

Town Of Eliot - Board Of Appeals Meeting

July 21, 2016

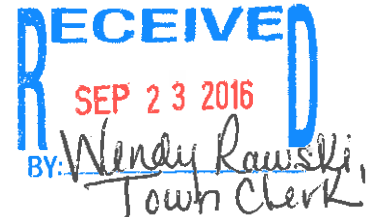
Roll Call

Present: Chairman William Hamilton, Secretary Ellen Lemire, Peter Billipp, Jeffrey Cutting, Associate Member John Marshall, Associate Member Charles Rankie

Absent: Edward Cieleuszko

Others Present: Heather Ross, Code Enforcement Officer

Call to Order



Chairman Hamilton noted that it is after 7:00PM and the regular scheduled meeting of the BOA is open. Roll call and everyone is here except Mr. Cieleuszko and Chairman Hamilton noted that at the last meeting, which was in February, he may well not be here. He said he doesn't believe there has been a resignation and Ms. Lemire confirmed he has not resigned and Chairman Hamilton noted he is just not here tonight. Mr. Marshall noted this was the time of year to not be here.

Chairman Hamilton stated we do actually have minutes from the last meeting of February 18, 2016, despite what the agenda said and that he believed they were in the box for some; that that is where he got his. Other board members stated that they got the By-Laws. Chairman Hamilton stated that it is a two (2) pager and noted he will read them and then the Board can decide. Mr. Marshall asked if it was a hearing or if there was just a meeting. Chairman Hamilton stated that it was just a meeting in February to approve minutes and Mr. Cutting noted that it was out earlier (the minutes from the February meeting). Chairman Hamilton stated that, if okay, he will just read it; it is pretty brief and if there are any changes the Board can make those.

Chairman Hamilton proceeded to read the Minutes from the February 18, 2016 meeting of the Board Of Appeals.

Ms. Lemire then stated that the absences needed to be recorded that they were excused at the beginning of roll call. She noted that, in parenthesis, it should say "excused" for Mr. Rankie and Mr. Cutting. She noted it is a legal requirement. Mr. Rankie then asked who it shows as excused. Chairman Hamilton answered Mr. Rankie and Mr. Cutting.

Chairman Hamilton confirmed that for tonight, for the record tonight, Mr. Cieleuszko is not excused. Mr. Billipp then asked does that mean, to be excused, he would have needed to notify the Chairman he would not be attending? Chairman Hamilton answered yes, along with Ms. Lemire. Chairman Hamilton stated if you miss three (3) meetings in a row, you could be subject to possible removal by the Board of Selectmen.

Mr. Rankie state that there has been discussion Mr. Billipp, if I could Mr. Chairman, discussion of what constitutes being excused and what doesn't. However, without notifying the Chairman, unless you had to go to the hospital or something, that one is a no brainer, there is no discussion on that. Chairman Hamilton confirmed he will make a note of it and Mr. Cieleuszko is not excused for tonight's meeting. Chairman Hamilton asked if there was any other discussion on the draft minutes of February 18, 2016.

Approval of Minutes

Chairman Hamilton asked for a motion. Mr. Marshall moved, second by Ms. Lemire, to accept the minutes of February 18, 2016, as amended.

Discussion

Ms. Lemire said she would like to make a comment and noted that even though the Chairman has read these they do not need to be included into the minutes.

Discussion Ended

Vote

5-1 (Mr. Rankie abstained because he was not present at the meeting of July 21st)

Chairman Hamilton stated that, as of this evening, or as of the first meeting after July, he believed, because of the new Town Charter, the Chairman of both the Planning Board and the Board of Appeals can, or should, vote actually. The Chairman doesn't now vote in case of a tie.

Mr. Rankie noted it should say "shall vote" and Ms. Lemire said "shall vote," as well. The Chairman confirmed "shall vote."

Ms. Lemire stated that she would be doing the role call for the Board of Selectman and that a motion is made and seconded, discussion, if there is any, and then a roll call vote is taken where each person is named and then that person responds. Ms. Lemire stated if they are voting against the motion they have to state the reason for that. Chairman Hamilton asked if that is part of the new language in the charter. Mr. Rankie answered it is not part of the charter and Ms. Lemire answered yes it is. Chairman Hamilton confirmed he didn't recall seeing it.

Mr. Rankie noted that, as far as the voting is concerned, the Charter Commission, as well as the Harbor Commission, but the Charter Commission agreed that all members would vote. I guess we pioneered it and it was really simple. We just all basically voted and then the secretary recorded what the vote was. In our case here it would simply be that the Chairman notes that so and so. Ms. Lemire looked through paperwork and noted she didn't know where it was. Chairman Hamilton stated that, for the recording, the vote for tonight was five in favor and one abstention. Ms. Lemire answered yes.

Chairman Hamilton stated that the next order of business is the election of officers which is what we need to do after the first regular meeting after town meeting, which was in July; he corrected himself with June after Mr. Rankie noted June.

Motion

Mr. Rankie moved, seconded by Mr. Cutting to nominate the current slate of officers as being Chairman Hamilton, Vice Chairman Billipp, and Secretary Lemire as the slate of officers.

Discussion

Mr. Rankie stated that he did have some discussion. He asked that someone, and he would if necessary, read the the description of the Chairperson's responsibilities so that the nominee and the Vice Chair acknowledge that they are capable and willing to carry out that responsibility.

Chairman Hamilton confirmed that is in the by-laws, which we are going to review a little bit later. Mr. Rankie stated it is in more detail than he thought and it would be healthy because he said he is not capable of chairing those meeting with those requirements. He says he doesn't know enough yet and it would be tough. Chairman Hamilton asks if

there is consensus that that would be a good idea. Mr. Billipp said yes. Chairman Hamilton stated that after the election, if he is still Chairman, they would go over the by-laws in detail because they never really have done that because it is sort of a requirement.

Mr. Rankie said he actually went through the By-Laws and was grateful to have them and since this was brought up, proposed that the By-Laws be modified and changed which they have the ability to do, and in the end, there are a few minor changes that would bring them in accordance with the Charter.

Chairman Hamilton confirmed that the Board is able to amend By-Laws at any time under a vote. Mr. Rankie stated it is scary but also unique. Chairman Hamilton stated, that, certainly is a topic of discussion when we get to that but, as of what you suggested before, let me read the Officers and Duties (Section III.) according to our current By-Laws. Chairman Hamilton read the current Officers and Duties, word for word, from the copies provided at the meeting. Chairman Hamilton stated a motion has been made and he believed seconded for a nomination of the current slate of officers and asked if there was any further discussion on that. Ms. Lemire said yes, it had been seconded.

Discussion Ended

Chairman Hamilton said all of us in favor, and all Board members present confirmed, all as opposed and motion carried. Chairman Hamilton noted it was a unanimous decision except for the Chair who abstained.

Vote

5-1 (Chair abstained)

Discussion

Mr. Rankie stated to Chairman Hamilton did you say yes and tell us why you abstained. Ms. Lemire asked why he abstained and Chairman Hamilton answered "you know for obvious reasons."

Discussion Ended

Chairman Hamilton stated they would continue to go over the By-Laws of the Elliot Board of Appeals and said to the Board "I don't know how we want to do this. If you want me to read it, you know, I think it is probably worth reading and discussing at this point and, hopefully, can do this in a half hour or so."

Ms. Lemire asked for another copy and Ms. Ross stated she would get another copy; that it would take her just a minute. Ms. Lemire said thank you and Ms. Ross replied you are welcome. Chairman Hamilton said they will go over it, and if any questions or concerns, they can go over them.

Mr. Rankie stated it would have been quite helpful to have had this when he started out, and for the record, he did go to whatever the best class and they have no more at MMA. Chairman Hamilton confirmed, and that it is a rather powerful document and this is steering us and a very good document. He stated that he can see Bruce Trott here in the document. Ms. Lemire confirmed yes "he is all over that one." Mr. Rankie said it makes sense and it just makes things clearer.

Ms. Lemire answered that the Board took a lot of time and deliberating quite extensively on this set of By-Laws. Mr. Marshall confirmed if Bruce had anything to do with it was gone over with a fine tooth comb and Ms. Lemire said absolutely it did and Mr. Rankie said it makes sense. Mr. Rankie asked Chairman Hamilton if out of curiosity as a procedure for hearings if he has a copy of the By-Laws on his computer. Chairman Hamilton answers yes he has and Ms. Lemire said it is a nice little cheat sheet. Mr. Rankie stated he is "right on and the hearing for the waivers

that he was right on message and was able to record better than a couple of lawyers, you are already elected I'm not blowing smoke at you, you were right on."

Once the copy of By-Laws Of The Eliot Board Of Appeals is brought in, Chairman Hamilton started to read through the By-Laws word for word starting with 1. General Provisions. Mr. Rankie proposed that section A. be reworded to say: A. Business of the Board shall be conducted in accord with Maine Statutes, Town Charter, Town Ordinances, Standards of Conduct and Robert's Rules of Order.

Mr. Billipp asked to make a comment and stated maybe we could read through it for everybody's benefit and then come back at a future time with corrections. Mr. Marshall noted he would agree with that and he didn't think any correction should be made today. Ms. Lemire agreed along with Chairman Hamilton and said let's just read it through. Ms. Lemire did confirm that the Town Charter needed to be added to it and Chairman Hamilton confirmed yes that it wasn't existing.

Mr. Rankie noted that he did get this in his inbox and the little things he has are pretty much no brainers. Chairman Hamilton stated they would go over it first and then have a little discussion at the end and that they can certainly have discussions as they are going over it too and that is a good point to add the Town Charter and he will make a note of it to amend at the end and we can certainly call for a vote to do that.

1. General Provisions:

Section D. Chairman Hamilton noted he would make sure to bring a copy of the "Ordinance Governing Boards, Commissions and Committees for the next meeting as there is a little document that does exist.

Chairman Hamilton confirmed they went over the III. Officers And Duties just a minute ago. Ms. Lemire said she had an issue with the Secretary doing the stenographer's duties. Chairman Hamilton said okay. In the past, she stated that she had recorded the meeting if the recorder couldn't be there and then given the recorder to the recording secretary.

Mr. Marshall confirmed it is a lot to ask of the Secretary and that the Secretary is not going to be able to participate if they are busy taking notes and Ms. Lemire said "that's right, you can't do both." Chairman Hamilton noted maybe a question mark there and they would come back to it.

IV. Powers And Limitations

Section B questioned:

Chairman Hamilton questioned if it makes sense and Mr. Rankie agreed that it is a mouthful. Chairman Hamilton repeated section B. Ms. Lemire said nonconformity is that you don't want to grant a variance for one particular person to be nonconforming to the rest of the neighborhood. Mr. Rankie stated that part is understandable and repeated the Section.

Ms. Ross said that it would be like a commercial expansion in a residential zone and Mr. Marshall asked if it would have to be a waiver as opposed to a variance. Ms. Ross said that she didn't think it would be allowed under the waiver requirements either, that it is just strictly saying they are prohibited. Mr. Marshall said that it specifically says variance and that would mean that a waiver would be in order. Ms. Ross said there are certain items you can get a waiver for, like if you have a nonconforming lot, you can get a waiver for setbacks. As Code Enforcement Officer she can authorize a waiver for 25%, 50% if authorized by the Board.

Section C: Ms. Lemire said she has a comment and that the last paragraph is a really good paragraph and asked if part of it could be incorporated into the application for an appeal because it really clarifies what a variance is. Ms.

Ross agreed as did Chairman Hamilton. Chairman Hamilton noted that there is a suggestion that it be included in the application for a variance.

Mr. Rankie said that if Ms. Ross agreed it is a done deal? Ms. Ross said she had already re-done the application at one point and that the Board looked at it and was going to get back to her on it and that was about 6 months ago.

Chairman Hamilton said that everybody had decided that there were some sections that needed more work and that Ms. Ross was going to come to the Board with a revised edition. Ms. Ross said she can do that. Chairman Hamilton stated that there was some confusion about some complexity of the various waivers, administrative appeals, and variances all being on the same application.

Ms. Ross asked if the Board preferred if they be broken back out leave them as they are and Chairman Hamilton answered that separate might be better and Ms. Lemire said waivers as opposed to variances. Chairman Hamilton said they agreed on that last time and it would be better to separate as opposed to one form it is just too complicated. Ms. Lemire asked about Administrative appeals and Chairman Hamilton confirmed three separate ones, Administrative, Variance and Waiver. Ms. Lemire stated three (3) separate ones. Ms. Ross confirmed that is the way it is now so she can re-do them and send back out to the Board.

Chairman Hamilton asked if it was consensus of the board if they included the paragraph explaining what a variance is in the application (at the end of Section C that Ms. Lemire called out). All Board members were in consensus and Mr. Rankie said it would help the Code Officer explain any issues if right there in print and Ms. Lemire said yes, "this is right out of the By-Laws of the Board Of Appeals."

IV. Powers And Limitations

Section E: Discussion around what section E. meant but no changes noted. Mr Rankie asked what an example would be of this and Ms. Lemire answered having a police officer at the meeting and Chairman Hamilton answered no it is specific to variance. Ms. Ross commented that maybe if you were granting a variance to a business or something maybe or a sign that says no parking here. Mr. Billipp said hours of operation and Mr. Marshall noted it was to the conditions they put on there and hopefully it is common sense.

V. Meetings

Section C: Chairman Hamilton noted that the annual meeting is no longer in March and needs to be changed to June. Mr. Marshall asked if when there is a meeting like they are having right now if it is advertised the same as when hearing a case and Chairman Hamilton answered no it is not in the paper and it is on the bulletin board out front and that they only need to advertise public hearings in the paper.

Section H: At the end of Section H. Chairman Hamilton clarified that in other words the clock won't start ticking if we have to reschedule. Ms. Lemire noted that was because they had a meeting that went until 1:00AM.

Mr. Marshall asked if they hear some appeals isn't there a clock already ticking that the applicant's attendance at that meeting should be considered. Ms. Lemire said no, not until you actually are dealing with the actual application. Chairman Hamilton stated that if they essentially have the consent to reschedule to the next meeting and Mr. Marshall chimed in no but an administrative appeal they have so many days to just file it and Chairman answered correct. Mr. Marshall said okay not to hear it. Chairman Hamilton also noted that the Board has sixty (60) days to hear it from the time it is scheduled. Mr. Marshall said he didn't want to see an applicant put in jeopardy because they decided it was too stinking late to hear their thing and the clock is ticking and they are losing their ground.

Chairman Hamilton stated that if it is 10:00pm and there is another appeal scheduled that he would make a statement to the effect that if the parties agree then they would reschedule, if they want to go, then he guessed they would have to go on.

Mr. Billipp asked so there has to be consent. Chairman Hamilton confirmed, yes, there has to be consent. Mr. Rankie noted that they could change it but if you think of the big picture the applicant is paying a lot of money to have professionals for the meeting and they would have to redo that the next time.

Chairman Hamilton stated that it seems fair to keep it the way it is. Mr. Rankie said he agreed with that and would think that it would be rare that they would concede to moving it on. "If you have paid an attorney and engineer to stand up here, wow, that is a big expense."

Ms. Lemire said the biggest issue with going after 10:00PM is tough because we are getting tired. Mr. Cutting noted that they made this change after the 2:00AM meeting. Ms. Lemire said that meeting was horrendous.

Chairman Hamilton said that if they are in the middle of a public hearing obviously they are not going to not continue but if there is another public hearing scheduled that is when this comes in. Mr. Rankie asked if you would interrupt the existing hearing if you could see there wasn't any end and invited the other one to change or just keeping going and wait until it ends. Chairman Hamilton said that they would have to wait until that one hearing ends and then determine whether or not the second hearing.

Mr. Marshall said that is an interesting thought, if they are still hot and heavy into something at 10:00PM he thought it would be worthy to stop and have that discussion for five minutes and give them the opportunity to stop paying their engineers for perhaps nothing. Ms. Lemir noted attorneys. Chairman Hamilton said that is not what this sentence is.

Mr. Rankie stated that it doesn't tell us when. Chairman Hamilton stated that it says if a public hearing has not been open by 10:00PM. Mr. Rankie said if it is 10:00PM you know it is not going to be opened and he brought it up because it is an opportunity for the Board to talk about it and think about it to see if that is something they might want to do.

Mr. Marshall said that it would at least be polite to give someone, the next appellant at 10:00PM, the opportunity to say if they would rather come back. Mr. Rankie stated that he thought they would have to ask the current appellant if they wouldn't mind if we interrupted them briefly to do that because it would potentially be a problem.

Mr. Cutting stated that most of the towns he does business in, they have a clause like that, and most of the attorneys know right up front that if they don't get heard by 10:00PM they are not getting heard that night. It is pretty much the rule in a lot of towns. Mr. Marshall said that would be an interesting way to put it, that the Board will not look at a new case after 10:00PM. Mr. Rankie said you could but you could have a slight case and we could all be done with instead of a special meeting.

Chairman Hamilton stated that they would not have to have a special meeting if they have the next regularly scheduled meeting, so it's been thought out definitely and if there is some thought about changing that language he could mark it and come back to it. Mr. Rankie said he did think the discussion is healthy and that the Chairman can use his judgement as we are going so that we have the discussion. Chairman Hamilton noted that it could be a side note for himself after 10:00PM. Mr. Marshall said everybody's ability to do business after 10:00PM is waning.

VII. Appeal Procedure:

Section B: Ms. Ross said "may I interrupt" and Chairman Hamilton said "yes," and Ms. Ross stated that it is not always the granting or denial of the permit but sometimes the decision that is made also, so she didn't know if the

Board wanted to address that here too. Say if somebody wants to split their lot and they are looking for a decision in writing, and she writes them a notice of decision saying they can't because it doesn't meet the criteria of this ordinance, that that is appealable also. Ms. Lemir confirmed they have heard appeals similar to that. Chairman Hamilton asked where that would arrive and Ms. Lemir noted a permit or decision, that is one word?, granting or denial of a permit or decision. Chairman Hamilton asked if decision by Ms. Ross and Ms. Lemire said right. Chairman Hamilton noted that is something to think about.

VIII. Decisions:

Ms. Ross asked who is responsible for recording it at the registry. Ms. Lemire and Chairman Hamilton confirmed the applicant is Chairman Hamilton stated a copy needs to go to the Code Enforcement Officer. Ms. Ross noted that something will be added to that effect in the application.

Mr. Marshall stated that that needed to be stressed to them too and that lately the Board has been doing a very good job of that but that, but boy that it is an oversight that is very costly. Ms. Lemire said to stress that to the applicant and Mr. Marshall said yes, absolutely. Chairman Hamilton said the Board has done that and Mr. Marshall said the Board has done that well lately.

VIII. Reconsiderations:

Ms. Ross asked if she could interrupt again and stated that she believed there was State Law on this, and she is not sure that it correlates the same so she will provide the Board with a copy of it.

Mr. Marshall stated that it seemed that on a reconsideration that someone asking for the reconsideration at least legislatively would have to previously have voted on the prevailing side, and this doesn't seem to mention anything to that.

Chairman noted that that was a good question and that this should be another part of this he thinks because it is basically saying that the applicant can ask for reconsideration, and it may well also be that one of the Board members may decide that they would like to reconsider as well.

Mr. Marshall said he can see the applicant asking for reconsideration but as far as the Board that he believed to be consistent with State Law; that the person asking for the reconsideration would have to have voted on the prevailing side.

Chairman Hamilton stated that he believed it was part of Robert's Rules and that is one of the provisions that the Board operates under; that he thinks it is covered under the proceedings of the meeting but whether the Board wanted to re-emphasized in this section or not.

Mr. Marshall noted reconsiderations could get out of hand if anybody can willy-nilly. Chairman Hamilton said that it said the Board will determine whether they will allow a reconsideration. Ms. Lemire said the Board would reconsider and make a determination. Chairman Hamilton noted only if any of those (three) 3 are legitimate.

X. Appeals to Superior Court

Section A: Chairman Hamilton stated that there are plenty of specific rules and regulations that would allow someone to appeal a decision. Someone off the street can't just say, "Well I don't think that is a good idea. I am going to appeal that to the Superior Court." That will not happen.

Mr. Marshall said one would have to have standing. Mr. Rankie stated that really that it is not applicable to the Board's By-Laws but it is handy to have as a guideline for them. Chairman Hamilton stated that within forty-five (45) days shall mean from the time the decision is rendered so that is actually the day as opposed to the day after.

XI. Amendments:

Section B: Ms. Lemire asked if B should be under severability and do we need that at this level, because that really is what that is, it is not an amendment it is a legal protection. Chairman Hamilton repeated back should that be a separate section within itself.

Mr. Rankie said he had a few things that he thinks are real apparent but being respectful of what Mr. Billipp said and if Mr. Marshall did as well, Mr. Rankie would recommend that they discuss these. If there is a consensus from what he has and what others have seem pretty good, that they ask the Secretary to redline the changes and bring it back to the Board for another meeting rather than making the decision now. The Chairman agreed.

Mr. Rankie stated that it would be respectful if Mr. Billipp asked, as well, if he still felt that way and Mr. Billipps commented wanting to mull it over. Mr. Marshall agreed that it is a good policy to never make changes after looking at it the first time. Mr. Rankie said a lot of them are simple but the English majors need to fix a couple little things. Mr. Billipp said that they should all go through it and address it at the next meeting for final revision and Chairman approval. Mr. Rankie noted that if the Secretary could do that they could get the redline copy to the Board's emails or inbox they could have the redlined copy in front of them to approve it for the next meeting.

Mr. Marshall said that would be appropriate and Mr. Billipp stated that if there are specific things you want to go through now we can pencil them in and Mr. Rankie noted some of them are pretty simple. Chairman Hamilton asked the Board if they wanted to go over tentative changes now and then get copies that are outlined and make decisions at the next meeting. Chairman asked for consensus and all agreed. Chairman Hamilton asked who would like to start.

Mr. Rankie noted that under 1. General Provisions: A. Town Charter, needs to be added after Maine Statutes. Under B. 6. Town Charter needs to be added. Ms. Ross said you wouldn't make decisions based on the Town Charter or questioned if this was just talking about what you are becoming familiar with because it is not a town ordinance. Mr. Rankie repeated part of it and stated said it is the responsibility of the Board to become familiar with the Town Charter and the Town Charter is a step ahead of the ordinance for Boards, Committees and Commissions.

Ms. Ross stated that she only said it because of the last sentence and lists the actual ordinances that the Board makes decisions under and Mr. Rankie said that is a good point and it fits in under E below.

Under E. 6. Eliot Town Charter needs to be added and, under 7. Copy of the Eliot Comprehensive Plan. Ms. Lemire noted the Code Book should be in this as well and that they always get a code book when they become members anyway. Chairman Hamilton noted that the Municipal Code of Ordinances to be added. Mr. Rankie asked what else is needed and Ms. Lemire answered the Code Book.

Mr. Rankie noted to Ms. Lemire that any place it says Board of Selectman it should say Select Board. Ms. Lemire agreed and Mr. Rankie said he didn't catch that before.

Mr. Rankie noted under III. Officers And Duties, B:

This is where English majors come in Mr. Marshall. Under Chairperson we are really reading in there what the responsibility of the Chairperson is and proceeds to read from the By-Laws. He stated that it should say that the Chairperson shall see that all records etc. because it just throws it in there where it says the Chairperson "shall."

Ms. Lemire said that's true every sentence begins with that. Mr. Rankie stated that she could probably do that when she edits it, and again, he is not an English major. At the end where it says reasonable times, and if you just made a comma there, you could make that one big sentence rather than another "shall."

Chairman Hamilton stated he was sort of lost and Ms. Lemire said the last two sentences are really just statements. Mr. Rankie agreed and said all the rest of it is the Chairperson "shall," so either he "shall" oversee all of that, or they don't belong here, and said this is the only one that is messy Mr. Marshall.

Ms. Lemire said something like this should be in here because your responsibility is to make sure that all the records are public. Mr. Rankie stated that is why he thinks it should say "shall" because he needs to oversee the Secretary as well as to make sure that is done, as well, so it should say "shall." Ms. Lemire stated that when she was the recording secretary for the BOA, she did the Notice of Decision and then Bruce Trott reviewed, along with all of the certifications as well as finding all the abutters and creating the files, all of those things.

Chairman Hamilton confirmed Linda had been doing all of that and then gives to the Chairman and then revisions are made. Mr. Marshall asked if the recording secretary finds all the abutters and Ms. Lemire confirmed she always did and that it was pretty easy. Mr. Marshall said he was kind of assuming that was the Town Clerk or somebody there. Ms. Lemire stated that now it is the Code Enforcement Officer and the Planning Assistant that do it now she thought, but that these are things that the Chairman needs to oversee.

Mr. Rankie asked Ms. Lemire to wordsmith it a bit and make it a "shall" and Ms. Lemire said she will try. Chairman Hamilton asked Mr. Rankie where that "shall" will be and Mr. Rankie stated where in the By-Laws to add it. Mr. Rankie then added that he thought if they went down to the second to the last line and put a comma where it says "reasonable times," and put in the word "that" it would do it. An English major would probably say it is a run on sentence and Ms. Lemire said she will have to think about it.

Ms. Lemire said she isn't even sure it should be in there, "that all records are public and they may be inspected at reasonable times," because that goes without saying. Mr. Rankie said he said he wouldn't say a word about that if they weren't doing this other stuff but while we are doing this other stuff we should fix that. Ms. Lemire said she is not even sure that should be in there, at least not there.

Chairman Hamilton said it is really not the duty of the Chairperson but of the Town. Mr. Rankie stated that it is the duty of the Chairperson to oversee these things to make sure that for a hearing everything is in order. Chairman Hamilton noted that the fact that records are public has nothing to do with the chairperson and is state law and not up to the Chairperson to enforce that. It is up to the Town to enforce that and anybody can call the Town if the public records are not being made available.

Mr. Marshall asked when someone does come in and ask for specific information like that who should they be coming to ask for it or who is responsible. Ms. Lemire answered Melissa, the administrative secretary, the Code Enforcement Officer, or the Planning Assistant.

Ms. Ross also added that the Town Clerk has a copy. Ms. Lemire stated yes the Town Clerk and those are the people because we are not even here, we are not even here, we are not available. Mr. Marshall said we are only a board on Thursday nights and Ms. Ross added the third Thursday. Mr. Rankie stated that he just threw that out there.

Mr. Rankie said on Page 4 noted that under V. Meetings: C. needed to be changed from March to June. Mr. Rankie stated that Section D. needed to be changed from forty-eight (48) hours to seventy-two (72) hours and read the section of the By-Law aloud.

Ms. Lemire said right and agreed that he is right about that. Chairman Hamilton said "good catch." Ms. Lemire brought up Section H. Mr. Rankie said he thought they were going to leave that to the Chairman. Chairman Hamilton said it is more of a procedural thing.

Mr. Marshall noted that it is something that could be brought up at the beginning of the meeting and telling the applicant at 10:00PM we are going to be doing this. Ms. Lemire stated the Chairman at least most of the time if not all the time he says something about it and Chairman Hamilton confirmed he usually said something at the beginning of the meeting from his cheat sheet that he used to go through the procedures.

Mr. Rankie stated the next one Ms. Lemire and Ms. Ross picked up on was on page 6, VII. Appeal Procedure: Section B. Ms. Lemire noted Heather said something about it, "or decision by the Code Enforcement Officer." Mr. Rankie said the only other thing he saw was Select Board things. Ms. Ross added you might want to put written decision. Ms. Lemire confirmed as the Board has heard appeals about verbal stuff, Ms. Lemire noted it was page 6.

Ms. Lemire has an issue with page 3 of the secretary's duties of being the recording secretary, III. Officers And Duties, section D. She stated she cannot perform her job as an appeals Board member if she had to keep the minutes of the meeting.

Mr. Marshall agreed with that as did Chairman Hamilton. Mr. Rankie stated that was true and that said that was part as to why he asked that they read the job descriptions. Mr. Rankie stated that he knows they have advertised for a new secretary and it's a pretty scary thing if we get a secretary that isn't even close, and I don't know who we have for a secretary, but that's not an easy job.

Ms. Lemire agreed "no, it's not." Mr. Rankie said "especially following Linda." He said especially following Linda, you know it's not an easy job so how do we make sure that this new secretary has the capabilities to do this?

Chairman Hamilton stated that the Town Manager did he believed interview and emailed him for suggestions as to what qualifications to ask for and he mentioned something about that she needed to know Microsoft Word because that is what the Board is all savvy as far as the outline and the way the minutes are written. He noted that it will be a training exercise.

Ms. Lemire noted that she didn't know anything when she first started. Chairman Hamilton noted that Linda didn't know Microsoft Word either. Mr. Lemire stated that she knew Word but had not been recording secretary before. Chairman Hamilton stated that Linda learned it because that was required because that is the only decent way to get it numbered.

Mr. Rankie stated that the requirement is verbatim and Ms. Lemire stated that it is verbatim and she didn't know if she knows that (the recording secretary). Ms. Ross added that they had talked to her about that and she had met with the Manager and the recording secretary, and they had that discussion.

Ms. Lemire asked if she knew that she is to send Ms. Lemire the copy of the minutes when she is done for her to review. Ms. Ross answered probably not yet, but she can let her know. Ms. Ross said that for now she is just doing the audio recording of this meeting so she can kind of test it out to see if it is something that is going to work for her.

Mr. Rankie asked if it would be prudent for Ms. Lemire to meet with the secretary. Ms. Ross said it may be if Ms. Lemire wanted to do that. Ms. Lemire said she is not really super concerned about it and you could give her my email because if she is going to continue she will need it, and is available for any questions she might have about procedure or process or anything like that.

Mr. Rankie asked if we know her name, is it fair to ask, and Ms. Ross answered her first name is Stef and couldn't remember her last name. She said she could look it up, but she resided here in town. Ms. Lemire said that is nice and Chairman Hamilton said yes as well.

Ms. Lemire said she didn't think any Board member on any board or committee or commission should take notes. Ms. Ross stated that her last name is Langlois and spelled it out and Ms. Lemire stated, "oh, okay."

Chairman Hamilton stated that they should try to address the issue of secretary's duties. Mr. Marshall said for lack of a secretary we would have to not hear somebody's appeal which would be more than improper and Ms. Lemire agreed.

Mr. Marshall asked if they should have a town employee or employee(s) who are determined as the recording secretary pro-tem on boards that any absence, that a known absence of the recording secretary, they get called into service. He stated that "yeah you pay them appropriately but whatever." He also stated that maybe they don't have to transcribe the notes but they have to be there to run the recorder at the very least. Ms. Lemire stated to record motions. Mr. Marshall said they should not ever, unless a disaster where they can't come up with a forum, ever say to applicants, "oh, I'm sorry our secretary is not here, we'll have to come back next month."

Ms. Lemire stated that she took a vacation last October and while she was gone, while they were having their stuff this year she was unable to attend a couple of meetings and Ms. Ross and Melissa filled in for her. They recorded things and recorded motions and Ms. Lemire stated she did the minutes when she got back.

Mr. Marshall stated that it was appropriate and as long as somebody records it and runs the machine. Chairman Hamilton suggested that how about if they do this, how about if they stated that if no stenographer is present, the Secretary shall record the meeting and return the information to the stenographer. How's that, or something to that effect. He stated to Ms. Lemire so that she would be able to record it, how does that work?

Mr. Rankie stated that either that or we make it known to the Town Manager that any event a secretary does not show up, it is the Board's expectation that the recorded meeting is written by someone on staff or whomever it is that he wants. Mr. Rankie stated that the point is Chairman Hamilton, if we have it on recording and we've got it on that (points to video), then we've got it and the Chairman is really good at keeping the rules, what our decision is. He stated that for Ms. Lemire to have to take it home to do it.

Chairman Hamilton stated that if they limit the secretary's duty to simply record the meeting and Ms. Lemire stated to record minutes and motions. Chairman Hamilton said no, record the meeting. Ms. Lemire then stated, no, to record the meeting and then write out the motions. She stated she did not have a problem with that.

Mr. Rankie stated maybe even something to follow through to make sure the recording is and Chairman Hamilton added given to the stenographer. Ms. Lemire agreed. Mr. Rankie said to Ms. Lemire she could probably wordsmith that.

Chairman Hamilton asked Ms. Lemire how she would want to phrase that, did she want to think about that? Ms. Lemire said she would give it some thought. Mr. Marshall stated that they have double recordings but there should be somebody responsible for running that thing (and points to the voice recorder). Chairman Hamilton agreed and said to Ms. Lemire that even if she wasn't there another secretary that they would have or some Board member should be able to learn how to run that thing.

Ms. Lemire said that just to record is pretty simple and she stated that when she was gone she just left her recorder with the Town. Chairman Hamilton stated that one of the big problems is that if there is an absent recording secretary, the Notice of Decision has to be out within seven (7) days. That is a requirement, that somehow if the

recording secretary is not available for a couple of weeks, they are in big trouble. She also said there has to be someone responsible for creating the Notice of Decision and getting that to the Chair who can then sign it.

Mr. Rankie stated that would fall under the Town Manager to do something and he was sure Mr. Ross would take that away if we need help. Ms. Ross stated, "what's that?" Ms. Lemire added that the Notice of Decision and the motion and the Findings of Fact are basically the decision.

Chairman Hamilton stated that they have to be in the applicant's hands within seven (7) days. Ms. Lemire said "yes they do." She then asked Ms. Ross what she said. Ms. Ross stated that she would take that information to the Manager, and that he is doing the Notices now anyway. Not just the Notices, but the Agenda's and everything too. She said he might, that they had discussed, that they would not want anything to ever be considered biased if she had prepared say an agenda or a Public Notice or something like that probably would state the decision, especially if it had to be an administrative appeal. She said that might be something that given that rare case that that might happen, that he would do that as an unbiased party. Ms. Lemire added "might happen" as well.

Chairman Hamilton stated the current procedure was that he writes the agenda and sends it to the Town Manager and then it is given to the Administrative Secretary and she posts it to the other Board members once it is approved. He stated they will have to work that out and he was just wondering if it should be in the language and stated that he guessed if no stenographer is present, the secretary shall record the meeting and make sure that the stenographer or some town official gets them (referring to the recorder).

Ms. Ross suggested that they say it simply enough that if no stenographer is present, the Secretary shall use an audio device to record the meeting. Ms. Lemire added record the meeting. Ms. Ross stated just leave it at that and let whatever happens in there that it would get taken care of.

Chairman Hamilton suggested it would be a matter of just notifying the Town Manager that they are without a stenographer and they have a recorded meeting and they need a draft for Notice of Decision. Ms. Lemire added that is the kicker that the Notice of Decision has to be done immediately. Chairman Hamilton stated that Linda was great about doing them. Ms. Lemire agreed and said she used to like doing them. The Board laughed.

Chairman Hamilton stated okay and Ms. Lemire said that she would be biased, no well she wouldn't but she is a Board member and really shouldn't be doing that. Chairman Hamilton said he knew, right, and that the motion still has to go through the Chair and that Ms. Lemire doesn't have final say. Ms. Lemire said, "no I don't." Chairman Hamilton stated that the Chair has final say on Notice of Decisions.

Chairman Hamilton stated alrighty, does that satisfy that, anything else, that they had pretty much gone through the suggested changes. All Board members flip through the By-Laws.

Ms. Lemire questioned, what about on Page 8, under VIII. Decisions:

C. Should the Charter be added to that?

Chairman Hamilton reviewed and said goals and policies, wouldn't it be considered a Charter and Ms. Lemire said "oh as specified in the Comprehensive Plan" from section C. Chairman Hamilton agreed that is true.

Mr. Rankie stated that a Charter is essentially procedural and behavior things and procedural of what the Select Board does, what the Town Manager does, what the Budget Committee does. Ms. Lemire asked what about the recall portion of it. Mr. Rankie answered that the recall is only for elective and Ms. Lemire repeated back "only elective, okay" and she confirmed that it wouldn't apply. Chairman Hamilton said it would not apply and said if the Board is reaching a decision he didn't think the Charter would have any bearing on the decision made. Mr. Rankie agreed, "no, not the decision."

Ms. Lemire said on page 9, the severability on the bottom, she is pretty sure that, referring to the Harbor Ordinance that she just saw? Ms. Ross answered that she didn't know and she didn't think she saw that one. Ms. Lemire stated that there are a lot of documents and that it is severability language and it's not an amendment.

Chairman Hamilton stated that they should take it to XI. Severability and turn it to that one statement. Ms. Lemire stated it would be an amendment. Ms. Lemire stated it would be XII. and said she would do that.

Chairman Hamilton asked the Board if anything else on the By-Laws. No one had anything else.

Chairman Hamilton said he doesn't have anything else but he believed there are some other meeting times for the MMA and another one coming up in November in Portland. Mr. Rankie asked if it was the basic course and Ms. Lemire and Chairman Hamilton confirmed yes it was. Chairman Hamilton stated that Mr. Cieleszko, at least in the last minutes, that he was going to go to one.

Chairman Hamilton said he was not exactly sure what to do about Mr. Cieleszko given what he said in the minutes of the last meeting that he is not going to be here. Ms. Lemire suggested that the Chairman call him and Chairman Hamilton said he would do that and find out what's going on.

Mr. Rankie stated that he did not have a copy of the Comprehensive Plan and he is confused if his book has any of these other ones but he knows he does not have the Comprehensive Plan, and that he believed the appropriate procedure is that the Chairman ask for copies.

Chairman Hamilton stated that there are copies of the Comprehensive Plan through the Administrative Secretary. Mr. Rankie stated okay so he will ask for that, and Chairman Hamilton stated anything else that he needed.

Mr. Billipp asked if they should replace the entire Code with this and Chairman Hamilton and Ms. Lemire answered yes and Mr. Billipp said okay. Chairman Hamilton said yes, to recycle the old one and Ms. Lemire said yes.

Chairman Hamilton stated that the biggest problem he had was that he had it all marked up with different things that he refers to and now he has to go back and do it again.

Mr. Rankie said to Mr. Billipp, for what it's worth, that he would keep that one because there are things that he can't find anywhere that he knows he has read before, and he doesn't even know why they changed. He wished he had still had them because he did what we was thinking about, recycling them.

Chairman Hamilton stated that he was going to keep his and go back and tab everything that he tabbed in his old one just to know where everything is. Ms. Lemire said yup, and agreed.

Chairman Hamilton asked the Board if there was anything else, and stated that he had nothing else tonight.

Ms. Lemire asked if there was an option of having a training session here instead of going to Portland? She said MMA, as she understands it, will come down and Ms. Ross stated "they will" and Ms. Lemire said Phil Saucier will come in.

Mr. Rankie stated MMA has nothing new and it's the same course we have all had. Chairman Hamilton agreed. Ms. Lemire stated she would actually prefer Phil to come in because he is more active and he has seen them in action and he might be able to give the Board some procedural guidance or information. Mr. Marshall asked "who's that?" Ms. Lemir answered "Phil Saucier, he is one of our attorneys."

Chairman Hamilton stated that it was a fairly expensive procedure to have him come and talk to us, and Mr. Rankie said yes, it is. Ms. Ross said that she thought it would be a good procedure though to have him come down and she thought he would be willing to do that if it were requested through the Chair. Ms. Lemire said he is actively involved in court cases at the State level, he knows things, he knows trends.

Chairman Hamilton asked the Board if they feel as though they are not performing in a way. Mr. Rankie said he didn't and he felt it would be a waste of the Town's money with one exception. He noted that they have debated, and he and Mr. Marshall particularly across the vast divide here, debating on certain things when we get to the area of MMA. Mr. Marshall stated that he thought it was a lobbying group and the guidelines that we have from the MMA, that in particular might be helpful for us. He also said that they may be able to get an MMA attorney to come down here as part of our fee to talk about that with us and would recommend being a frugal Yankee and try to do that first before we get this guy for \$500 an hour.

Chairman Hamilton said that he was a little adverse to having the Town attorney come and talk to us for the rates he is going to charge. Mr. Rankie said especially if we had something we were struggling with yeah but to give him a general open checkbook he couldn't see that. Chairman Hamilton agreed.

Ms. Ross said that it could be something that is done with a joint Planning Board, maybe Select Board, and maybe Board Of Appeals and Ms. Lemire agreed that was not a bad idea either.

Chairman Hamilton stated that he thought their issues were specific and Mr. Rankie chimed in to the one through fours and the financial hardship and he thinks they have a big difference. He said he had a big difference with some things, he can just say that and that he takes the case law that MMA has presented to us, he takes that as very pertinent and germane for what he is considering when he looks at this and he doesn't know that everyone feels the same, so that is an area he feels he could certainly listen to that again and that it might be helpful.

Chairman Hamilton stated he didn't realize the MMA would come down here. Mr. Rankie said he didn't know until we ask them. Ms. Ross stated she thought they would. Chairman Hamilton said really and he thinks again before they do that the Board should have some specific things that we should discuss because his sense is that the Board is doing a reasonably good job in addressing the applications that are in front of them. The Chairman doesn't feel that they have defaulted on anybody's application.

Ms. Lemire stated she would disagree on one particular case and that was the Libby case. Mr. Rankie said "the what" and Ms. Lemire answered the "Libby case." Ms. Lemire stated that she felt and she does believe that the Libby party should have been allowed to have as much speaking time and to be heard as the appellant because they were directly impacted and they did not.

Chairman Hamilton said oh you mean the developer and Ms. Lemire said yes. Chairman Hamilton stated he thought they gave them as much time as they wanted and Mr. Rankie chimed he did too. Chairman Hamilton said his understanding through the Planning Board and through everything else and through all of those public hearings they had more than the opportunity to present their case. Ms. Lemire added not at the appeal.

Chairman Hamilton continued to take up the time because the appellant is really the one that is sort of asking for the Board's decision, his sense was, and he felt pretty comfortable about making that decision. He said everybody had pretty much had a chance to say whatever they needed to say without having to be re-educated about what types of septic systems the developer was planning on putting in, that would be more reasonable and more efficient. Chairman Hamilton said he didn't really need to hear that discussion and he thought that was where it was going, which would have dominated the entire hearing.

Mr. Marshall said that was another whole situation irrelevant to any decision the Board makes as it is a state approved septic system, state approved septic system. Chairman Hamilton said that that was really all they needed to hear as he didn't care if they were more efficient, whether they were, that wasn't relevant. If that's what they were going to spend their time with, then he wasn't going to allow it.

Ms. Lemire said that in that particular question she really felt strongly they were not allowed the same amount of time. Chairman Hamilton asked if anyone else felt that way. Mr. Rankie said he did not and with the Libby case and certainly he said he with not point to be mean or anything but he questioned if Ms. Lemire had any conflict because of all the time she spent in front of them with the Planning Board. Mr. Rankie said that he deliberately made sure that he didn't go to any of the meetings personally because he did not want to prejudice himself in any way hearing anything because he could sense it was coming their way (to the Board). He said he wondered if maybe that could be have difficult for you to Ms. Lemire and Ms. Lemire answered "no, not at all."

Ms. Ross stated that they probably should not be discussing any details of that case just because it is still intending to be purchased. Ms. Lemire added that it is still pending.

Ms. Ross also stated that she knew that Phil Saucier, as the Town's attorney, had some concerns about the avenues the Board was taking with that Appeal. Mr. Marshall asked if would be appropriate at this time to ask what is developing in that, at what state is it, is it dead, are they appealing.

Ms. Ross stated that she believed they are attempting to purchase the property and to go into some kind of agreement with the Land Trust over a multi-year type thing, so that the abutters are going to purchase the property so that it doesn't get developed into the lots that were proposed; instead maybe two or three lots broken up over a period of couple of years.

Chairman Hamilton said that currently he maybe got and doesn't know if everybody received this from the packet, that it said it's an Order on the plaintiff's motion to a Stay of Action, the plaintiff being the Libby and Falzone's, vs. the inhabitants of the Town Of Eliot as the defendant and the Hilt Family etc. He stated for good cause shall the motion for stay of action filed by the plaintiffs be granted. He summarized so the plaintiffs have asked for a stay in the Superior Court, Civil Action. He read "that it is hereby ordered that all proceedings and deadlines of this action are stayed until July 23, 2016." Chairman Hamilton then said meaning next week. Chairman Hamilton continued to read from the document, the parties will request an amended schedule from the Court if a settlement is not reached by that date. He stated that it is still active but it is just on a Stay basis right now. Mr. Rankie said that is a Saturday though.

Chairman Hamilton said that this was signed on 4/8/2016, so April 8th. Mr. Rankie said should have stopped it soon. Chairman Hamilton said, "anyhow." Mr. Rankie said that he felt it was important that the Board talk about some of these things when they are not having hearings and Ms. Lemire said that she agreed. Chairman Hamilton said that it is a public hearing, public meeting rather. Ms. Lemire said right it's a public meeting and Mr. Rankie added that they have no other time, they don't privately talk, they wave if they see each other in town.

Chairman Hamilton said that Mr. Rankie was right and this is the opportunity to have this discussion. Ms. Lemire noted if they run into each other at the dump. Mr. Marshall laughed and said not that discussing it at the dump would be improper. Mr. Rankie added that especially if there is three of us there and Mr. Marshall said that he thinks it is suspect if there is just two and Chairman agreed, and Mr. Marshall said to avoid it at all costs. Mr. Rankie said this is a good opportunity for them to learn.

Mr. Marshall asked if that Stay means they are back to the Board, and Chairman Hamilton said they wouldn't be back to the Board, and Ms. Lemire added in Superior Court. Chairman Hamilton said it would re-initiate their action in Superior Court, that the stay would come to an end on the 23rd of July and the Court would decide whether they need to amend it further or whether there is any sort of settlement that doesn't need the Court to be a part of.

Adjournment

Chairman Hamilton asked the Board if anything else and no one answered and he said Motion to Adjourn and Mr. Marshall said so moved, and Mr. Billips said seconded, and Chairman Hamilton said "all those in favor" and all Board members presents answered "I" and raised their hand. The meeting was adjourned just after 8:30PM.

Respectfully Submitted,
Stefanie Langlois
Recording Secretary

Approved By S/
William Hamilton, Chairman
Date Approved: August 18, 2016