

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

September 19, 2013

### **ROLL CALL**

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

Others Present: Code Enforcement Officer Jim Marchese; Edith Breen, representative for appellant; abutters and interested parties.

### **CALL TO ORDER**

Chairman Cieleuszko called the meeting to order at 7:00 PM. He stated that the meeting was being streamed live on the internet. He stated that the camera was located at the back of the room and the microphones in the ceiling.

Jeff Cutting recused himself from the Board because he is an abutter to the appellant.

Chairman Cieleuszko stated that the voting members for the hearing would be John Marshall, Bill Hamilton, Peter Billipp and Ellen Lemire.

Chairman Cieleuszko stated that the hearing was for a variance request by Sweet Peas LLC for property located on Little Brook Airpark, Eliot, Maine, Tax Map 46, Lot 3 for relief from ordinance(s) interpreted to deny the building on an approximately two-acre lot divided from an existing 90 acre lot. He stated that the information presented was sketchy and that the packet was confusing. He stated that he was sure there would be many questions but that the BOA would get to the bottom of the issue.

Chairman Cieleuszko stated that the Board has a duty to provide a Notice of Decision to the appellant within seven days, which would be Thursday September 26, 2013. He stated that if the BOA reached a decision, the Notice of Decision would probably be available by Wednesday and that he would hand-deliver the Notice or overnight mail it. He stated that normally, the appellant would receive the NOD by Monday or Tuesday but that the recording secretary was going to be out for a few days.

Chairman Cieleuszko clarified that the mailing address was a P.O. Box and asked if the appellant would be able to pick up the NOD if it was in the box by Thursday. Ms. Breen, representative for the appellant, stated that she could. She stated that she would prefer

hand delivery and that she would arrange to be at home whenever Chairman Cielezsko said he could deliver it.

Ms. Breen asked how long the appellant would have to appeal any decision. Chairman Cielezsko replied that she would have 45 days from the meeting. The attorneys would want the NOD if a decision was reached.

Chairman Cielezsko 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 present anything she would like to present as long as it is pertinent to the case.
- The Board will question the appellant.
- The 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.
- The appellant will make the last statement and take any last questions from the Board.
- 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 a decision is reached, the appellant will receive a Notice of Decision within seven days.
- Anything granted must be recorded with the York County Registry of Deeds and a copy of the paperwork delivered within 90 days to the Code Enforcement Officer. If this is not accomplished, the decision becomes moot.
- Any decision can be appealed to the Superior Court within 45 days.

## **TESTIMONY FROM APPELLANT**

Edith H. Breen, 2 Little Brook Airpark, or P.O. Box 79, Eliot, Maine thanked the BOA for allowing her to appear. She stated that the situation is very complicated and that there were a lot of people present at the meeting who are hostile and clearly not on her side. She stated that she was in a very difficult position speaking for Sweet Peas and Liz

Todak, appellant, who could not attend the meeting. Chairman Cielezko assured her that there would be no hostility allowed at the hearing.

Ms. Breen stated that she had come into "the whole mess" 4 ½ years ago when she became aware of what was going on. She stated that her presentation contained information from her own knowledge, some from history provided by Elizabeth Todak, some from history from Paul White, the Code Enforcement Officer with whom they discussed their desire to break off one house lot, and some from various people and documents. She stated that she would be presenting a variety of information.

Ms. Breen stated that before discussing the difficult issue of the road, she would like to start at the beginning and discuss an agreement that was made with a corporation called Fly Away Homes on September 18, 2006. She stated that before that time, in 2005, Jean Hardy had sold the airport to Jim Barrett. She added that about nine months into the agreement, Mr. Barrett defaulted on the payment and Ms. Hardy was forced to foreclose on the mortgage, taking the property back from Mr. Barrett after he had stripped the timber and done some other things to the property.

Ms. Breen stated that soon after the foreclosure a group of two builders called Fly Away Homes made an agreement with Ms. Hardy, on September 18, 2006, to purchase the airport for a sum very close to what Mr. Barrett had paid for it. Fly Away Homes was going to purchase the property and develop it but they pulled out of the agreement to purchase the airport when Steve Wing, an abutter, decided that he did not wish to sell his property to Fly Away Homes. Fly Away Homes felt that they needed the acreage owned by Steve Wing in order to make the development work for them.

Ms. Breen stated that embedded in the agreement to purchase the airport there was a section in which Fly Away Homes basically took out a mortgage on one house lot on the property. Ms. Breen stated that Fly Away Homes paid Jean Hardy approximately \$100,000 and that they were to be given the house lot after the five year waiting period had passed since the last house lot had been broken off.

Ms. Breen stated that the agreement with Fly Away Homes had been checked out thoroughly with two lawyers, William Leete and Tim Boulette, the two owners of Fly Away Homes, Jean Hardy and the then Code Enforcement Officer Donald LaGrange. She stated that the CEO assured all of the parties involved that there would be no problem with the breaking off of the one house lot after the five year period had passed. She added that the complicated agreement was signed leaving what is now Sweet Peas, and was then Jean Hardy, owing a house lot to Fly Away Homes.

Ms. Breen stated that the variance request is for the house lot that is owed to Fly Away Homes.

Ms. Breen stated that after the bankruptcy with Jim Barrett, Jean Hardy had absolutely no money left between the lawyers' fees and everything that she had paid in order to get the property back. She stated that the agreement signed with Fly Away Homes was to pay off some of the lawyers' bills. She added that Ms. Hardy did not profit at all from the arrangement because all of the money went to pay the lawyers. She stated that it was interesting to note that the lawyers were the same ones who had drawn up the agreement.

Ms. Breen stated that the CEO, Donald LaGrange, gave his assurance to all of the parties that after the five year waiting period, the house lot could be broken off and given to Fly Away Homes to satisfy the money they had basically loaned to Jean Hardy.

Ms. Breen stated that there is a great deal of money at stake now because Fly Away Homes is suing Sweet Peas for something like \$200,000 because they have not provided them the house lot. She added that she certainly could understand why they are more than a little annoyed.

Ms. Breen stated that she wanted to go on with more history of the property. She stated that in September of 2009 she, Jean Hardy and Elizabeth Todak sat with Paul White to discuss breaking off the house lot. She stated that they had a nice conversation in which Paul White said he could not see why Sweet Peas could not break off one or two house lots since the waiting period had passed. He stated that there should be no problem doing that.

Ms. Breen stated that a little further along in the conversation with Paul White, he said, "Why don't you give Steve Wing a utilities easement?" Ms. Breen stated that Liz Todak's response was that the easement had nothing to do with the meeting and that it was not any of his business. She stated that Steve Wing had nothing to do with the request to break off a house lot.

Ms. Breen stated that a short time after that, a couple of weeks later, a letter was received from Paul White denying the permit for the house lot they had applied for. She added that within the required time frame, they got everything together and submitted an appeal to the Board of Appeals to appeal Paul White's decision to deny the permit. She stated that their appeal was received on time and signed for by S. Hatch. She stated that she has documentation of that and also documentation from the Post Office that it was received and signed for. She added that the appeal then "disappeared into thin air, never to be seen again."

Ms. Breen stated that they scratched their heads and wondered what they were supposed to do. She added that they sent letters to different people and to the Board of Selectmen asking for help. She stated that that letter was never received by the BOS.

Ms. Breen stated that in 2010 and 2011 Sweet Peas made a number of attempts to obtain help from various people in the Town. She stated that they were told to see Ms. Pelletier because she would help them. She stated that they did speak to Ms. Pelletier and Ms. Pelletier never got back to them about anything.

Ms. Breen stated that Jean Hardy had had a conversation with Betsy Donahue before her untimely death. Betsy said she would look into it. Ms. Breen added that Jean Hardy went to the BOS meeting in December and was told that Kate Pelletier would provide her with some help but that did not happen.

Ms. Breen stated that finally on April 17, 2013 they had a very helpful, long discussion with the BOS. She stated that at that meeting, the Selectmen agreed that the Town had made an error in not hearing the appeal that had been submitted back to Paul White.

Ms. Breen added that the BOS suggested that Sweet Peas work with the CEO and that they should go ahead and get a lot surveyed so that they could submit the lot for a growth permit, which they did. She stated that they spent money, had the lot surveyed, and had everything laid out. She stated that they felt that the Selectmen wanted to help them. Ms. Breen stated that they spent approximately \$4000 having the survey done and spent some additional money as well.

Ms. Breen stated that they found out much, much later that there had been more meetings with the BOS in which the CEO brought up some issues. She stated that Sweet Peas was never informed of those discussions by anybody. She stated Sweet Peas was ready to proceed only to find out that a new wrinkle had been raised and they would now be required to appeal to the BOA, which is the appeal of the current hearing.

Ms. Breen stated that the CEO had had some information and had apologized for the fact that he did not get the information to Ms. Breen until two months later which was why she did not know about the discussions. She stated that the CEO misplaced the letter and finally got it into the mail in June 2013. She stated that the letter had been sent to her prior Maryland address but that she had since moved and she did not receive the letter until two days before Ms. Breen's next meeting with the BOS.

Ms. Breen stated that in 1987 the Eliot Planning Board approved breaking off a lot for the house near the end of Little Brook Lane. She stated that, additionally, the Planning Board approved breaking off a 2-acre lot where the 10 hangars were built, with access from Little Brook Lane and a turn-around at the airport parking lot. She added that the Planning Board also approved an addition to the airport building, with Little Brook Lane as the road with a turn at the airport parking lot.

Ms. Breen stated that Littlebrook Lane has been an approved road but not an accepted road by the Town in a number of previous actions.

Ms. Breen stated that Sweet Peas is between a rock and a hard place right now. She stated that if the variance was not granted, unfortunately they would have no choice but to move forward with a suit against the Town and some of its employees. She stated that they really do not want to do that.

Ms. Breen stated that in a suit, they would bring up, for example, that a number of building permits have been issued by the CEOs. She stated that Steve Wing got a permit in 2008 to break off a lot and build a house on his property. She stated that Mr. Wing did not go through any appeal but was just granted the permit. She added that Mr. Wing's house is 4500 feet from Beech Road and is way on the other side of the airport.

Ms. Breen stated that the Kaichens recently, in June 2013, were given a building permit to expand their house lot and their house with no appeal. She stated that one of the CEOs had told Sweet Peas that the Kaichen's house is totally illegal because of its location and how it was arranged.

Ms. Breen asked, "What is the issue with Sweet Peas getting a building permit to break off one house lot?" She stated that the CEO had several times implied that Sweet Peas was doing a subdivision. She stated that they are not doing a subdivision and never have suggested that it be a subdivision. She stated that the CEO wants to apply subdivision rules, indicating that they need to build a road all the way through the property so there would be two access routes. She stated that that rule does not apply to breaking off one house lot. She added that the rule would apply if Sweet Peas was doing a subdivision, which they are not.

Ms. Breen stated that documents have been lost and disappeared. She stated that other people have gotten permits while Sweet Peas has been denied.

Ms. Breen stated that the reason they applied to the BOA was to ask for a variance around the 1000-foot limit from Beech Road.

Ms. Breen stated that she received a phone call from Mr. Marchese that morning to ask her to pick up his response to her appeal. She stated that he said, "I just wrote it this morning and I don't have time to get it in the mail." She stated that that constituted another document that she had not seen. She stated that she picked up the document from Barbara Thain around 10:00 AM and that it contained new information and raised new questions. She asked, "I am supposed to have time to consult with my legal team and figure out how to respond to this when I get it at 10:00 in the morning of the day of the hearing?"

Ms. Breen stated that the CEO attached a document to the letter of the morning that went back to 1977. She stated that it was a document between Jack Hardy and a couple of people who owned property in the subdivision in which the road was discussed. She stated that the document was basically a right-of-way for the road and specified that

Jack Hardy was responsible for maintaining the road. She stated that at the very end of the document was the critical statement, "Jack Hardy is responsible for maintaining the road." She stated that there is nothing in the document about his heirs or his assigned when Jack Hardy dies. She added that when he died, that responsibility went away. She stated that Sweet Peas is an heir and an assigned and there is nothing in the documentation stating that Sweet Peas has to maintain the road.

Ms. Breen stated that, from what she has heard, the issue of the road maintenance is a basic misunderstanding among people in the neighborhood. She stated that some of the neighbors have been expecting that Sweet Peas is responsible for maintaining the road. She stated that the neighbors have discounted the Maine law that states that people are supposed to get together and form a road association. She stated that there had been meetings about that and that, apparently, the group decided that they did not want to establish an association.

Ms. Breen added that several people have stepped up the plate and informally organized road committees, so there is money to plow and occasionally fix the road. She added that the women in the community have donated their time to make that happen but that there is no formal association. She stated that that had been one of the issues raised in the letter from the CEO which she received that morning. She stated that the answer to his concern is that there is an informal arrangement but not a formal one.

Ms. Breen stated that the other issue of the road, which makes it an "awful can of worms" is that Jack Hardy stopped paying his taxes on the road a long time ago, resulting in a lien from the Town on the road. She stated that Sweet Peas wonders if the Town owns the road. She added that there is no question that the road needs help. She stated that it is unfortunate that so many in the community believe that it is Sweet Peas' responsibility to maintain it and fix.

Ms. Breen stated that she is not a lawyer and that she is struggling with the issue, that she is sympathetic to everyone who is upset at what has happened and that Sweet Peas is upset also. She stated that Sweet Peas feels that it has been treated very unfairly compared to the people who have been given building permits without any hassle whatsoever.

Ms. Breen stated that, certainly, the Town bears some responsibility for mislaying, delaying and losing documents. She stated that if Paul White had dealt with the original appeal, the whole issue would have been settled three years ago. She added that the paper disappeared into thin air and nobody would take responsibility for what happened to it. She stated that there is anecdotal evidence that it was found crumpled in a corner of the CEO's office later.

## **QUESTIONS FOR APPELLANT FROM BOARD**

Mr. Marshall asked for the amount of the Town taxes on the property. Ms. Breen stated that the amount is \$7500 per year. Mr. Marshall stated that the property is obviously not being taxed as unusable land.

Mr. Marshall asked for the age of the road. Ms. Breen stated that there is a map from 1872 given to her by Mr. Marchese which shows the road going up to the house and the farm. She added that the house has been there since 1740. She stated that the road has been around for quite a long time.

Mr. Hamilton stated that at the beginning of her presentation, Ms. Breen had mentioned there were meetings with Donald LaGrange in 2005 and 2006 and with Paul White in 2009. He asked if there was anything in writing concerning those meetings.

Ms. Breen stated that she has lots of items in writing from the meeting with Paul White. She stated that all she could say about documentation of Donald LaGrange's statements is that none of the parties would have written the agreement (with Fly Away Homes) without the assurance that they could get the house lot. She stated that the whole arrangement would have fallen apart without the agreement from Mr. White. She stated that she did not know why they did not commit anything to paper and that she wished that they had. She stated that the agreement would never have been signed at all if there had not been assurance that the house lot could be broken off.

Mr. Hamilton summarized that there was nothing in writing by either CEO stating that the house lot could be broken off. Ms. Breen responded that Paul White denied their request which is the reason they sent in the appeal which then disappeared. She added that she has nothing in writing from Mr. LaGrange.

Mr. Hamilton clarified that the appeal that "disappeared" occurred in 2009 and Ms. Breen concurred. Mr. Hamilton asked if Ms. Breen had a copy of the appeal. Ms. Breen stated that she had documentation that the appeal had been received. Mr. Hamilton stated that the information presented in the packet does not indicate the date or item received.

Chairman Cielezko stated that there was no copy of a 2009 appeal in the BOA packet. Ms. Breen stated that she did not include the actual appeal but that she did include the signing for the appeal. Chairman Cielezko asked if she had a copy of the appeal with her. Ms. Breen stated that she could provide it but that she did not have it with her at the meeting.

Mr. Hamilton referred to Ms. Breen's statement that in 2010 and 2011 "Sweet Peas LLC made several attempts to obtain help with this issue ALL OF WHICH FAILED. Sweet Peas wrote a letter of complaint to the Selectmen concerning the Appeal not being heard,

which was received by the Town but the Selectmen never responded nor acknowledged this letter of complaint.” He asked if she had a copy of the letter. Ms. Breen stated that she did have a copy and Mr. Hamilton replied that it was not in the packet.

Mr. Hamilton stated that page 2 of the packet information states that “Jean Hardy went to a Board of Selectmen meeting in December and was told to see Kate Pelletier who would be able to provide some guidance. However, Sweet Peas did meet with Ms. Pelletier who promised a letter but did not respond after meeting with Sweet Peas.” Mr. Hamilton asked for the date of the December meeting. Ms. Breen replied that she did not know the date of the meeting but that Ms. Pelletier never got back to them with any information.

Mr. Hamilton stated that on page 3 of the packet, Ms. Breen stated that during April 17, 2013 meeting with the BOS, “a decision was made by the Selectmen that Sweet Peas appeal was considered granted. Sweet Peas was to work with the CEO with the expectation that Sweet Peas was approved to break off a house lot.” Ms. Breen stated that she had not said the appeal was granted. Mr. Hamilton replied that he was just reading from her packet.

Mr. Hamilton noted that Ms. Breen had further stated that she has spent \$4000 for a surveyor. Ms. Breen concurred. Mr. Hamilton noted that Ms. Breen stated in her testimony that the Selectmen had said there would be no problem with breaking off a house lot. Ms. Breen stated that that was correct and that is why she went ahead with the survey. Mr. Hamilton asked if the Selectmen had told her to get a survey during the April 17, 2013 meeting. Ms. Breen replied in the affirmative and stated that Sweet Peas had been directed to get the survey. She stated that otherwise they would not have gone out and spent the money on the lot survey.

Mr. Hamilton noted that Ms. Breen had stated in her packet that during the following week, the BOS held another meeting and rescinded their decision and directed the CEO to write Sweet Peas and notify them of the change in their decision. Mr. Hamilton stated that there must be a record in the minutes of the meeting of April 17, 2013 and the following meeting. Ms. Breen stated that Sweet Peas did not know about the second meeting.

Ms. Breen quoted from the minutes of the April 17, 2013 BOS meeting. “Ms. Hardy proposed that she work with the CEO and have the CEO work with their surveyor to do some more work and that Sweet Peas, the CEO and surveyor sit down and figure out where the proposed lot would go and what would have to happen to break off a house lot.” She added that the CEO was an integral part of this, that the Board was struggling, the CEO was struggling and Sweet Peas was struggling and she thought that if they just worked together, they could come to a successful resolution on this.

Mr. Murphy said that he thought this deserved some calm going over with the CEO to verify each of these steps, to write them up and to work with Ms. Hardy in the ways she just suggested and that if it could be shown that what the Board suspected had happened has happened, that there should be some record somewhere that showed what happened. He added that if the Town was wrong, he thought the Town ought to admit it and let the lot be allowed, although the lot would have to be determined.”

Mr. Hamilton stated that he would try to paraphrase the statements. He stated that it sounds as though no decision was made at the Selectmen’s meeting that indeed they could have a house lot. He stated that from what Ms. Breen had said, his understanding was that there is a possibility that Sweet Peas may have a house lot but that they are not sure and that Sweet Peas needs to work with the CEO and the surveyor to determine whether or not they do have a house lot.

Ms. Breen stated that that was not her understanding of what was said at the meeting and she wished Mike Moynahan was present to address the issue. Mr. Hamilton stated that Ms. Breen had made the statement that a decision was made by the Selectmen that Sweet Peas’ appeal was granted. He stated that from what Ms. Breen had read from the BOS minutes, it did not sound like that was what happened.

Mr. Hamilton stated that from the testimony given at the hearing, reading the minutes of the BOS meeting and reading the declarations of the appellant, it appeared to him that there were two interpretations about what went on at the Selectmen’s meeting. He stated that that was the only conclusion he could draw from Ms. Breen’s reading of the minutes.

Mr. Hamilton stated that there was confusion and that he was trying to understand why Ms. Breen would go ahead and spend \$4000 on a survey. Ms. Breen stated that she did so because she was directed to and that that was her understanding coming out of the BOS meeting. Mr. Hamilton stated that from what she had read from the BOS minutes it was his understanding that there had been a discussion that maybe Sweet Peas should consult with a surveyor and the CEO to determine whether or not they did indeed have a buildable house lot. He stated that the minutes do not say that there was a decision by the Selectmen in spite of her statement that, “A decision was made by the Selectmen that Sweet Peas appeal was considered granted.” Mr. Hamilton stated that he did not hear that from the minutes Ms. Breen read at the hearing.

Ms. Breen stated that one of the things that happened in the BOS meeting was that someone said that because the appeal Sweet Peas had submitted to Paul White had not been heard, it was automatically to be granted to them under Rule 618. Mr. Hamilton asked who had made that statement. Ms. Breen stated that someone in the audience brought up Rule 618 and read the zoning rule which stated the appeal should be granted. She added that the BOS then discussed the rule and that confused the issue

even further. Chairman Cieleuszko stated that the person who made the statement was incorrect. Ms. Breen stated that she later realized that.

Chairman Cieleuszko asked who owns the property. Ms. Breen stated that Liz Todak owns the property and that she was representing her. Ms. Hardy was also at the hearing as an abutter. Ms. Breen stated that Liz Todak is the owner of Sweet Peas LLC.

Mr. Marshall asked if ownership applied to the larger piece of property with the airport or on just the proposed house lot. Ms. Breen stated that Ms. Todak owns the entire 90-acre property.

Chairman Cieleuszko stated that the hearing was for a variance request and that the appellant had to meet four criteria. He stated that Ms. Breen had spoken about the strange history to the property. He stated that he needed some help determining how she met the four criteria. Ms. Breen stated that the issue was financial hardship. She stated that if Sweet Peas cannot break off even one house lot out of the entire land, all of which is more than 1000 feet from Beech Road, the land becomes worthless. She stated that Sweet Peas is being sued for over \$200,000 because they have not broken off the house lot which was expected by Fly Away Homes.

Chairman Cieleuszko clarified that Sweet Peas is using the suit from Fly Away Homes as evidence that they have no reasonable return from the property if a variance is not granted.

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

Mr. Marchese stated that he has been working with the appellant since May 2011, getting the ordinances in front of them so that they would be aware of what they could and could not do. He stated that he had written five or six letters to the appellant addressing the ordinances and exposing the issues to them.

The CEO stated that the current hearing is a request for a variance due to his denial of the application that was issued to him. He stated that the main reason for his denial was Ordinance 37-69(f) which limits a dead-end road to 1000 feet.

The CEO stated that the first GIS diagram provided to the BOA indicates a distance of approximately 2500 feet to the end of Little Brook Lane. He added that Sweet Peas plans to extend that road an additional 1000 feet to access the two-acre lot. The CEO stated that the second GIS map provided includes a history of the development of the land. He stated that the last Planning Board approval was for a three-lot subdivision at the end of Lamplighter and Everett Lanes. Mr. Marchese stated that the last GIS map provided shows that there are 22 dwellings that currently utilize Littlebrook Lane in its current condition.

Mr. Marchese stated that he also provided the BOA with a 1977 court case that was recently submitted to him by an abutter of Little Brook Lane.

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

Mr. Marshall cited Section 37-69(a), "All proposed streets shall conform to such comprehensive plan as may have been adopted." He stated that the ordinance applies to proposed streets and that if a new ordinance is applied to a street that is 200 years old and on which people have lived since the 1700s, it seems to be a misapplication of the code at the very least.

The CEO stated that he disagreed with Mr. Marshall. He stated that he somewhat agreed with Mr. Marshall personally but that there are other appellants in Town who had been given a permit. He stated that the permits were later brought to the BOA as Administrative Appeals and that the BOA held the 1000-foot rule for the proposed lot. He stated that the prior CEO held to the 1000-foot rule. He stated that his decision was exactly what was done in the past.

Mr. Marshall stated that in one of the BOA's last hearings, a list of dead-end streets was provided and that this hearing was the third one in rapid succession regarding the same issue. He stated that, looking at the list of streets, it appears that there will be many more requests coming.

Chairman Cielezko stated that the discussion needed to be limited to questions and answers rather than arguments.

Mr. Hamilton referred to the CEO's statement that he has worked with the appellant since May 2011 and had written five or six letters to the appellant. He asked if any of those letters implied or stated that the lot in question could be divided. Mr. Marchese stated that he brought to the appellant's attention the 1000-foot rule and the need for them to construct a through way.

Mr. Hamilton clarified that the CEO did not say in any of the letters that the lot was definitely to be an approved lot. The CEO concurred.

Mr. Hamilton asked if Little Brook Lane was an approved road. Mr. Marchese responded that Little Brook Lane is a private way.

Mr. Billipp asked for clarification on a denial of a building permit. The CEO stated that there was a growth permit application and the letter of denial was issued on August 13, 2013. Mr. Billipp asked if the appellant's correct response should have been an Administrative Appeal appealing the decision of the CEO's denial.

The CEO stated that he gave the appellant the option of filing an Administrative Appeal or attempting to get a variance. He stated that he thought it was clear which ordinance he referred to when he issued the denial and that the appellant's best option to proceed would be to request a variance.

Ms. Lemire stated that it was her understanding that Little Brook Lane was an approved road rather than a Town accepted road. She stated that the Planning Board approved it when they approved the minor subdivision in 1983. The CEO stated that there are only private and public ways and that Little Brook Lane is a private way.

Ms. Lemire stated that she disagreed with the CEO. She stated that the Planning Board, in the process of approving the minor subdivision, put conditions on the approval and one of them was to build the road to a certain standard which was the standard at that time. Chairman Cielezsko asked if that information was in the packet provided and Ms. Lemire stated that it was in the Planning Board file.

Mr. Marchese stated that he had the Planning Board minutes from their meetings on January 18, 1983, February 15, 1983 and April 4, 1983 in which the Planning Board approved the application from Mr. Hardy. Ms. Lemire stated that she was looking for clarification about the condition of the road.

Chairman Cielezsko asked the CEO if he had the Notice of Decision and the CEO replied in the negative. Ms. Breen stated that she has a copy of the NOD. Chairman Cielezsko asked if she had it with her. She stated she would have to check the records.

Ms. Lemire referred to the CEO's statement that the appellant would have to extend the road an additional 1000 feet to reach the house lot. She stated that there is a built house beyond the proposed house lot. The CEO asked if that road was built according to standards. Ms. Lemire stated that she found it interesting that he made the statement the way he did.

Ms. Lemire stated that there is no direct access to Little Brook Lane from the proposed lot. The CEO stated that, from his perspective, the lot that sits way out in the back is an existing, non-conforming lot and has no relevance to the development of the proposed lot. Ms. Lemire stated that the proposed lot is between two built house lots and that the proposed house lot does not have any direct access to Little Brook Lane. The CEO affirmed that it does not.

Ms. Breen gave the CEO the Notice of Decision from the Planning Board meeting in 1983 which stated:

"A motion was made Mr. Fulton to waive requirements for filing Subdivision Quick Form with the Town, seconded by Mr. Murphy. All in favor 3-0. The Planning Board

identified additional actions to be done which includes obtaining a statement by a soil scientist in accordance with Section 403.8 of the Ordinance, alternative permissible in accordance with Section 403.5.6, conditions to cover the survey requirements of Section 8-13.

Agreed that Lot 3 would not be built upon until the road is completed up to Town standards, including cul-de-sac. Copy of covenants and any deed restrictions will be provide to the Code Enforcement Officer in accordance with Section 701.5. One copy of the drawing, signed and sealed, must be 1 inch to 100 feet with a 2-inch border.

Requirements of concrete boundary markers will be waived until the subdivision plan is actually approved. The debris and junk in the subdivision are will be picked up by the time the road is completed. The Board is waiving the exact provision of 810.3.2 for additional access to a street or road because of special circumstances of connecting the proposed subdivision to another.”

Chairman Cieleuszko asked Ms. Lemire if that citation answered her question and she replied in the affirmative.

Mr. Hamilton asked for clarification on the difference between an approved road and a Town accepted road. The CEO stated that, from his perspective, an approved road by the Planning Board would mean that the design meets the Town standards. He stated that an accepted road by the Town means that the road was constructed to Town standards, the Road Commissioner has approved the location and materials used to construct the road, the Planning Board has reviewed the road to make sure that it was built to plan and that the road is monumented. He added that once all of that is complete and the Board of Selectmen is confident that the information has been gathered and meets the ordinances, the road is put before the Town voters to be accepted.

Chairman Cieleuszko asked where it states in the ordinance that the appellant has to meet Section 37-69(f). The CEO stated that they have to have road frontage. Chairman Cieleuszko stated that the frontage requirement of 150 feet is in Section 45-405. Chairman Cieleuszko asked if the street had to be a qualifying street. The CEO stated that it does not have to be a qualifying street.

Chairman Cieleuszko asked for the minimum street requirement for a buildable lot. The CEO stated that it would be located in the Back Lot Ordinance and would be a 15-foot-wide gravel way. Chairman Cieleuszko stated that the Back Lot Ordinance would be circumventing the whole Chapter 37. The CEO stated that a back lot cannot be located more than 1000 feet from a through way.

Chairman Cieleuszko asked if the CEO was saying that the appellant had to meet either 37-69 or 45-405. The CEO replied in the affirmative. Chairman Cieleuszko stated that he did not like the "or" option and asked which ordinance the appellant had to meet. The CEO stated that the request was not submitted as a back lot. Therefore, he stated, the appellant would have to meet the requirements of 37-69.

Chairman Cieleuszko asked for the assessed value of the full 90-acre lot according to the Town map. The CEO stated that he did not know. Chairman Cieleuszko asked if Lot 44-3 includes the road. The CEO stated that, according to the assessment records, it does not and that the GIS map shows a line across the road. He stated that he did not have information on the lien on the road. Chairman Cieleuszko asked the CEO if he had heard anything about the lien on the road and the CEO replied in the negative.

Chairman Cieleuszko stated that the tax assessment offered by Mr. Billipp states that the land area is 75 acres and the land value is \$505, 500. He added that improvements are \$74,000.

Chairman Cieleuszko stated that there is a house located beyond where the appellant wants to break off the lot. He stated that the way he understands the issue, the proposed lot is between two lots. The CEO stated that there is a house constructed on Lot 46-100. Chairman Cieleuszko asked how the residents of the last house access their property. The CEO replied that he believes they travel down to the end of Little Brook Lane and go out onto the taxiway of the airport and proceed down that to get to their house. The CEO stated that he thought it was important to note that the house is off the grid, meaning that it has no power. Chairman Cieleuszko asked if anyone lived in the house and the CEO stated that he believed so.

Mr. Billipp stated that the appellant chose to seek a variance rather than an Administrative Appeal. He stated that a lot of the issues that had been discussed relate to what might have been an Administrative Appeal but that he thought the BOA needed to focus on the four criteria for a variance. Chairman Cieleuszko replied that the four criteria had to be met, but first it had to be determined if the variance was needed. He stated that he wanted both the four criteria and the need for the variance covered.

Chairman Cieleuszko stated that the variance request must give the minimum necessary to meet the need for the owner to do what she wants and the BOA has to determine what the minimum need is. He stated that he wanted to determine what the need actually is before granting or denying the variance.

## **TESTIMONY FROM ABUTTERS**

Jeffrey Cutting of 22 Everett Lane, Eliot, Maine stated that he is not opposed to a house lot on Little Brook Lane. He stated that he is concerned about the condition of the road,

the appellant coming in on that road and the issues that would be involved in trying to get somebody to that house.

Mr. Cutting stated that the Kaichens were present at the hearing and that they are the owners of the house that is on the end of the road. He stated that it is a true statement that they are off the grid with absolutely no power to any of those lots.

Mr. Cutting stated that he did have a question about how an LLC that does not have a shareholder could transfer money to someone who had a legal debt outside of the LLC. Chairman Cielezsko stated that he did not want to address that issue.

Mr. Cutting presented photographs to the BOA to demonstrate the condition of the road. He stated that the residents already have enough problems trying to get up and down the road, including plowing. He stated that they all pay \$200 apiece but that on a lot of mornings he has to plow his way out of Little Brook Lane in order to get to work. He stated that the farther up the road one gets, the worse the condition is.

Mr. Cutting stated that Little Brook Lane stops at the two houses at the bottom of the hill. He stated that from that point forward, it is a driveway that goes up to the airport. He stated that the house would be over 1000 feet from that point. He stated that at the Planning Board meeting of September 19, 1989 Jack Hardy was told that if he was going to continue with all of the lots on the road, the road should be paved and up-to-date and that the Town section of the road would not continue up to the airport between Lots 4 and 5.

At the Planning Board meeting, Jack Hardy stated that the road was too steep to meet Town standards. He stated that those lots would have frontage on the road that was then being partially paved and which ran from East to West. Mr. Hardy stated that the road had no name and asked what his next step should be with the Planning Board.

Mr. Cutting stated that he was citing the above information from the minutes of the September 19, 1989 Planning Board meeting.

Mr. Cutting stated that the photographs he provided show that there is no road up to the airport currently. He stated that everything is posted and where the 1000-foot mark is indicated, there is a sign that says "Private Property No Trespassing." He stated that two other signs say "Warning. No vehicles on the landing strip. This is unlawful. No trespassing. Airport property only."

Mr. Cutting stated that there is one house back there currently and his concern is that Fire and Rescue, if they tried to access that house, would think that there is no way up there and that that could be a problem. He stated that physically there is no road and that the only road is the airport taxiway that goes down the back side. He stated that those issues should be taken into consideration.

Mr. Cutting restated that he has no problem with a house going up in the proposed location but he thinks it should be developed properly and not just done because it needs to be done.

Daniel Perkins of 46 Little Brook Lane, Eliot, Maine stated that he has lived in the Town for about 70 years. He stated that he would like to know who Sweet Peas LLC is. He asked if she was a relative or kinfolk. Chairman Cielezsko stated that that was irrelevant.

Mr. Perkins stated that his deed from Jack Hardy states that the road will be brought up to standard and be maintained and plowed. He asked if that meant that when that piece of property was passed to someone else, nobody would be responsible for maintaining the road. Chairman Cielezsko apologized and stated that the issue was irrelevant to the current case. He stated that he understood the issue and that it had been clearly described but that it did not have bearing on what the BOA was addressing.

Don McKenney of 7 Barnard Lane, Eliot, Maine stated that he has only lived at his address for a couple of years. He asked why the Town could not take the road over, in spite of the horrible condition, if there are back taxes owed. He asked if the Town could do that if the owners are not going to make payments and owe taxes. He stated that they don't deserve the road.

Mr. McKenney mentioned that Ms. Breen had noted that the audience was hostile. He stated that at one time, the road was so bad that stakes were put up by a resident so that people would not drive on his grass instead of the road. He stated that the stakes got torn down and the resident asked Mr. McKenney if he knew anything about it, since he lives across the street. Mr. McKenney stated that he did not know anything about it but that he would keep his eye out. He stated that he and his wife were watching out the window and saw the stakes get torn up, bent and thrown. He stated that he went out to see what was happening and got screamed at by a person he did not know who said, "You don't know anything. Get back in the house." Mr. McKenney stated that that statement was pretty hostile.

Jason Bryant of 30 Everett Lane, Eliot, Maine stated that he noticed on the map that there is a road shown that goes down and connects to Everett Lane. He asked if there was a plan to use that road. Chairman Cielezsko stated that in the BOA packet, Everett Lane has an extension drawn that goes around the lot. Ms. Breen stated that there is no plan at the current time to extend Everett Lane and that Everett Lane exists as a right-of-way that goes up and around her property to Route 236.

Steve Wing of 68 Lamplighter Lane, Eliot, Maine stated that he had heard his name mentioned twice at the hearing and that he was surprised. He stated that he was almost shocked to hear that because he did not sell his land he did something bad. He stated that he had heard of people having their land taken away by eminent domain but that

he had never heard of anybody doing something wrong by not selling their land. He stated that that had been indicated at the hearing. He stated that he bought his land 20 years ago. He stated that he used to help Jack Hardy work on the property and that he knows quite a lot about the property. He stated that he would be glad to answer any questions.

Jean Hardy of 2 Little Brook Airpark, Eliot, Maine stated that she was married to Jack Hardy who died due to cancer. She stated that she did not do anything with the property for five years and that she did not know what she wanted to do. She stated that there was a huge void in her life when Jack died.

Ms. Hardy stated that Jim Barrett came to her and said that he wanted to develop her property. Ms. Hardy stated that she was sitting in the cockpit of a Jetstream 3100 in Trenton, New Jersey when she received the phone call. She stated that it appeared that the man was serious so she hired a local realtor to help her with it. She stated that she thought the man was legitimate and that she made an agreement with him. She stated that her biggest mistake was to "take paper." She stated that all she can say is that it was a nightmare and the nightmare continues in her life.

Ms. Hardy stated that she sold Jim Barrett the property and he promptly started to do things around the airport. She stated that he ripped up the pavement on the taxiway and the pavement in front of the hangars and then did not do anything with it. She stated that he sold land to Mike and Jill Kaichen. Ms. Hardy stated that the Kaichens did not even have a road to get to their house.

Ms. Hardy stated that Mr. Barrett stripped the property of the assets. She stated that she received a call from her insurance company, National Aviation, in which the caller stated, "I know that I am not supposed to tell you, but I need to tell you that you have no insurance on the airport." Ms. Hardy stated that there had been times when she and Jack did not pay the utility bill or the electric bill, robbing Peter to pay Paul, but that they always paid the insurance to avoid being sued and not having any liability insurance. She stated that she then paid for insurance and called her attorney to have him "pull the plug."

Ms. Hardy stated that in December 2005 it looked like Mr. Barrett was not going to meet some of his agreements. She stated that they came up with an agreement that Mr. Barrett was to do certain things. She stated that when she foreclosed on Mr. Barrett, it was "a nightmare."

Ms. Hardy stated that Mike and Jill Kaichen owned a house lot and did not have a road to their house and no utilities. She stated that she felt very bad for the Kaichens. She stated that, in hindsight, she should have walked away and said that it was their problem, but she did not. She stated that she gave the Kaichens a right-of-way over the taxiway so that they would not have to build up Everett Lane all the way to their house.

She added that it was a horrible expense. She stated that she also gave them a utility easement and that, too, was cost-prohibitive.

Ms. Hardy stated that Jim Barrett promised the Kaichens the moon and that they were victims in the transaction. She stated that they have a lovely home.

Ms. Hardy stated that when all of that happened in 2006, she did not have a dime. She stated that she did have developers who came to her and wanted to develop the property. She stated that she did feel, and that she still does feel, a sense of responsibility on the property. She stated that the property had been part of Jack and her.

Ms. Hardy stated that Fly Away Homes LLC wanted to buy the property and made what was basically a refundable deposit. She stated that they paid her approximately \$100,000 as a refundable deposit and that there were a lot of pieces to the transaction and that did not work. She stated that the way Fly Away Homes was going to get their property back was through the proposed house lot.

Ms. Hardy stated that all Sweet Peas wanted to do was to break off one house lot. She stated that she is an abutter and that she likes it there because it is quiet and passive. She stated that she had been working in Washington, D.C. and that, thankfully, she is now here permanently. She stated that she never wants to go back to Washington, even to visit. She stated that when she was riding the metro, all she could think about was being back in Eliot, Maine.

Ms. Hardy stated that she likes it quiet where she is now, but that she does not own the airport property. She stated that her daughter owns the property. She added that she really does not have influence over a 42-year-old woman who has got a master's in Emergency Management, has learned how to fly and has her pilot's license. She stated that it is her daughter's property and that she has to learn to take two steps back.

Ms. Hardy stated that someone had mentioned that she was hostile. She stated that the story on that was that the posts were put up in part of the right-of-way, part of Barnard Lane and Little Brook Lane. She stated that she "nicely put them down." She stated that the stakes were put up again and that she took them down again.

Ms. Hardy stated that Jack Hardy and some people on the road had a law suit with each other. She stated that they settled the suit and the location of the piece of property with the stakes was part of the law suit. She stated that the last thing she wanted to get involved with was another law suit because people wanted to put up stakes in a right-of-way.

Ms. Hardy stated that she agrees that the road is in lousy condition. She stated that she has spent money on the road and that there is nothing she can do about it. She stated

that she does not know who owns the road. She stated that Jack Hardy, being Jack Hardy, thought that he was being overtaxed and refused to pay the taxes. She stated that the road was under Little Brook Airport, Inc. and that she had nothing to do with the corporation. She stated that it was formed way before her marriage to Jack Hardy and her name is not on any of the legal documents. She stated that there is a lien on the road and that that is something the Selectmen are going to have to figure out. She stated that if the people on the road would work together, they could probably figure out what is going to happen with the lien. She stated that that issue is above and beyond the issue of the house lot.

Ms. Hardy stated that all Sweet Peas wants to do is build one more house lot. She stated that the proposed house lot is next to the location of the Kaichen's house. She stated that she sincerely does not want another house there, but that it is not her property. She stated that there was an agreement that access to the lot is off of Little Brook Lane and will not go down the taxiway. She stated that there had been problems with people driving onto the runway. She stated that that was the reason her daughter enforced the State law and erected the no-trespassing signs.

Ms. Hardy stated that one of the options her daughter has looked into is to work with the Kaichens and perhaps, if the house lot is approved, develop access down behind where the tie-downs would be and use a dirt road down to the house lot. If that was done, the access to the runway could be shut off without affecting anybody. She stated that that would also get the Kaichens off of the taxiway.

Ms. Hardy stated that people seem to think she is the "answer lady" but that she refers them to her daughter because Ms. Hardy has nothing to do with the property.

Mr. Hamilton asked Ms. Hardy if she was an abutter and she replied in the affirmative, stating that she owns the big, white house that sits at the end of the runway.

Jill Kaichen of 55 Little Brook Lane, Eliot, Maine stated that she and her husband are the owners of the property that is off the grid. She stated that they bought the property about eight years ago from Jim Barrett. She stated that at that time, Mr. Barrett was putting in a subdivision that was to be hangar homes. She stated that they were at that time under the impression that there would be approximately 20 hangar homes.

Mrs. Kaichen stated that their deed contains a right-of-way to the airport forever.

Mrs. Kaichen stated that Mr. Barrett was supposed to put roads and power into the properties. She stated that when they bought the lot it was part of their agreement that the lot would be a buildable lot. She stated that they were under the impression that the lot was originally owned by Tony Manero and that it was under some sort of grandfather agreement. She stated that they did not obtain the building permit because Mr. Barrett obtained it as a condition of the sale.

Mrs. Kaichen stated that when they paid for the lot, there were three people that actually received money from the sale including Jean Hardy, Tony Manero and Sylvia Warner. She added that Ms. Warner had invested in the property and had given Jim Barrett the money for a down payment to be given to Jean Hardy.

Mrs. Kaichen stated that they were asked by Jim Barrett if they wanted to start building right away. Mr. Barrett asked if they could start building with a generator until the power was installed. She stated that they agreed and that the builders agreed that there would be a lot of excavation that would not require power.

Mrs. Kaichen stated that in March they found out that Mr. Barrett had defaulted on the loan and that Jean Hardy had taken back the land. She added that the power had not yet been put in and that they were about two-thirds of the way through the building process.

Mrs. Kaichen stated that Ms. Hardy was upset and that the Kaichens were “pretty shook up.” She stated that Ms. Hardy had another developer, Fly Away Homes, interested.

Mrs. Kaichen stated that their lot had originally had a right-of-way on Everett Lane which was never supposed to be used by anyone other than in the subdivision. She stated that once Mr. Barrett defaulted, the subdivision was suspended. She added that because of the expense of the road, Ms. Hardy and the Kaichens exchanged the right-of-way on Everett Lane for the right-of-way on the taxiway. Mrs. Kaichen stated that they paid for all of the bills associated with that process. She added that they were very grateful to Ms. Hardy for allowing them the right-of-way exchange.

Mrs. Kaichen stated that they then finished their home and received a Certificate of Occupancy from Don LaGrange and that they have lived there ever since. She stated that they are off the grid and have no power. She stated that when they wanted to purchase the right to buy power they were told that Ms. Hardy could not give them that right because of Fly Away Homes and the uncertainty about where to locate the power. She stated that their power source is solar.

Mrs. Kaichen stated that access to their home is deeded on either the runway or the taxiway.

Mrs. Kaichen stated that they do not have any objection to having another home beside them and that they originally expected to have a lot of homes out there.

Mr. Billipp clarified that the Kaichen’s property is Map 46, Lot 100.

Chairman Cielezko asked about the right-of-way on the taxiway and asked for clarification from the map which Mrs. Kaichen provided by showing him the home, the

runway and the taxiway. Chairman Cieleuszko asked if the taxiway was fenced off. Mrs. Kaichen stated that it is not fenced but that there are warning signs which they drive through to get to their home.

Chairman Cieleuszko asked for clarification of the term "hangar home." Mrs. Kaichen stated that they have a hangar attached to their home and that they can drive the airplane right into it because it has access to the taxiway.

#### **TESTIMONY FROM INTERESTED PARTIES**

There were no parties who wanted to speak.

#### **FINAL STATEMENT FROM APPELLANT**

Ms. Breen demonstrated from a map the location of the proposed driveway right off Little Brook Lane. She stated that the driveway would proceed along the tree line and that it would be possible for the Kaichens to use the driveway also. She stated that she was assuming that there would be power and that the Kaichens could also get power.

Mr. Billipp asked if the lot has frontage on Little Brook Lane. Ms. Breen stated that the driveway would connect with Little Brook Lane but that the property does not have frontage on the road. Chairman Cieleuszko stated that a driveway is located on a lot of ownership not on other property. Ms. Breen stated that the owners would be given a right-of-way to the property by Sweet Peas for the driveway.

Ms. Breen stated that Mr. Cutting had provided wonderful pictures showing the condition of the road and that all of the residents need to get together as a community to figure out how to improve the road. She restated that it is not the responsibility of Sweet Peas to take care of the road, although some members of the community do think it is Sweet Peas' responsibility. She stated that those residents have refused to participate in any of the meetings that had been held about the road. She added that the road issue is a tough one but that the road is passable and that one more house is not going to cause any problem for the road.

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

Mr. Billipp asked Ms. Breen if she had a copy of the survey for which she paid \$4000 in order to demonstrate the location of the proposed lot on the 90-acre parcel. Ms. Breen showed Mr. Billipp the survey. He asked why she did not locate the proposed lot in a different location in order to provide a shorter roadway and driveway.

Mr. Billipp asked if the frontage on the proposed lot was 150 feet and Mrs. Breen replied in the affirmative. Mr. Billipp asked if Everett Lane was a 50-foot right-of-way and Ms. Breen replied in the affirmative.

Ms. Breen stated that nobody has addressed, or seemed interested in, the building permits which had been granted without any hearing. Chairman Cielezsko stated that those permits were irrelevant to the current hearing. She stated that meant that nobody cared that Steve Wing received a permit. Chairman Cielezsko stated that "care" would be a different issue. Chairman Cielezsko stated that he was trying to limit the discussion to what was necessary to make a decision that night and that other permits do not concern her lot request.

Ms. Lemire stated that it was testified that all of the resources on the property were stripped by Mr. Barrett. She stated that her concern was reasonable return on the property and that she was not sure that that issue had been addressed. She asked Ms. Breen if there was anything else that could be done with the property. Ms. Breen stated that there was not. Ms. Lemire stated that, because of the 1000-foot limitation, the 90-acre property is basically unbuildable land. Ms. Breen stated that that was correct.

Ms. Hardy stated that she had a lot of knowledge about the property. Chairman Cielezsko clarified that Ms. Breen had authorized Ms. Hardy to speak for her and Ms. Breen concurred. Ms. Hardy stated that as far as return on the property was concerned, she supposed that if one ripped up the roadway, which her daughter had threatened to do, there would be about one million dollars' worth of gravel under the runway. Ms. Hardy stated that because she is still a pilot, she would not allow her daughter to do that. She added that she thought there would be a lot of people who would be very unhappy if that runway was ripped up.

Ms. Hardy stated that Jim Barrett took all of the trees off the property. She stated that she had told him to stop and that he refused to stop and that there was nothing she could do about it. She stated that in terms of "reasonable return", there is no return on the property and that the property does not even support itself right now. She stated that there is no income from the property to pay for the property taxes.

Chairman Cielezsko asked Ms. Breen if there was a running airport. She replied in the affirmative. He asked if people kept their planes in the hangars at no cost. Ms. Breen replied that the 10 hangars basically pay very little. Chairman Cielezsko stated that they do pay and that the airport is a business on the property.

## **PUBLIC HEARING CLOSED**

The public hearing was closed at 9:02 PM.

## **FINDINGS OF FACT:**

- The hearing was held on September 19, 2013.
- The owners of the lot are Sweet Peas LLC and Elizabeth Todak.
- The mailing address of the owner is P.O. Box 243, Eliot, Maine, 03903.
- Ownership is shown by a partial purchase agreement between Elizabeth Todak and Jean Hardy dated January 1, 2009. Testimony was made many times about ownership.
- The property is identified as Lot 46-3 on the Eliot Tax Map.
- The property is approximately 90 acres.
- The lot is in the Suburban District.
- The authority to hear and decide the variance request was granted to the Board of Appeals by Section 45-49(b), Variance Appeals.
- Edith Breen is representing the case for Sweet Peas LLC.
- The appellant is seeking relief from provisions of Ordinance 45-466(g)(5) Back Lots which would be the minimum to give the appellant a buildable lot.
- It was clarified by the Code Enforcement Officer that Littlebrook Lane is a private road.
- The lot requirement in the Suburban District is for a 2-acre minimum and 150 feet of road frontage.
- The Code Enforcement Officer's packet and the GIS map show the distance to Beech Road is 2500 feet from the end of Littlebrook Lane and another 1000 feet from there to the location of the appellant's parcel where they want to build a house.
- The distance from the proposed lot to Beech Road would be 3500 feet.
- It was testified that there is currently a private airport being operated on the property with small fees being charged for plane storage.
- The assessed value of the property, including land and structures, is \$579,500 according to the Eliot Tax Assessment records.

During the itemization of the Findings of Fact, there was a discussion about the type of variance being sought. Chairman Cielezsko stated that the appellant was seeking relief from two ordinances. He stated that he thought they were fighting for relief from the Back Lot Ordinance, Section 45-466(g)(5) regarding the 1000-foot limit.

Mr. Hamilton stated that he thought the only reason the appellant came to the BOA was because of the Code Enforcement Officer's decision where he stated clearly that Sweet Peas was in violation of that ordinance.

Ms. Lemire stated that the package presented by the appellant referred to two ordinances, Section 45-466 and Section 37-69. Chairman Cielezsko asked for her opinion

on which of the two the appellant had chosen to fight. Ms. Lemire stated that the focus of both of the Ordinances is the 1000-foot limit to a dead-end road.

Mr. Hamilton stated that he did not think Chapter 37 applied to the situation. He stated that the CEO had indicated in his letter that there were two Ordinances that he felt applied and that the BOA needed to grant a variance on whichever one did apply.

Chairman Cieleuszko asked Ms. Breen if Sweet Peas was requesting relief from the Back Lot Ordinance or from Street Standards of Chapter 37. Ms. Breen stated that she did not know how to answer the question. She stated that the CEO had told them what variances to request and that she had followed his direction.

Chairman Cieleuszko asked if there was consensus to deal with both ordinances. Chairman Cieleuszko stated that the appellant was asking for relief from Ordinances 37-69(f), limiting dead-end roads to 1000 feet. If relief is granted for that, then they need to meet requirements of Section 37-70 and Section 37-71 or they must get relief from Ordinance 45-466(g)(5), Back Lots.

Mr. Hamilton stated that the determination as to which ordinance applies is up to the BOA. He stated that he thought the Back Lot Ordinance was applicable because Sweet Peas is not located on a town-approved road. Chairman Cieleuszko and Ms. Lemire agreed that Section 37 did not apply. Ms. Lemire did not agree with the determination that the lot is a back lot.

Mr. Hamilton stated that the BOA could not rule on an ordinance unless they could determine which applied. Chairman Cieleuszko stated that they could rule on the application. He stated that the appellant was asking for relief and that it is up to the BOA to determine what the relief is. Chairman Cieleuszko replied that the BOA can approve minimum relief.

Mr. Hamilton stated that he thought the relief sought was from Ordinance 45-466(g)(5). He cited the definition of a back lot which states, "A lot which does not have the minimum street frontage required in the zoning district but which is accessed by an access way which either passes over or has been divided out of one or more other lots separating all or part of the back lot from the nearest qualifying street." He stated that he thought that definition applied to the appellant. Chairman Cieleuszko stated that, according to the appellant, access was from a driveway which functions as an access way.

Mr. Hamilton asked if that meant the BOA should not consider Ordinance 37. Mr. Marshall stated that Chapter 37 applied to the design of new streets. Chairman Cieleuszko stated that there is actually no street for frontage. Mr. Marshall stated that there is a street but that it is not a street that the Town supports. Chairman Cieleuszko stated that currently the only thing touching the proposed lot is a driveway to a lot

further down and is the taxiway of the airport. Chairman Cielezsko stated that that is not a street.

Mr. Hamilton cited the definition of a street which states, "Street means any common access to three or more lots and shall meet the requirements of division 2 or article II of chapter 37 of this code, the street design and construction standards for the town." Mr. Hamilton stated that the definition applied to any street, new or old. Mr. Marshall stated that the provisions were for streets designed after a certain date. Ms. Lemire stated that the date was June of 2005.

Chairman Cielezsko stated that on page CD1:30.6 of the definitions it states, "Street, town way or public way. The word street shall embrace streets, highways, avenues, boulevards, roads, town ways, lane, bridges, and all other public ways dedicated to public use."

Mr. Hamilton stated that another definition states, "Street or road means a street as defined by or meeting the standards of the street design and construction standards in division 2 or article II of chapter 37 of this code." He stated that a public way would have to be an approved street. Mr. Hamilton states that the definitions state that public ways must meet Town standards. Chairman Cielezsko stated that a driveway is not a public way and that there are "No Trespassing" signs on the access.

## **MOTION**

Mr. Billipp moved to deny the request for the variance. Mr. Hamilton seconded the motion. Mr. Billipp reviewed the four criteria necessary to be met in order for a variance to be granted.

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

Mr. Billipp stated that they are dealing with an approximately 90-acre piece of land that is the home, and has been the home for many years, of Little Brook Airpark. He stated that there is a business of some degree operating there, although he did not know what the income from the hangars is. Mr. Billipp stated that he did not think the appellant met the first criteria because he thought there could be revenue. He stated that sand and gravel had been mentioned.

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

Mr. Billipp stated that he thought the whole neighborhood was afflicted by the condition of the road. Therefore, he did not think the individual property was unique

because the road has been an on-going problem. Mr. Billipp did not think the appellant met the second criteria.

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

Mr. Billipp stated that he would agree that the variance would not alter the locality. He stated that he thought the appellant met the third criteria and that one more house would not change the way the area looks currently.

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

Mr. Billipp stated that he disagreed with that because the urgency related to the creation of the two-acre lot was through business dealings that were unsuccessful for the current owner or the former owner. He stated that he thought that the action is a result of a business decision by the owner or prior owner. He stated that he did not think the appellant met the fourth criteria.

Mr. Billipp stated that his conclusion was that the appellant only met one criteria out of four. Mr. Hamilton concurred and seconded the motion.

## **DISCUSSION**

Mr. Marshall stated that a "reasonable return" is a difficult issue to deal with. He stated that the appellant could sell the land to get some sort of return but he did not think they would get \$579,000 or anything close to that for it. He stated that the owner made some mistakes but that he did not think it appropriate to get into the specific finances of the situation.

Mr. Marshall stated that in terms of the unique circumstances, the property is at the end of a long road and that codes have changed over the years since the property was purchased. He stated that now the codes prevent the ability to build a house on the land beyond 1000 feet. He added that it had been allowed for several others.

Mr. Marshall stated that granting the variance would not alter the essential character of the neighborhood. He added that, if anything, it would add another resident to assist in maintaining the road.

Mr. Marshall stated that the hardship is a result of the codes changing over the years. He stated that the appellant had nothing to do with the decision that an owner cannot use his property if it is at the end of a 1000-foot dead-end road. He added that there was nothing the appellant could have to done to protect against code changes.

Mr. Marshall stated that more people live on small lots than live on large pieces of property and that the codes were changed by people who live on small lots who would like to have all of the big lots set aside so that they could look at them.

Chairman Cielezsko summarized Mr. Marshall's position as agreeing that the appellant met all four of the criteria.

Ms. Lemire stated that to some degree she agreed with Mr. Marshall. She stated that she was struggling with the reasonable return issue. She stated that there were circumstances over the years which drained the property of resources. She added that it was a tough decision for her because it had to be narrowly construed and that there are things that could be done with the property to bring in income but she does not know what they would be.

Mr. Billipp stated that in the mid-1980s, the property was a thriving airport with a restaurant and lots of traffic. He stated that the airport business had gone down but he wondered if somehow it could be brought back up. Ms. Lemire stated that she was considering the current economic situation and the economic situation of the appellant.

Mr. Marshall stated that the airport was Jack Hardy's operation and that he is no longer around to run the operation. He stated that he wondered if anyone else who has a piece of the property has the willingness or ability to run the operation. He stated that the market is not very good right now and that an operating airport is not a viable option.

Ms. Lemire stated that she was concerned about voting no on the criteria because the property is an airport. Chairman Cielezsko stated that he understood her dilemma.

Mr. Marshall stated that he was concerned about calling the property an airport. He stated that it is a place for airplanes to take off and land but is not what he would call an airport. He stated that it is not easily accessible and is not being run as a commercial airport at this time and does not have landing fees or tie-up fees. He stated that someone could do that if they had the inclination and ability to do so but that it would not be easy. He added that a sand and gravel operation would also not be easy to start or to get permission to do. He stated that the alternatives that had been brought up are expensive.

Mr. Billipp stated that, although it was not part of the four criteria, the proposed house lot is 3500 feet from the nearest Town-accepted road and is way up a private road. He stated that the explanation of the driveway came at the last minute.

Mr. Marshall stated that his concern was that if someone bought the land knowing the limits, it would be their business. Mr. Billipp stated that the issue was one of safety and access for fire and emergency vehicles. Mr. Marshall stated that others on the land and the house located further in are already in that situation.

Chairman Cieleuszko stated that the argument deals with the philosophy of ordinances. He stated that he assumed the Board was in agreement that the ordinance as it exists is what they were dealing with and the determination was whether the appellant met the ordinance, not the wishful thinking of what the BOA would like to have as an Ordinance.

Mr. Marshall stated that the property is off the grid and is in further than the ordinance allows and that the appellant was applying for a variance. He stated that the BOA did not have to justify whether the appellant meets the ordinance because the request is to vary the requirement of the ordinance for the specific site to possibly allow the appellant to break off a house lot. He stated that the circumstance is unique for the proposed lot and would not be setting precedent.

Chairman Cieleuszko stated that a variance offers the appellant relief from the ordinance but that to get that relief, the appellant has to meet all four criteria. Mr. Marshall stated the first criteria would not be met if a hard stand was taken because the land could always be sold. He added that he doubted they could sell the property for what the Town had been taxing them for. Mr. Billipp stated that there would be options.

Mr. Hamilton stated that the four criteria which have to be met did not come from the Town. He stated that the criteria are given to the Town by the State of Maine to uphold and to apply interpretation based on what the appellant has presented as reasons for the relief requirement. He stated that the BOA could not toss off the criteria because of difficulties.

Mr. Hamilton stated that he realized that the appellant was affected by prior bad decisions. He stated that the job of the BOA is to meet what the State requires and that the legislature had created the questions to determine whether or not the appellant met the standard. He added that variances are difficult to get. He stated that he thought that his duty as a member of the Board was to make the determination as to whether the specific case met the criteria and he does not think the appellant met them.'

Chairman Cieleuszko asked Ms. Lemire if she thought the appellant met the first criteria. She stated that she did not think they met the first criteria but that they did meet all of the others.

Chairman Cieleuszko stated that there were three opinions that the appellant did not meet the first criteria, giving standing to deny the variance.

As the last Finding of Fact, Chairman Cieleuszko stated that the survey of the four criteria found that:

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

Mr. Marshall agreed that the appellant met this criteria. Mr. Billipp, Mr. Hamilton and Ms. Lemire 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.*

Mr. Marshall and Ms. Lemire agreed that the appellant met this criteria. Mr. Billipp and Mr. Hamilton did not agree.

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

All agreed that the appellant met this criteria.

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

Mr. Marshall and Ms. Lemire agreed that the appellant met this criteria. Mr. Billipp and Mr. Hamilton did not agree.

#### **VOTE**

The motion to deny the variance request passed by a vote of 3-2 with Mr. Billipp and Mr. Hamilton approving, Mr. Marshall and Ms. Lemire opposing and Chairman Cielezsko voting due to the tie, approving the motion to deny the request. He did not think the appellant met the first or the fourth criteria.

Chairman Cielezsko stated that the decision can be appealed within 45 days and that the Notice of Decision would be received within seven days.

#### **APPROVAL OF MINUTES**

The minutes of the July 18, 2013 meeting were approved as written.

#### **OTHER BUSINESS**

A discussion about the 1000-foot limit rule ensued. Mr. Hamilton stated that he would well imagine someone getting a building permit beyond the limit, having a fire in the middle of a snow storm when the Fire Department could not reach them and then having the owner, who had been given a building permit by the Town, suing the Town. Mr. Marshall stated that if he was that owner, he would realize that the Fire Department would not make it up the road. Chairman Cielezsko tabled the discussion until another time.

Chairman Cieleuszko stated that he had received a budget request from the Town to go to the end of the year. He stated that he would have the budget at the next meeting but that it would be flat. Ms. Lemire clarified that the budget would cover the fees from the recording secretary and any workshops the BOA members attend. Chairman Cieleuszko stated that they had done well under the current budget and that they had never had to request extra funds. He stated that the amount is not extravagant and is \$4400.

Ms. Lemire asked if the BOA was going to do anything about the 1000-foot limit. Chairman Cieleuszko stated that it would need to be brought before the Planning Board. Mr. Marshall stated that many people like the open space and may not allow the change.

For the current case, Chairman Cieleuszko stated that there were three negative votes on the first criteria so the decision to deny was firm on that basis. He stated that if there had been a split decision with no majority on any single criteria, the result would have been the appeal either being sent back or accepted. He stated that a majority has to agree that the appellant does not meet at least one of the criteria.

Ms. Lemire stated that she had difficulty voting no on the first criteria but that she had to vote based on the rule rather than on her feelings. Mr. Billipp stated that the reference in the criteria is to a reasonable return, not a maximum return. Mr. Hamilton stated that the issue was not whether or not Jean Hardy or any heirs could receive a reasonable return. The article states that the land can receive a reasonable return and the decision goes with the land, not with the owner.

Mr. Hamilton stated that Section 45-406(c) was a provision which was adopted on June 16, 2007 by petition and by a vote of the Town of Eliot. The Section states that, "no new access street or road, whether public or private, providing access to more than 14 house lots or dwelling units, shall be permitted or constructed if directly connected to any public street(s), which such existing public street(s) do not meet current town street design and construction standards." He stated that the Section has been eliminated from the current Municipal Code. Ms. Lemire stated that it must have been voted out.

Mr. Hamilton asked that the Chairman see if the Section can be reinserted. He added that the provision had been cited in the current case and mentioned in the application. Chairman Cieleuszko asked the CEO to look into the issue and the CEO agreed.

## **ADJOURNMENT**

The meeting was adjourned at 10:00 PM.

Respectfully Submitted,  
Linda Keefe  
Recording Secretary

Approved by: \_\_\_\_\_

Ed Cieleszko, Chairman, Board of Appeals

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

October 17, 2013