stated that she did not realize that that was how Mr. Rankie was interpreting Mr. Marshall's comments. She stated that she thought Mr. Marshall had been using his experience as an example in order to clarify the issue. Mr. Rankie stated that he believed that it became harder for a person to accept a denial of an appeal if there is dwelling on personal experiences in other places. Mr. Marshall stated that he was not using his comments as personal experience but was using them as an example.

Mr. Billipp stated that he thought that, overall, Mr. Rankie's comment was a good one and that the BOA should not bring up their personal opinions in the hearing.

Chairman Hamilton agreed with Mr. Billipp and that he felt strongly that the BOA's purpose was to determine an administrative appeal based on what the CEO had based her decision on. He stated that he thought the members' personal beliefs, theories about land use, and whether land should or should not be developed have no right to be in a public hearing or discussion.

Mr. Cutting stated that comments in a hearing are also a matter of record, kept by both the secretary and by the streaming video. He stated that the BOA members had to be careful because, when and if they were brought to court, the record would be perceived as part of the judgment. Chairman Hamilton agreed and stated that personal opinions could be perceived as a bias to what decision is reached. He stated that Mr. Cutting had brought up a very good point.

Mr. Cutting stated he was comfortable with the decision the CEO had made in the appellant request for an administrative appeal. He stated that the appellant had been before the BOA two years ago and that they were basically coming back with the same issue all over again in a little bit of a different fashion. He asked if the BOA really wanted to rehear the same issue.

Chairman Hamilton stated that the BOA did not have a choice because the first appeal had been for a variance and the current appeal was for an administrative appeal. He stated that the appellant certainly had that right and that the BOA had to hear the appeal, whether or not the members felt that the determination on the issue had already been made.

Chairman Hamilton stated that since the first appeal there may be new evidence and that there may be things that have changed in that period from two years ago until present. He stated that he understood the point Mr. Cutting was making but that he thought it was incumbent upon the BOA to hear the appeal. He added that the appeal had met the criteria in timeliness and standing and that the appellant had the right to make the appeal, even if the appeal sounded very similar to one of the past.

Mr. Rankie stated that he thought it was tough on the CEO because, when the decision is to deny the appeal, the decision can be based on the part of the hierarchy of the ordinance that says no, rather than continuing on by explaining many reasons why the application has been denied. He stated that the CEO had probably picked the first good reason for denial without looking for more reasons. He stated that the CEO's decision might be easier to defend if there had been more than one reason for the denial of an application. He added that it should not be necessary but that it might be helpful.

Mr. Cielezsko stated that Mr. Rankie's comments about not bringing personal bias into a decision were valid. He stated that it is not appropriate to say, "Well, I didn't get away with it, so why should you." He stated that that would be clearly off the table.

Mr. Cielezsko stated that Mr. Rankie had premised his valid comment on what Mr. Marshall had presented. He added that Mr. Marshall had used the situation as a perfect example of how an ordinance can go haywire. Mr. Cielezsko added that the BOA had been looking for understanding and that Mr. Marshall had a perfect example. He stated that Mr. Marshall had located his house on the back of his lot and questioned whether or not he could build anything in front of his house.

Mr. Cielezsko stated that Mr. Marshall was presenting a clear example to determine whether the BOA was looking at the ordinance correctly. He stated that Mr. Marshall would not have had to use his house but could have questioned whether someone who had built on the back of 400 acres could therefore not use anything with the 400 acres. He stated that he did not think anyone could draw the conclusion that Mr. Marshall was all of a sudden inappropriate. Mr. Cielezsko stated that Mr. Marshall did not do anything wrong and that he did not agree with anyone who thought that Mr. Marshall had made a misstatement.

Chairman Hamilton stated that, whether or not it was believed that what was said had been a personal judgment, it could appear to add clout to a decision. Chairman Hamilton stated that what the BOA projects is the appearance of impartiality. Chairman Hamilton stated that he agreed with Mr. Billipp and Mr. Rankie that Mr. Marshall's statements were a little overboard in terms of being more than simply fact and being opinion.

Chairman Hamilton stated that the BOA was not there to judge whether an ordinance is right or wrong. He stated that that is not the purview of the BOA. He stated that the purview is to determine whether or not the request for a variance meets the four criteria, which it did according to the vote but which it did not in his opinion.

Mr. Cielezsko stated that he did not think the BOA should make decisions so sterile that they just plug in a formula. Chairman Hamilton stated that there are extenuating circumstances in many cases.

Mr. Cutting stated that it would be appropriate to make a hypothetical example but that the BOA members have to be careful about stating that they disagree with something because then, if the BOA denies a request, the person who made the comments could be perceived as persuading the BOA's denial. Mr. Cielezsko agreed.

#### ADJOURNMENT

Mr. Cielezsko moved, seconded by Ms. Lemire, to adjourn the meeting. All were in favor. The meeting was adjourned at 10:03 PM.

Respectfully Submitted,  
Linda Keeffe  
Recording Secretary

Approved by:  \_\_\_\_\_  
Bill Hamilton, Chairman

Date Approved:  \_\_\_\_\_