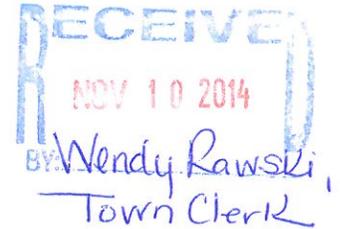


ITEM 1 - ROLL CALL

Present: Steve Beckert – Chairman, Jeff Duncan, Larry Bouchard, Greg Whalen, Dennis Lentz, Melissa Horner – Alternate.

Absent: Dutch Dunkelberger – Alternate

Also present: Kate Pelletier, Planning Assistant.



ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – REVIEW AND APPROVE MINUTES, AS NEEDED

December 17, 2013 minutes were not reviewed tonight.

Mr. Duncan moved, second by Mr. Lentz to approve the minutes of October 7, 2014, as written.

VOTE
4-0
Chair concurs

ITEM 5 – REVIEW “NOTICE OF DECISION” LETTERS, AS NEEDED

- **PB14-20: Apsey – Amendment to previously approved Site Plan**

This was not addressed tonight.

- **PB14-11: Swanick – Open Space Subdivision**

This was accepted as written.

ITEM 6 – PUBLIC APPLICATIONS OR PLANNING BOARD BUSINESS TO BE CONSIDERED

A. PUBLIC HEARING – and continued review of an Application for Site Plan Review to construct a 4,738 sq. ft. retail store and gas station at 28 Levesque Drive (Eliot Commons). Applicant is TMC CF New England, LLC (mailing address: c/o Sandra Guay, Esq., P.O. Box 468, Biddeford, Maine 04005). Owner is Sea Dog Realty, LLC (mailing address: 8 Western Ave., Kennebunk, Maine 04043). Property can be identified as Map 29/Lot 27 and is located in the Commercial/Industrial District. (PB14-13)

Ms. Guay, applicant representative, said that they did receive their sewer allocation and that they are making a minor change to the DEP Permit (adding Cumberland Farms to application).

Mr. Leidner, Civil Design Group, summarized the proposal. He said that the proposed Cumberland Farms will be a 1.2-acre condominium lot at the corner of Dow Highway and Beech Road; that it would be a 4,738 sq. ft., 24-hour, convenience store building; four associated multi-product fuel dispensers located beneath an overhead canopy; two 20,000-gallon dual fiberglass state-of-the-art underground storage tanks (gasoline/diesel); that the site will have 20 parking spaces (16 required) and that the plan shows parking compliance within the condominium lot and Eliot Commons, as a whole. He said that there will be two access points – one on Beech Road, which they will make DEP-recommended minor upgrades to and a new right-in/right-out access from Route 236. He added that water and sewer are stubbed out to this location; that the Kittery Water District told them that there is sufficient capacity to service this building; that they comply with the Stormwater Management standards applicable to this site; that they mitigated for run-off with a sub-surface detention system. He described the architectural design and floor plan of the building (Colonial) and canopy, as well as the signage. He discussed the landscaping plan, adding that they will place 7-8 mature evergreens to screen residential neighbors.

Mr. Beckert reviewed the rules format for the Public Hearing.

7:13 PM – Public Hearing opened.

Mr. (Jack) Murphy, Brixham Road, ask how cars would utilize the pumps under the canopy and whether the canopy reached to the building.

Mr. Leidner said that space allowed for two cars at each pump station; that the canopy did not extend to the building.

Mr. (Grant) Hirst, Farmer Road, asked if there would be a sprinkler system in the building. He also said that the pumps, themselves, have a dry chemical fire suppression system.

Mr. Leidner said that he did not believe there was a sprinkler system in this building.

Mr. Hirst asked if the lighting would impact the neighbors across the street.

Mr. Leidner discussed the lighting plan; that the lighting poles have a low height that holds LED lights and won't have spillover out into Beech Road, or out front.

7:17 PM – Public Hearing closed.

Mr. Lentz asked if the snow removal issue had been resolved.

A.J. Barbato, architect, said that they are working out a plan on where it will go and could provide that through a condition.

Mr. Beckert said that the Board did receive a memo from the Fire Chief that said that there was adequate access for emergency vehicles; that the building is required to be barrier-free; that fire alarm systems are in accordance with NFPA 72 and all applicable laws, rules, and regulations; fire alarm system monitored 24 hours, off-site, for emergency responder notification; addressable control panel located as close to the front door as practicable; Knox box system with box mounted in front of building in vicinity of front door; Maine State Fire Marshall to review a copy of construction permit to the Fire Chief and that, if the property will be sprinkled, then he needs to be contacted for sprinkler connection location and type. He added that the Fire Chief reserved the right to add additional comments during the building permit process. Mr. Beckert said that the Board also received a memo from the DPW Director that said the applicant will comply with the Town's Stormwater Management Program and comply with the Town's MS4 permitting criteria for inspection and compliance; the sewer allocation will be made; that all driveway permits shall comply with Maine DOT criteria.

Mr. Bouchard asked what the plan was for snow storage for Cumberland Farms.

Mr. Leidner said that there was significant landscaped/open area along both frontages to store snow on-site. He added that a note on the plan says that, if snow storage creates a public safety concern or blocks an accessible route then, at that point, Cumberland Farms would haul the snow off-site, which was pretty standard practice for this company.

Mr. Bouchard asked what the upgrades were for the Beech Road entrance.

Mr. Leidner said that Maine DOT asked them to pave the entrance; that the current width will be maintained; that the curbing will be replaced to define it; that it will receive a center stripe, a new stop bar, and a new stop sign.

Mr. Whalen asked, regarding the potential overflow parking, if there were any easement issues that needed to be created between that condominium plan or does that lot have, by the very deed for this condominium presence within that development, a right to pass and re-pass the parking lot on the limited common area described.

Ms. Guay said that the condominium declaration is just about done and, yes, there are easements that grant them the right to pass (egress and ingress) over those driveways and to use that as overflow, if needed; to even go in and maintain that if it is not maintained by the property owner.

Mr. Duncan moved, second by Mr. Lentz, that PB14-13 be accepted, as presented, with the following conditions of approval:

1. The property may be developed and used only in accordance with the plans, documents, material submitted, and representations of the applicant made to the Planning Board. All elements and features of the use as presented to the Planning Board are conditions of approval and no changes in any of those elements or features are permitted unless such changes are first submitted to and approved by the Eliot Planning Board.

2. Copies of approvals from Maine Department of Environmental Protection shall be provided to the CEO before construction on this property may begin.
3. The permit is approved on the basis of information provided by the applicant in the record regarding ownership of the property and boundary location. The applicant has the burden of ensuring that they have the legal right to use the property and that they are measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership, or similar title issues. The permit holder would be well-advised to resolve any such title problems before expending money in reliance on this permit.
4. The applicant authorizes inspection of premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance.
5. Copy of approved traffic movement permit from the Maine Department of Transportation shall be provided, if applicable, to the CEO before construction on this project may begin. If the Traffic Movement Permit is not applicable, a letter from Maine Department of Transportation Traffic Engineering stating so shall be provided to the CEO before construction.
6. Any applicable conditions of approval for the previous Planning Board application that developed this facility in the first place be retained, as they might be applicable.
7. The applicant will enter into a Stormwater Maintenance Agreement with the Town of Eliot with post-construction inspections on a yearly basis as part of the Stormwater Program.

VOTE

4-0

Chair concurs

Mr. Beckert explained the 30-day appeal period to the applicant.

B. PUBLIC HEARING – and continued review of a Shoreland Zoning application to increase the size of a non-conforming accessory building. Applicant is Andrew Pierson (mailing address: 134 Tidy Rd., Eliot, ME 03903). Property owner is the David & Edith Pierson Trust (mailing address: 134 Tidy Rd., Eliot, ME 03903). Property can be identified as Map 61/Lot 13 in the Suburban District and Limited Residential Shoreland District (PB14-21).

Mr. (Andrew) Pierson said that we have an existing, though dilapidated, boat house down on the border of Sturgeon Creek; that it is their desire to tear that down and replace it with a new structure somewhat farther back from the high tide line.

7:30 PM – Public Hearing was opened.

There was no one who wished to speak to, for, or against, this application.

7:31 PM – Public Hearing closed.

Mr. Duncan moved, second by Mr. Lentz, that PB14-21 be approved, as presented, with the following standard conditions of approval:

1. The property may be developed and used only in accordance with the plans, documents, material submitted, and representations of the applicant made to the Planning Board. All elements and features of the use as presented to the Planning Board are conditions of approval and no changes in any of those elements or features are permitted unless such changes are first submitted to and approved by the Eliot Planning Board.
2. The permit is approved on the basis of information provided by the applicant in the record regarding ownership of the property and boundary location. The applicant has the burden of ensuring that they have the legal right to use the property and that they are measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership, or similar title issues. The permit holder would be well-advised to resolve any such title problems before expending money in reliance on this permit.
3. The applicant authorizes inspection of premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance.

VOTE

4-0

Chair concurs

Mr. Beckert explained the 30-day appeal period to the applicant.

C. Application for Site Plan Review to construct a 9,100 sq. ft. retail building on Harold L. Dow Highway. Applicant is Zaremba Land Development, LLC (mailing address: 14600 Detroit Ave., Lakewood, OH 44107). Owners are Ray & Lena Grover (mailing address: PO Box 364, Eliot, ME 03903). Property can be identified as Map 29/Lot 5-1 and is located in the Commercial/Industrial District (PB14-19).

Mr. (Chris) Nadeau of Nobis Engineering, Inc. said that they were working on behalf of Zaremba Program Development, who are the preferred developers for Dollar General; that they are proposing a 9,100 sq. ft. single-story general merchandise retail store on Route 236 next to the Agway store. He added that they were before the PB on August 19th with a sketch plan and have since submitted a full application with engineered drawings and a Stormwater Management Report. He clarified that Dollar General was not a dollar store; that they sell name brands just like Walmart, for example, but in a smaller building. He said that it is a 3-acre parcel; that there are two access points – the Dollar General driveway, itself, and a right-of-way along the edge of the property to access the back lands; that the two driveways are separate. He added that the parcel now has two MDOT access permits and can provide that confirmation to the PB. He said that they are moving the existing access to the property to a more central location and will have a single access in and two exit lanes, one turning left and one turning right; that they are proposing 48 parking spaces; that the store hours of operation are typically 8AM – 10PM, depending on how business goes. He said that they receive one large delivery a week

(tractor-trailer) and have accommodated the turning movements for that; that they have smaller deliveries for common things on a daily basis, as needed. He added that because there is no sewer or water on the site, they will have a private septic system (application submitted) and either re-use the existing well or, if not adequate, they will drill a new bedrock well. Assessing stormwater run-off, he said that the site was already pretty much impervious (gravel) and, technically, they are reducing lot coverage down to 37%; that they are collecting stormwater in a few catch basins and then sending it into a detention area where the water will be retained, treated, and discharged to the wetland to the back of the property.

Mr. Duncan asked if the green shown on the plan was going to be lawn.

Mr. Nadeau said yes, that they were proposing to loam and seed it; that they will either remove the impervious material or top it with top soil to support grass. He discussed their landscape plan; that they typically sod and irrigate the front area, with several trees there. He added that they were proposing two signs – one free-standing sign (96 sq. ft. on 20-ft. pole) and a building sign (4 ft. by 26 ft.). He also discussed their lighting plan (3 double-head site lights and 2 single-head lights on 25-ft poles) and architectural plan (single-story steel building).

Mr. Lentz said that he had two different applications and was wondering which was the real application.

After some discussion, it was agreed that the original sketch plan submission would be the application and the plan submitted October 14, 2014 would be the supplement to the original plan.

Mr. Lentz discussed the warranty deed conveyed from the Grover's, which says the parcel contains 1.96 acres and all other documentation says it is 3 acres, which is the required minimum, and asked for clarification.

Ms. (Nancy) Shapleigh explained that Mr. Grover's father owned some land behind the pertinent lot and combined some of that property to make the 3 acres and there is a recent survey on that.

Mr. Whalen asked Mr. Nadeau to clarify the secondary egress.

Mr. Nadeau clarified that the Dollar General driveway will be separate and there is no shared access; that there is a driveway serving Dollar General and a separate driveway serving the back properties, with no connection between the two; that the separate driveway serving the back properties was an easement right-of-way (ROW) (will remain as is), which is on Dollar General property; that there was a single access to Dollar General. He added that grading would prevent access to that ROW access and added that they could add some sort of barrier.

Mr. Duncan asked if the 2 propane tanks shown on the plan were solely for heating.

Mr. Nadeau agreed they were just for heating purposes. He added that any hazardous material would be typical consumer products, such as bleach and cleaning products.

The PB scheduled a Site Walk for November 2, 2014 at 3 PM and a Public Hearing on November 4, 2014.

ITEM 7 – DISCUSS STATUS OF OUTSTANDING ACTION ITEMS

There was no discussion.

ITEM 8 – CORRESPONDENCE AND PLANNING ASSISTANT, AS NEEDED

Mr. Beckert discussed a memo from the Charter Commission regarding the merits of a PB appointed by the BOS versus elected by Eliot voters; that the Charter Commission was asking for comments to be provided, if any.

Mr. Beckert also raised the topic of video-streaming PB meetings.

Mr. Pomerleau asked to introduce a topic before the PB adjourned.

The PB agreed.

Mr. Pomerleau discussed the referendum on the upcoming Growth Ordinance amendment; that at first he supported it and, after much discussion and study of that, he felt that adding the words 'or more' to this ordinance would give the PB the power to set an unlimited number of permits. He added that what bothered him more is that the PB could set that number and it would not be subject to a public vote because the only time you have to go to a public vote is when you change the ordinance. He said that there is a public perception in Town that this ordinance was initiated by this PB and that this PB supports that language; that he didn't believe that was the intent of this PB and that if they had been video-streaming he could have seen the pertinent meeting. He added that it would help the public if they knew the stand of the PB is on that language and its' affected impact as far as the PB is concerned.

Mr. Beckert said that the PB did not initiate this.

Mr. Pomerleau agreed; that it was initiated by the BOS, put through to this PB, and then voted to pass through to the public for a vote.

Mr. Beckert said that it was not unanimous but it was decided to add the wording in to give the Town the flexibility to adjust the numbers so that we don't have 17 people on the waiting list. He added that he didn't think it was ever the intention of this PB, or anyone sitting on it, to skyrocket the number of growth permits, saying that we survived with 48 for years and this PB had no reason to change that. He said that we've fallen on the State changing their requirement that, if you have a growth ordinance, then you have to do it this way. He said that, regarding the initial discussion on this State change, the Town

went with 105% and left the words 'or more' out because it was stricter than the State but that there was no mechanism to prevent the downward spiral caused by the economy.

Mr. Lentz said that this was presented to the PB as a short-term fix to stop this downward spiral.

Mr. Murphy said that he examined PB minutes all the way back to September 2006 and the early discussion by the PB was a concern with the 10% of affordable housing; that there was no discussion about the possible effects of the 10-year averaging in the minutes of the PB meetings. He added that it wasn't until 2010 or 2011 that Chris Pollard brought up that the trend was going down; that the recession was in there and there was no demand until last year and there was a real problem.

Mr. Pomerleau said that he believed it has been a misinterpretation of the State statute as to what it requires for language in the local ordinance; that he thought the State statute was giving the flexibility of setting any percentage it needs to by saying 'or more'; that it's giving the PB a floor but saying you can use a higher percentage. He added that he didn't believe the State language was suggesting that this local ordinance have the words 'or more' following that percentage because that pushes it wide open to an unknown number.

Mr. Duncan agreed.

Mr. Pomerleau reiterated the problem that none of that was subject to a public vote once you set that number because you're not changing the language of the ordinance.

Mr. Duncan said that the State statute does not say we have to say 'or more'; that it is asking for a number, which is 105% or greater, but it is looking to us to establish a number.

Mr. Pomerleau said that he is not necessarily suggesting that the State is telling you it needs to be a percentage because he did research of other ordinances and saw a whole lot that had a number, which he presumed was a calculation of the 105%, but none of them stated a percentage; that in no instance did he see language that said 'or more'. He added that he thought the guidelines from the State is saying you take the 105%, you do the calculation and, then, you can set that number as long as it doesn't go below 'this'. He said that that is subject to review every third year or sooner, if necessary.

Mr. Duncan clarified that Mr. Pomerleau was saying was that we could set 48 permits.

Mr. Pomerleau said that it appears that way. He added that, in the worst case, what ought to be done is that some number be determined after some reasonable examination is done and that it be a flat percentage without the words 'or more'. He said that at least that gives you a cap, it can go no higher; that, if you try to change that limit and go higher, that now, by ordinance, has to go to a public vote. He added that he thought the words 'or more' are flawed and need to come out. He went back to his point that this is being

presented as something this PB supports because you all voted for it but he knew that that wasn't necessarily how all the members felt.

Mr. Beckert said that they voted to move it forward.

Mr. Murphy said that the idea behind that part of the statute brought over into our ordinance is that the Town, every three years at least, and can be more frequent, review the ability of the Town to support, with its' infrastructure and services (such as fire, police and schools) an amount of building that is requested. He added that that has not been looked at sufficiently in Eliot and there should be a process.

Mr. Lentz said that the formula is a tool but agreed there is no process to substantiate what the number really is.

Mr. Murphy discussed ideas for what might go into the process, such as getting department input and paying attention to the state of the economy; that things like these should be weighed, and weighed out in the open, to find the best possible. He added that it was quite interesting looking at the total picture from 34 years; that in those 34 years, we lived through 3 recessions at 48 and the average over those 34 years was 29 permits per year. He also added that it spiked to 48 only 7 times over those 34 years. He said that you could expect something like that would be reasonable for the future and there will be recessions; that right now, if nothing is done and this ordinance doesn't pass, the number of growth permits allowed drops to 18 then 16 for the following four years.

Mr. Pomerleau discussed his research on population growth and impact on taxes; that it shows that, in higher populations with higher density areas (where services are typically more at a saturation point) population growth tends to increase taxes to support it; that it is much less a tendency in small communities, like Eliot, because there is usually a lot more room for growth with the available services, so it is less likely to directly impact taxes. He agreed with Mr. Murphy that this was something that needs thorough examination and there are mechanisms for this through the State planning office but that, right now, this amendment gives the PB the capacity to set an unlimited number of permits and there are a lot of people not comfortable with that.

Mr. Lentz said that that was brought up in the public hearing; that it is documented in the minutes – how do you control it.

Mr. Pomerleau reiterated that he thought, as others, that this was something that would take care of the 17 permits and not be harmful but, after a ton of research and discussion, he has changed his mind; that this is problematic language.

Mr. Duncan said that he thought that what was also problematic was that the language on the ballot was ambiguous and open-ended.

There was discussion around the language of the warrant and the lack of clarity.

Mr. Beckert discussed his frustration with the State's impact to this local ordinance that had worked well over the years.

Mr. Pomerleau asked, if this is passed in November, what is its' effective date and how will it impact 2015 and, then, if there were a sudden realization that this was problematic language and we wanted to change it in June, what impact would that have on 2015 and what effective date does that take.

Mr. Beckert asked the PB members if they had any problem with the original growth ordinance that had 48 growth permits allowed per year, 24 for subdivisions and 24 for private residences. After some discussion among the PB, Mr. Beckert said that his point is that, if nobody had a problem with 48, and he thinks that has been the discussion to this point, to try to get back to some semblance of order so we could bring it back to get it to cover 48 and leave it alone; that it worked for 34 years.

Mr. Murphy said that, in recent months, he has said that Eliot doesn't realize that Eliot isn't making the decision about what building takes place in the year; that it's the financial world outside affecting us in ways we can't control and can't really predict; then, suddenly, here's Eliot with a huge drop and so that, even when there are 20 or 15 or 18; people can't build; that they can't get money to build because banks won't give it to them.

Ms. Pelletier said that growth permits always go by calendar year; that even though the ordinance would go into effect the day it was enacted, the number of growth permits is on a calendar year so we are set for 2014; that in 2015, if we do nothing, that guarantees we will only have 18.

Mr. Pomerleau agreed. He asked what would happen if there was an attempt to correct the language with another vote and a change in June.

Ms. Pelletier said that that was the intention; that that would apply in 2016. She added that she thought that the PB understood, and said publicly, that they are taking the input of the public; that obviously they are not going to go rogue and propose something so wild that it would never get voted in.

Mr. Pomerleau said that he thought that the more important point was that, legally, they (PB) could and, then, there is the question of the unknown and unintended consequences of that language; that you are not the only people involved but there are developers, attorneys and a host of other areas that could be challenging things. He asked why you would want a statute out there that gives you the capacity to set an unlimited number of permits when you can avoid it.

Ms. Pelletier said that she thought because this was the quickest solution to fix what was being sort of an emergency situation; that people are screaming that they can't build and we knew we couldn't overhaul the whole ordinance by November.

Mr. Pomerleau said that there were some who did not agree with this. He added that there are two sides to the argument and they both have good arguments; that there are some people quite content that 16 is not a bad number and, on the other hand, there are a lot of people who think it ought to be back up to 48. He added that nobody in this room has that answer because we've never done an analysis to determine the ideal number.

Mr. Beckert said that we should have left it alone; that we should have told the State to repeal the law; that the State preaches Home Rule but doesn't allow us to use it.

Mr. Pomerleau did not think there was a problem with the law, if it was used as intended, and that was to be reviewed every three years and adjusted; that it just languished for ten years because there was no problem.

Mr. Beckert said that the State law has 'or more' in it.

Mr. Duncan said that it doesn't tell us to put 'or more' in it; that it tells us to put 'a' number, which is 105 'or more'; that the State statute says to pick a number that is 105 'or more'; it doesn't say to put 'or more' into the local ordinance.

Mr. Murphy said that there is a following paragraph that says that every three years, or more frequently, the town masters, including the PB, get together to ask if this is working and, if not, to take whatever steps are needed to correct the situation to make it consistent for whatever the Town can support.

Mr. Duncan didn't disagree but that he didn't think this quick fix was the right answer because it does allow a gazillion percent.

ITEM 9 – SET AGENDA AND DATE FOR NEXT MEETING

The next regular Planning Board Meeting is scheduled for November 4, 2014 at 7PM.

ITEM 10 – ADJOURN


Steve Beckert, Chairman
Date approved: 11-4-14

Respectfully submitted,


Ellen Lemire, Recording Secretary