

Town of Eliot - Board of Appeals Meeting

OCT 24 2016

August 18, 2016

Wendy Rawski,
Town Clerk

Roll Call

Present: Chairman Bill Hamilton, Vice Chair Peter Billipp, Secretary Ellen Lemire, Associate Member Charles Rankie, Associate Member John Marshall

Absent: Edward Cieleuszko, Jeffrey Cutting, Associate Members - both unexcused absences

Call to Order:

Chairman Hamilton said that we can begin and that it is a regularly scheduled meeting of the Board of Appeals. He asked the members to introduce themselves. Each member stated their name.

Chairman Hamilton stated that they are video streaming this meeting and that it can be looked up on the Town website; that it is a live video stream. He then asked everyone in the audience that did have a cell phone or an electronic device to silence it at that point.

Chairman Hamilton said that there is one public hearing tonight for Gail Chase requesting an administrative appeal against the decision of the Code Enforcement Officer to approve a building permit application for property owned by Bruce Staples located at Map 34, Lot 22, and Map 34, Lot 21.

Chairman Hamilton then asked if Ms. Chase is there and she replied, "I am." He then said, Mr. Staples, and Mr. Staples replied, "Yes." The Chairman then asked Mr. Staples, "So, you were able to make it tonight?" and Mr. Staples stated yes, thank you.

Chairman Hamilton said that he would go over the procedure before the public hearing began. He asked, now that he had read the brief public statement, if the Board members had any conflict of interest tonight and they all said no.

Chairman Hamilton stated that there are 5 members of the Board, 2 associate members, and that Mr. Marshall and Mr. Rankie will be regular voting members tonight. The 3 regular Board members, including himself will be a quorum of 5 tonight, a full complement.

Chairman Hamilton stated that the parties to the action are the Code Enforcement Officer, who is present tonight, and the Town Of Eliot, the administrative Code of the Town of Eliot.

Chairman Hamilton said that the powers of the Board to review this appeal come under

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Section 45-49(a) under Administrative Appeals. He said the way that the meeting will proceed, is that the hearing will be opened, there has been a brief summary of the request of the appellant. Chairman Hamilton said the voting members have been determined, we have determined that there is no conflict of interest, and the parties to the action have been determined. Chairman Hamilton stated he had just decided the parties to the action. He said standing, he believed the appellant is an abutter, and asked if that was correct to the Code Enforcement Officer; that she answered, "Yes" and he stated that she has standing.

Chairman Hamilton stated that timeliness, she has 30 (thirty) days from the time the permit is issued to appeal, and you are within that time frame, so she met the standards of both standing and timeliness.

Chairman Hamilton stated that this is an appellate review; that the Board of Appeals, in this instance, in this case, the Board is charged with reviewing the action of the Code Enforcement Officer up until the time that the decision was made.

Chairman Hamilton said that if there is any new information between that time and this time, that that is not for the Board to do; that is called a de novo review and the Board is not charged to do that. Chairman Hamilton noted that a de novo review is what the Superior Court would do, they would take all of the evidence and review that and make a decision. He said that the BOA, in this particular instance, can only look at it in terms of appellate review. He noted that they review the action of the Code Enforcement Officer, in this case, to see whether or not it is clearly contrary to the Code. Their charge is to determine whether the Code Enforcement Officer acted clearly contrary to the Code.

Chairman Hamilton said that the procedure is that the appellant will have the opening remarks without being interrupted, and all the information they would like the Board to hear, the Board will ask questions if there are any, and the parties to the action will respond to the application, your testimony. Chairman Hamilton said that the Board will question the Code Enforcement Officer and will listen to other parties that are interested parties, other abutters, or people that have interest in this particular case and will take questions from the Board again.

Chairman Hamilton stated that all questions should come through the Chair as opposed to individual Board members or anyone else in the audience; in other words, don't ask questions to your neighbor, ask them to the Chair, and he will relay the information to make for a very orderly meeting.

Mr. Rankie stated he is slightly confused. He said that in his package he has the request for the Administrative Appeal and just recently the Notice of Appeal, but also has a violation.

Chairman Hamilton asked him to hold on that for a minute until they get into the testimony.

Chairman Hamilton stated that there would be other questions to the abutters or to the other interested parties by the Board.

Chairman Hamilton stated that the applicant will have the final say to summarize what they feel, if there is anything that has come up during the meeting that they want to address, certainly they have the last voice on it.

Chairman Hamilton stated that, at that point, the public hearing will be closed and, at that point, there will be no additional testimony from the public unless the Board specifically asks for it. He said, in other words, after the public hearing is closed, the Board of Appeals will discuss the case, and unless they have specific questions of someone, it is their discussion and the hearing is closed.

Chairman Hamilton stated they will determine the findings of fact; that the courts require them to list the findings of facts, which include property descriptions, testimony. He said the testimony will be part of the record; that their duty (the Board), in listening to the testimony, is to determine, in this particular instance, how the Code Enforcement Officer acted. Chairman Hamilton stated that is pretty much how the hearing will proceed.

Chairman Hamilton stated that what he would like to do, because this is a fairly unusual appeal because there are things that have come in after the initial action by the Code Enforcement Officer and the date that has come in after the appeal, we've gotten other information in since then.

Chairman Hamilton stated that what he would like to do is listen to the appellant and see if this is something that the Board can actually decide on. He said he is confused because the Code Enforcement Officer did issue a building permit and the fence was already constructed. Chairman Hamilton said the Notice of Violation later on was already issued; it is the Notice of Violation that we are having a little bit of a problem with.

Chairman Hamilton said that before they started, he would like the appellant, unless any other issues from the Board, to present their case.

Gail Chase stated that she does not have a problem with the Code Enforcement Officer at all, she did her job. She said Mr. Staples started the fence on the boundary the day before he went and got the building permit. She said the day he got the building permit, the Code Enforcement Officer came and checked; the Code Enforcement Officer notified the builders and also said she would notify Mr. Staples that he was in violation of the code.

Ms. Chase said the maximum distance it was from the boundary was like 7 (seven) inches, and, in parts on her side; that the builder said they didn't care and they kept right on working. She stated that the afternoon that she went and talked to him he appeared with food and they worked very late and got it done wrong. She said they willingly finished the fence wrong. She stated that every inch of the fence has something wrong

with it. Ms. Chase said, that it's on the boundary, it's wrong sided in, it's nailed to a tree, it goes through a well, they chain sawed down a bush, it goes through the bush, and it goes on. She said she would just like it to be fixed, pushed back the way it belongs, turned around, and done right.

Chairman Hamilton stated, "Please say your name." to Gail Chase so that each person identifies himself or herself. Chairman Hamilton said you don't have a problem with the Code Enforcement Officer, and Gail Chase, said "No, none." Chairman Hamilton stated that their jurisdiction is either the Planning Board case, if the Planning Board made an incorrect decision, against the Code, or the Code Enforcement Officer made an incorrect decision against the Code.

Chairman Hamilton said that that is their jurisdiction; everything else is up to the Town to determine. He said, in other words, if there is a Notice of Violation, which was received after the application, which was issued by the Code Enforcement Officer on August 11th, 2016; she issued a violation and order of correction. Chairman Hamilton said that, at that point, it becomes an issue with the Code Enforcement Officer and the person that filed for the building permit; that the Code Enforcement Officer is issuing the Notice of Violation, i.e. Mr. Staples; and the Town. He stated that the Code Enforcement Officer, and between the enforcement divisions of the town, and the Select Board, directs it.

Chairman Hamilton stated that the person who received the building permit, Mr. Staples, has received a Notice of Violation to correct what the Code Enforcement Officer, and Ms. Chase believes, are violation to the Code. He said that, at that point, the next level of enforcement comes in, which is the Select Board after being notified by the Code Enforcement Officer.

Chairman Hamilton said that, if there isn't a resolution and Mr. Staples decides not to take his fence down, or make any changes, which have been indicated and addressed by the Code Enforcement Officer on August, 11, 2016, then it is up to the Select Board to decide what to do. Chairman Hamilton said that it is no longer in their jurisdiction, they only have to decide whether the Code Enforcement Officer acted correctly and he asked Ms. Chase that she agreed with them that she acted correctly to issue the permit. Chairman Hamilton said, that the question to the Board is, that he believes they do not have any jurisdiction further to hear her case than what she has testified to at this point.

Chairman Hamilton said they have no ability to enforce the Notice of Violation; that that is up to the Select Board and the Town attorney and the Courts. He said that, if he (Mr. Staples) is not willing to make a change that has been indicated in the Notice of Violation, then that is the Select Boards' choice.

Chairman Hamilton said the Notice of Violation does have a 30-day (thirty) timeframe. He stated "remove the fence within 30 days of the date of this Notice of Violation, or file an agreement with yourself and the adjoining property owner that allows the fence to be

located less than 2 (two) feet from the property line and record the agreement at the Registry of Deed within 30 (thirty) days.”

Chairman Hamilton stated this Notice of Violation does have a thirty-day (30) timeframe beginning August 11, 2016, so by September 11, 2016, if nothing is done, it goes to the Select Board.

Ms. Ross said that is correct. She said Mr. Staples also has the option of appealing to the Board of Appeals as a violation and Chairman Hamilton agreed with her.

Chairman Hamilton stated that there is nothing else they can do tonight to proceed to review something. He said that they don't have the jurisdiction to intercede between the Code Enforcement Officer and the person that receives the building permit to do anything about the Notice of Violation. He said that that goes to the Select Board if nothing is corrected between now and September 11, 2016.

Ms. Ross asked, do you want me to just summarize what happened. Ms. Ross said she was contacted by Ms. Chase about the fence and that Mr. Staples was putting up the fence. Ms. Ross said she contacted Mr. Staples and advised him he needed a permit for it; that she said he came down the next morning. She said she went through the ordinance with him; that it had to be 2 (two) feet away from the property line and the good side facing the neighbors. She stated that he said that that was what he was going to do and was issued the permit based on the criteria of the ordinance. She said he then installed the fence and it did not meet the criteria of the ordinance. She sat down with him and explained it all again, and offered to meet with both of them and he wasn't willing to do that and continued to install the fence and, so, that is why the notice went out.

Chairman Hamilton said that, at this point, he is going to close the public hearing because they cannot hear this case. The Board all agreed that the Code Enforcement Officer is not in violation. (The Board agreed that this case was no longer within their jurisdiction to hear.)

Mr. Billipp said that it seemed to him that they might have two options. One, the appellant can withdraw their appeal because they agree with the Code Enforcement Officer that she did not err, or they could hear the case and we would have to turn down the request because it seems to be clear the Code Enforcement Officer did not err. He said the permit was issued correctly, that it's just what happened afterwards.

Chairman Hamilton agreed and said he thought those are two good options.

Mr. Rankie said, to clearly paint the picture, had the Code Enforcement Officer not issued the Violation, then there would be a case. Chairman Hamilton agreed.

Chairman Hamilton said except the applicant is not contesting the decision that the Code

Enforcement Officer issued the Notice of Violation and is not specific as to what she is contesting. He said it is just so fuzzy that there is no specific thing we can rule against.

Chairman Hamilton asked Ms. Chase if she would withdraw the application and she said "sure." He said that, in that case, the Board doesn't have to make a ruling and would have to rule the Code Enforcement Officer acted correctly which she agreed as well, and would not mean anything.

Chairman Hamilton said what really has to go on now is the Notice of Violation, which was done after Ms. Chase submitted her appeal. Chairman Hamilton stated that Ms. Chase submitted her appeal on July 25, 2016 and the Notice of Violation was submitted on August 11, 2016. He stated that, essentially, the Board couldn't look at the rest of it because they are an appellant review board and can only look at things that have come to them to the point when she made her application (July 25, 2016)

Ms. Ross said to Chairman Hamilton, may I please state, both parties were aware that there was a Notice of Violation that was going to be issued, just that the office was really busy, which is why it was a little way out. She said that she believed they were advised to hold a place for them if they (the appellant) appealed the original permit, which is why they did so.

Chairman Hamilton asked Ms. Chase if she was willing to withdraw her application? The Chairman looked at Ms. Chase and she agreed. Chairman Hamilton said, okay, so we will close the public hearing and there is no decision to be made, this hearing is over. He stated that he wouldn't be issuing a Notice of Decision because the Board has not made a decision.

Ms. Chase asked if this would pick up from here between the Code Enforcement Officer and Mr. Staples? Chairman Hamilton answered, yes, and between the Town.

Ms. Ross asked the Chairman if he would like her to explain. Chairman Hamilton said yes.

Ms. Ross stated that the Notice of Violation gives him 30 (thirty) days to either remove the fence or to come to an agreement with the two of you (the Chases') where it would be on the line. Ms. Ross said that, if he fails to do that, then it would be turned over to the Board of Selectman and they would go forward and prosecute him in court, with the town attorney, if they choose to do so. Mr. Staples also has the option of appealing the notice of violation to the Board of Appeals and, in that case, Ms. Chase would also be notified because she is an abutter to the fence that was installed.

Ms. Chase asked if she would have to come back and do paperwork again. Ms. Ross said she would not need to come back again.

Ms. Ross said that, if Mr. Staples decided not to take either of those two options, then he

would have to file an appeal with the Board of Appeals. He would pay the fee and file the paperwork and Ms. Chase would be notified.

Ms. Chase asked if it still starts on August 11, 2016 when Ms. Ross sent out the thing, so a week has gone by already.

Ms. Ross answered and said, "Correct, it was 30 (thirty) days from the date of that letter."

Ms. Chase said thanks.

Chairman Hamilton said okay, thank you very much all.

Someone in the audience asked the Board if someone is in direct violation, like building something out of code, does anyone have the authority to stop them?

Chairman Hamilton said that he would have the Code Enforcement Officer answer that.

Ms. Ross answered that she does have the authority to do a stop work order on that, but that, at the time Mr. Staples came in, he was going to be putting it 2 (two) feet from the line, and that he understood what she was saying. She said that over the course of that evening is when he finished the fence; it was about 4:00PM when she was at his house.

Chairman Hamilton asked the person that had asked the question to state his name. He said James Cosenza and Chairman Hamilton asked his address, and he answered 239 Fore Road.

Chairman Hamilton stated again that there is no public hearing anymore and that this is more of just an informal discussion for a few minutes, and then we have some other business to attend to.

Sydney Rex, 124 Depot Road, spoke from the audience. He said that Ms. Ross came down and told him to stop, the contractor and Mr. Staples continued, and Mr. Staples tells the contractors don't listen to them two women and continue working, so what is the recourse here?

Chairman Hamilton answered that the recourse here is what happened with the Code Enforcement Officer issuing the Notice of Violation to put it into the framework for the normal process in the town to confront violations, that that is what she has done correctly.

Chairman Hamilton said he has 30 (thirty) days to resolve that issue or it goes to the Select Board and they determine what to do at that point.

Mr. Rex said that is totally harassment for the elderly and he considers you elderly (to Ms. Chase).

Chairman Hamilton said that, if he has to take the fence down, it is going to be fairly expensive and it will be at his own cost. Mr. Rex said if he doesn't take it down there is something wrong with the system. Chairman Hamilton agreed with him. Mr. Rex said she should have a say.

Chairman Hamilton stated that she does; that she has done all she can do and they have done all they can do. He said they have done all they can do by law, that it is the Legislature of the State of Maine that determines what their functions are, and the town adopts the legislative authorities. Chairman Hamilton said that that is all they can do, they would love to do more but they can't.

Chairman said that that is as much as they can do and as much as she can do; that it then goes to the next stage, the Select Board, and then they decide what they are going to do; that at that point you may want to show up for the Select Board if there is a hearing regarding that.

Mr. Cosenza asked, if they had a fence on their property that wasn't theirs, could they take it down as a homeowner?

Chairman Hamilton said, you mean, someone built a fence on your property. Mr. Cosenza said right.

Chairman Hamilton said he was not exactly sure and deferred to the Code Enforcement Officer.

Ms. Ross answered that you'd probably want to consult an attorney, but it's your property, so the attorney will probably tell you it would be your right to do that.

Chairman Hamilton it would probably be like if someone left his or her car on your property, so you'd have to go through that process.

Ms. Lemire said there is a legal process for that as well.

Chairman Hamilton said that he thinks it is for everyone's benefit because, otherwise, things would get done willy-nilly and you might decide to rip the fence down yourself.

Chairman said thank you all for coming; that we will continue our meeting and, of course, you are welcome to stay.

Public Hearing Closed

Chairman Hamilton said the next order of business is to review our minutes from the last meeting.

Mr. Marshall asked how did we generate so many pages of minutes.

Mr. Rankie asked if it is was possible to review minutes at the next meeting as he just got them and it is really small print. He said he checked his mailbox Monday and he didn't get them.

Chairman Hamilton said he got his Tuesday and they certainly can defer if no one has had a chance to read them.

Mr. Marshall said we didn't do anything of any consequence, so even if there is an error in it, it doesn't matter.

Chairman Hamilton said they are pretty much verbatim.

Mr. Billipp said he couldn't vote to accept because he has not had a chance to read them.

Chairman Hamilton said they would defer to the next meeting, whenever that is, to approve the Minutes of the July 21, 2016 meeting.

By-Laws Review

Chairman Hamilton said the next order of business is to review the By-Laws. He thanked Ms. Lemire for the revisions that we talked about last time.

Chairman Hamilton stated that, on the first page, the two additions that were suggested are to include under Section E, New Member Orientation, the Town of Eliot Municipal Code of Ordinances and the Town of Eliot Charter. Chairman Hamilton also noted they should include the Comprehensive Plan, as well.

Mr. Marshall stated that he could recall, from having participated in the last several Comprehensive Plan formations, that it was stressed many times that the Comprehensive Plan is not a legislative document, it is still just a plan.

Ms. Lemire stated that it was adopted.

Mr. Marshall said the plan was adopted but not all of it has been converted into ordinances and, until it's an ordinance, it is only a plan and not a binding document.

Ms. Lemire confirmed and agreed.

Mr. Marshall said he is not sure that it should be listed in there as something they should look at as to how they interpret their ordinances.

Ms. Lemire asked how do you respond to C.

Mr. Marshall said he thinks there is a problem with C in that they are looking at possible

in order to carry out decision that are supposed to be done by Code. He said that that would be like the Code Enforcement Officer going to his house and saying the Town is thinking of doing this but we're not going to let you do that.

Chairman Hamilton said he thought there is a difference and, under E, it is called New Member Orientation. He said that under the last paragraph it says, "As part of the discussion, the various official reference materials will be identified and distributed." He said that that is what they are talking about, "The list of reference materials includes the following:" and that it also includes the Comprehensive Plan.

Mr. Rankie said that Ms. Lemire brought up something with the Comprehensive Plan; so, if the Comprehensive Plan were taken out of C, then there wouldn't even be an E.

Ms. Lemire said that the only problem is that the whole paragraph C, is around the Comprehensive Plan.

Mr. Marshall said that he could see it being put into E as information, but it certainly shouldn't be held up in any way, shape, or form as something they are going to make decisions by, as far as dealing with an appellant.

Chairman Hamilton said it is not suggested that that is the basis of their decision.

Mr. Marshall said it just seems there is an implication here.

Chairman Hamilton asked what the consensus was, to add the Comprehensive Plan to the list of reference materials.

Ms. Lemire said she didn't have a problem with it as far as reference, and was more concerned with paragraph C.

Chairman Hamilton said it is the responsibility of the Board to become familiar with the community goals, it doesn't say that it has to act in according to the suggestions of the Comprehensive Plan.

Ms. Lemire said it says and, "and grant the minimum relief that will ensure that the roles and policies of the plan are preserved and substantial justice is done." She said it is the last sentence of C, and said they can't preserve something that is not enacted into Code.

Chairman Hamilton said that he thinks that what it is saying is that their duty is to interpret the code to some degree where there is some issue of interpretation. He said that, if there is the ability to use the Comprehensive Plan as their guideline, then perhaps their interpretation will also follow that.

Chairman Hamilton said that, if they have a choice between going one way or another and the Comprehensive Plan says they want to go this way, then maybe their thinking

through the interpretation of the ordinance would be somewhat affected by the Comprehensive Plan. He said that that was done by a group of people and voted on by the Town to accept after many many public hearings, and it is a legal document.

Ms. Lemire said she has read case law where courts have come down on the side of the appellant, based on the preamble of the Comprehensive Plan, and the purpose of the Comprehensive Plan, not even getting to the strategies and goals.

Chairman Hamilton said it is something to consider.

Chairman Hamilton said that where it is clear in the Code that this is the way it is to be interpreted and there is no ambiguity, their job is pretty clear, and they are charged with interpreting the ordinance, that is in the by-laws. Chairman Hamilton said that, to him, it is just another resource; that just like the Handbook of Board of Appeals, created by the Maine Municipal Association, it is a guideline.

Ms. Lemire said yes, it is a guideline.

Chairman Hamilton said he feels comfortable leaving the Comprehensive Plan as number 8, and also leaving C, but it is up to the Board.

Mr. Rankie agreed and said the last paragraph convinced him.

Mr. Billipp said he agreed as well.

Mr. Marshall agreed, too.

Chairman Hamilton asked if there was consensus, and all said yes.

Chairman Hamilton turned to the next page, under Secretary, and read, "if no stenographer is present, the secretary will record the meeting for the stenographer."

Ms. Lemire said she put "or" because she may not always be here with her recorder, and, at some point, may not be a member of the Board. She stated she has a recorder because she does recordings for other Boards, so has a recorder. Ms. Lemire said the meeting "shall" be recorded would be better than naming a particular person or position.

Mr. Rankie said he disagreed and said the Chairman would assign someone as Secretary, so leave it generic.

Ms. Lemire also said she was thinking of changing stenographer to recording secretary throughout the document.

Mr. Marshall asked if there was recording equipment available within the building and the Chairman would know where it would be in case they did not have a recording

secretary.

Ms. Lemire said Ms. Pelletier loans hers and that she thought there is one in the vault.

Mr. Marshall asked if there is going to be one available in case there is a surprise and they need to find one, in the building, and does anyone know where it is?

Chairman Hamilton also asked, and does anyone else know how to operate it.

Ms. Ross added that it is being audio/video recorded.

Ms. Lemire said she has done her minutes on that, as well, and the quality has improved tremendously.

Chairman Hamilton said that, since they are quasi judicial and their decisions are next reviewed by the Superior Court, they need at least 2 recordings of the meetings and that they cannot rely on the video recording.

Ms. Lemire said she knows Ms. Pelletier has one and has loaned it before, and she has one as well.

Chairman Hamilton said that he thought they should keep it the way it is, and say, "if no recording secretary is present, the secretary shall record the meeting for the recording secretary." Chairman Hamilton said he would like to add something to that; that one of the key provisions of the recording secretary is to provide the Chair with the Notice of Decision within 7 (seven) days. He would like to say, "ensure that the Notice of Decision is prepared to be reviewed by the Chair and received by the applicant within 7 (seven) days," because they are required to do that. He said that, if they don't have a secretary, and have a recording of the meeting by someone operating the device, they still need to have the Notice of Decision in the mail within 7 (seven) days.

Ms. Lemire stated that her suggestion would be to have the blank form here and have it filled in as they go through the meeting.

Mr. Marshall asked if that responsibility falls on the Town Manager.

Chairman Hamilton said yes.

Mr. Rankie said that the only way they would be blind-sided is if something happened to the part, because if they knew, they would have to go to the Town Manager and ask for staff. It really is the Town Manager's responsibility to provide the secretary for them.

Mr. Marshall said he was meaning to provide the Notice of Decision.

Chairman Hamilton said yes, that that would fall under the Town Manager if there were

no recording secretary.

Ms. Ross said, how about in the event that a recording secretary is not available, the Chairman shall appoint a replacement, a recording secretary for that meeting, and that way it wouldn't fall on the Secretary.

Chairman Hamilton said he didn't know if that would work, because the secretary would have to prepare them.

Mr. Marshall said it really needs to be someone not a member of the Board.

Ms. Ross said that, in a worst-case scenario, she has experience doing it.

Chairman Hamilton said legally they have to have the Notice out in the hands of the applicant in 7 (seven) days, so they need to address it somehow.

Ms. Lemire said in the deliberations, the Notice of Decision is really, once the public hearing is closed, they have their discussion, they list out the findings of fact, they describe the conclusion, it's already done, really, and just needs to be put on paper.

Mr. Billipp said, so you are suggesting some sort of form that can be handwritten and done, or typed and quickly done, by the Chair.

Mr. Marshall said they might have a form that it might be handwritten on and then given to the Town Manager who is going to deal with it.

Ms. Lemire said right, because it is reviewed by the Chairman of the Board before it is signed by him.

Chairman Hamilton said except that it is taken verbatim from the recording.

Ms. Lemire said there is a small window on that recording where that information lies.

Chairman Hamilton said someone has to transcribe that before 7 (seven) days so he can review it and make sure it is correct. He said usually Linda would email him the draft Notice of Decision and he would make any changes; that then he would email it back to her, she would make the changes, and he would come in and sign it.

Chairman Hamilton said it's never been addressed before, but since they are reviewing the by-laws, it is probably worth looking at.

Ms. Lemire asked the Chair for his wording, again, for the Notice of Decision.

Chairman Hamilton said that, if no recording secretary is present, then the secretary shall record the meeting for the recording secretary and ensure that the Notice of Decision is

prepared to be reviewed by the Chair and received by the applicant within 7 (seven) days as required.

Mr. Rankie said it is cumbersome but Ms. Lemire can make the words right. The Chairman agreed that it is.

The Chairman said he is not sure if it has to be in the mail within 7 (seven) days or received within 7 (seven) days.

Ms. Lemire said that what she used to do with Bruce (Mr. Trott) is that she would get them done and, either the next day or the day after, he would come in and review it and make the corrections; that she would go home, re-do it, and get it back in a day.

Chairman Hamilton said that would be great, Linda was pretty quick. He said it would be in the mail within 3 or 4 days after the meeting. Chairman Hamilton asked if that looked like it would work.

Ms. Lemire said, so it is consensus of the Board to add that in.

Chairman Hamilton stated yes, and all agreed.

Chairman Hamilton said that, on the next page, the officers of the Board shall provide the Select Board, not the Selectman.

Ms. Lemire said she has changed that in some places.

Chairman Hamilton said he didn't see any changes on that page.

Chairman Hamilton said on next page where it goes to 3 and 4.

Ms. Lemire said, yeah, that is how she did it and she also has a note to separate it out. She said she also has another note later on in the By-Laws.

Mr. Billipp said where are we. Chairman Hamilton said the 4th actual page where it starts 3 at the top.

Mr. Billipp was trying to compare it to what they started off with. Ms. Lemire said only the word "note" is added, only the word "note." She said it is a descriptive. She said she did the same things under Officers and Duties because it is a descriptive but it is not technically part of the Chairman's duties but something he needs to be aware of.

Chairman Hamilton said that language is already in the By-Laws.

Ms. Lemire said yes, that is what we asked Ms. Ross to put in the application.

Chairman Hamilton said the only other change there was in section D, where it says 72 (seventy-two) hours written notice and read section D aloud. Chairman Hamilton said, so 72 (seventy-two) hours.

Mr. Billipp said so you did correct under 5C, the Town's annual meeting to June.

Ms. Lemire answered, yes she did and didn't read that. She said she also made a couple of other grammatical changes.

Chairman Hamilton said they could leave out "June."

Ms. Lemire said it is in June but they can always change it; that it is now in Word form.

Chairman Hamilton said so, under Section 5E, you have "shall specify the matters to be considered"; looks good.

Ms. Lemire said she added "or written decision by the Code Enforcement Officer".

Chairman Hamilton said under 7B. He said it might read better "in any case where the application does not meet the timeliness criteria."

Ms. Lemire agreed. Chairman Hamilton said the "Board shall review the case at a public meeting and agree the case shall not be heard", reading from section 7B.

Chairman Hamilton asked if everyone agreed and everyone did. Chairman Hamilton said nothing on the next page or the next page, starts with number 10 on the top.

Mr. Billipp said should we go back to 8G.

Chairman Hamilton stated that is where they were at, 8C.

Chairman Hamilton read section 8C aloud. Chairman Hamilton asked if the Charter is going to help them make a decision, does the Charter create standards that the Board can use to make a decision before the Board of Appeals.

Mr. Rankie said no.

Ms. Lemire agreed and said she didn't know of any either.

Chairman Hamilton said he didn't know if it applies there and the Charter should be there in reference. Ms. Lemire said in reference at the front.

Chairman Hamilton read E aloud. Mr. Billipp said this says shall be sent by mail not received. Mr. Marshall asked if that was correct.

Ms. Lemire said she did not remember hearing anything different.

Mr. Marshall said, or are they to have it in their hands within 7 (seven) days?

Ms. Ross said it should be mailed within 7 (seven) days.

Ms. Lemire said, so should we keep hand delivered in there? Chairman Hamilton said yes.

Ms. Lemire said should we replace the Select Board with Town Manager, as everything has to go directly through the Town Manager that goes to the Select Board. Mr. Marshall asked if they should replace it or just include the Town Manager.

Mr. Rankie said it should be Town Manager not Select Board. Ms. Lemire said everything has to go through Mr. Lee.

Mr. Marshall asked if it would be automatic for the Town Manager to give that to the Select Board.

Mr. Rankie said only if he is assigned to it because he is our executive officer; that if that's not his assignment to show everything to them, then he would make the decision if he thinks it is necessary, or not; that more than likely he would.

Mr. Marshall said he thought the decisions they made would be going to the Select Board.

Ms. Lemire said it is in their by-laws they need to be told.

Chairman Hamilton said they should add the Town Manager.

Mr. Marshall said adding the Town Manager should be sufficient.

Chairman Hamilton agreed.

Mr. Marshall asked isn't it going to be the Town Manager that delivers it, anyways, so we don't need to add the Town Manager, as he already has it.

Ms. Ross asked if they would like her to read the Code and what it says so it should match. "Within 7 (seven) days of its decision, it shall notify in writing, the appellant, the Code Enforcement Officer, the Planning Board and municipal officers of its decision and its reasons for the decision.

Mr. Rankie asked where that is from.

Ms. Ross answered from 45-50 J. Mr. Rankie asked does that cover the 7 (seven) day

question the Board has.

Ms. Ross said yes. Ms. Ross said, "Within 7 (seven) days of it's decision it shall notify in writing" and read the statement again.

Mr. Rankie asked if it footnoted the State statute.

Chairman Hamilton said it sounds like it needs to be sent within 7 (seven) days, not in the appellant's hand.

Chairman Hamilton said, what do we want to do; do we want to add the Town Manager? Mr. Marshall said he thinks it is redundant. Ms. Lemire said so do you want to leave Select Board in there or Municipal Officers?

Ms. Lemire asked Ms. Ross anything that comes into the Town, that has to do with this board, where does it go?

Ms. Ross said either to Ms. Albert or the Town Clerk and it gets received through there and gets distributed, as it needs to be. Ms. Ross said it would be normally either Ms. Albert or Town Clerk that stamps it in, then it goes to Ms. Albert and she distributes.

Ms. Lemire asked if she normally gives any Board information, whether it's the Planning Board, Board of Appeals, or for the Select Board, directly, to Mr. Lee?

Ms. Ross said she thought it was highly likely but she can't fully verify that.

Chairman Hamilton said he is of a different understanding of how that works; that, for example, for an agenda for a meeting, he creates an agenda and sends it to Mr. Lee, who looks at it and, unless he has issues, it then becomes the agenda, Mr. Lee gives it to Ms. Albert, and she emails it to everyone.

Ms. Ross said normally that anything that comes in regards to an appeal though, she thinks it specifically says it has to be in by the Town Clerk or herself, which is why it is usually her. Ms. Ross said the Town Clerk is responsible for receiving and distributing appeal forms.

Ms. Lemire said she is not concerned about appeal forms she is concerned about things like this, because it has been stressed several times that everything has to go through Mr. Lee that goes to the Select Board.

Ms. Ross said that, where she is his administrative secretary, she would get his approval before she gives it to the Board, but it would be her physically doing it. Ms. Ross said that is what she meant.

Chairman Hamilton asked if we are covered without changing anything at this point. All

Board members agreed.

Chairman Hamilton said under G, 8G on the next page on the top. He read the paragraph word for word. He said, it doesn't say by whom, and it should be by the applicant. In other words, the Board is not responsible for recording it.

Chairman Hamilton said it needs to be spelled out that if not recorded by the applicant at the Registry of Deeds.

Mr. Marshall asked if that was going to be always included on the Letter of Decision.

Ms. Lemire said it is.

Chairman Hamilton agreed.

Mr. Marshall said it should be in capital letters and italicized.

Mr. Rankie said you tell them every meeting (to Chairman Hamilton).

Mr. Marshall said they are in a state of shock when they are here; so the more we can remind them of that.

Chairman Hamilton said that is only if they get a positive decision; that he also just advises that a decision can be appealed within 45 (forty-five) days. He said in this case he doesn't indicate because if they vote against them.

Mr. Marshall said correct, you don't have to tell them if it is going against them, but even when it's for them, just that they are here, they are not in their comfort zone and not everything is registering correctly.

Ms. Lemire said she put something in under Reconsiderations. She said at the end of 1, she wrote "or", but she is not really sure, it was not in the prior.

Chairman Hamilton said under number VIII, and it should be IX. Ms. Lemire said she would change that.

Ms. Ross said she believed that the reconsideration law was changed, too, since then, and since this ordinance was written, so Ms. Ross advised she is going to pull it up on the computer.

Ms. Lemire said she added, under Section 10, she added the section symbol in, and Town Manager under Amendments in number 2.

Chairman Hamilton said that, once these are approved by the Board, they can make sure everyone gets them.

Ms. Lemire said she will do them up and email them back to the Chairman.

Ms. Lemire said they are waiting on Severability in number 12, and said she needed to change B to A. Ms. Lemire said severability was on the last page under amendments but that it doesn't make any sense.

Mr. Billipp added that it did not mean anything if there are no other items under 12.

Chairman Hamilton said an A.

Ms. Lemire said following the format.

Chairman Hamilton said that, under Reconsideration, there are two methods. He said that, if the appellant doesn't like the Board's decision, they can ask for a reconsideration where the Board at the next meeting can review the criteria and decide if there are factual errors or the Board followed improper procedures, whether indeed it should be reconsidered.

Mr. Marshall said before they even get to the reconsidering of something legislatively, in order to make the motion to reconsider something, it has to be part of the prevailing side that has no mention of that in here. He said is it possible that doesn't hold through at this level or does one of us on the prevailing side have to move for it's reconsiderations after someone has brought it back.

Chairman Hamilton said it holds under Robert's Rules.

Ms. Lemire said Robert's Rules, yes.

Chairman Hamilton said, nonetheless, the appellant or the applicant still has the right to ask for reconsideration.

Mr. Marshall said someone on the Board has to move; he is trying to find out.

Chairman Hamilton said there are two things going on here. Chairman Hamilton said, as far as he understands it, the appellant can ask for reconsideration or a Board member can ask for reconsideration if they were on the prevailing side.

Mr. Marshall said if an appellant asked for reconsideration, they have to hear it.

Chairman Hamilton said, at that point, they determine if the Board acted inappropriately or if there is fraud involved.

Mr. Marshall asked and said somebody on the Board, on the prevailing side, doesn't have to make that motion in order for the Board to reconsider.

Chairman Hamilton said they do, for some reconsideration that comes from the Board.

Mr. Marshall said he was talking about from an appellant.

Chairman Hamilton said they have to listen to a reconsideration with 30 (thirty) days.

Mr. Marshall asked if that was part of the criteria for reconsideration.

Chairman Hamilton said that is a different type of reconsideration.

Ms. Ross handed out copies of Maine Revised Statutes Title 30-A Section F, the entire State Statute.

Chairman Hamilton read the statutes aloud.

Ms. Ross said maybe you just reference that statute?

Ms. Lemire said she will just add the statute.

Ms. Ross said just reference the number so that if it changes it again.

Chairman Hamilton said, yet, here we have a conflict because it says 10 (ten) days and we say 30 (thirty) days.

Ms. Lemire said whichever is more stringent. Ms. Ross said the Town can be more stringent than the State but not less. Ms. Lemire said they have to change the 30 (thirty) to 10 (ten). Chairman Hamilton asked what the date of the revision was, 2013 and each section has it's own review.

Chairman Hamilton said so we've been doing it wrong for the last 10 years or so. Ms. Ross said it has been changed since then, too, within the last 5 years or so.

Mr. Rankie said so, do we want to say corrected dates, or do we want to say reconsidered in accord with the statute in case it changes again.

Mr. Marshall said it hasn't changed since 2003.

Ms. Ross said the section on the bottom, where it says 2013, the last amendment.

Ms. Lemire said, basically, what we have to do is change the 30 (thirty) to 10 (ten).

Chairman Hamilton said, yes but we also have to include the 45 (forty-five) days.

Ms. Lemire said she could add "the Board may reconsider any decision, reached under,

or any party aggrieved by the decision, or a Board member may petition the Board". Ms. Lemire asked Ms. Ross, is this saying the Board can consider a decision within 45 (forty-five) days, but what about a party?

Ms. Ross said that she didn't think a party could request a reconsideration. She said a party could petition the Board and the Board member that voted against it.

Ms. Lemire said, a request to the Board to reconsider a decision must be filed within 10 (ten) days of the decision to be reconsidered.

Ms. Ross said she believed it is a board member that has to make the decision to reconsider.

Chairman Hamilton said he thought that was only in the case where one Board member feels they acted incorrectly.

Ms. Lemire and Mr. Marshall said they disagree, that it does not say that.

Chairman Hamilton said what Ms. Ross is saying, that she believes that someone who isn't happy with the decision as it reads from the current By-Laws, asks the Board within 10 (ten) days, if they even use that guideline. Chairman Hamilton said they have to act on that reconsideration regardless.

Ms. Ross said the Board would then have to vote first if they want to reconsider.

Ms. Lemire agreed.

Chairman Hamilton said it wouldn't have anything to do with anyone on the prevailing, or non-prevailing, side, as far as he knew.

Ms. Lemire said that that is always the way it is done.

Ms. Ross said that, legally, if you get into it further that it does have to be.

Chairman Hamilton said there are two operations going on here, one is an operation among the board and then there is an operation from the appellant to the Board.

Ms. Lemire said the motion to reconsider has to be from the prevailing side, regardless.

Chairman Hamilton said it never says that.

Ms. Lemire said Robert's Rules does.

Chairman Hamilton said that that is if it is a decision within the Board, he said he is talking about decision outside the Board asking the Board to reconsider.

Mr. Marshall said you look at the third sentence in F; “a vote to reconsider and the action taken on must happen within 45 (forty-five) days.” He said if someone requests we have to choose to reconsider or not, and Robert’s Rules would say that it has to be someone on the prevailing side.

Chairman Hamilton said, under Reconsiderations, as it currently reads in the By-Laws, it says, “and may conduct additional hearings and receive additional evidence, but only if the record contains significant factual errors due to fraud or mistakes regarding the facts of which the decision is based, or the Board misinterpreted the ordinance, followed improper procedures, or acted beyond it’s jurisdiction or, if a second application for a variance on a property where a variance was previously denied is substantially different”; it says nothing about the Board, you know, the prevailing vote at all.

Ms. Lemire said a prevailing vote is a procedural issue.

Chairman Hamilton said they are going to have to get some opinion on this.

Mr. Marshall said they are finding out, though, that their present by-laws are in error. Chairman Hamilton answered he did not know if they are in error or not.

Chairman Hamilton said Robert’s Rules are the method in which the Board operates, the procedure the Board uses to operate it’s own function internally. It does apply to some external things, but he didn’t know if it applies to this type of reconsideration because the current by-laws say that somebody from the outside that is not happy with the Board’s decision can ask them to reconsider based on these three criteria and nothing to do with the prevailing side.

Ms. Lemire said someone can come in and request that they reconsider, and we have a discussion among us on how we feel. She said if no one in the majority on the Board feels that we made an error, then we will choose not to reconsider, and that is what it is saying.

Chairman Hamilton stated it is a two-prong thing; one of the prongs is, first of all, we look and did we make a significant factual error. Chairman Hamilton said if someone comes to the Board and says, I understand from the information that you thought you had, that this is how you made your decision, but there was information that you didn’t look at and had available to you and didn’t use it. He said, the appellant, in this case, is saying, for example, that they want to be reconsidered based on it.

Chairman Hamilton said that, at that point, he doesn’t care who is on the prevailing side at this point. Chairman Hamilton said the Board has to decide; if they say, no they won’t reconsider because nobody on the Board wants to reconsider, he thinks they have the ability to take them to court.

Mr. Marshall said that is then the next proper thing to do but they can vote.

Chairman Hamilton said what we are saying is that the Board would be voting not to hear it because nobody in the majority wants to consider changing their vote. Chairman Hamilton said they would basically be disregarding the three criterion presented to them, what we are saying is that it doesn't matter if we screwed up.

Ms. Lemire said no, that is not true, we had a reconsideration come to us many years ago. She said, not recently but the one that she remembers, but the Board voted not to reconsider because we knew that we hadn't made any substantial errors.

Chairman Hamilton said that is different from what we are asking, you are saying that even if we realized we screwed up, if someone on the prevailing side does not believe that, then the Board can't essentially. Ms. Lemire said she sees what he was saying.

Ms. Lemire said the standard practice of this town is follow Robert's Rules of Order. Chairman Hamilton said, within the structure of the meeting, but this is something coming to the meeting and adding a whole other level of requirements to us.

Chairman Hamilton said regardless of who voted how, if we screwed up, it doesn't matter whether we all voted unanimously 5-0 and nobody is going to change their opinion, then they have to vote it down again but not for these reasons. He said it is a little convoluted. Chairman Hamilton said do they want to eliminate these three choices because they are now deferring to Robert's Rules?

Ms. Lemire said we are not "now" deferring to it, we've always deferred to it.

Chairman Hamilton said we are essentially saying Robert's Rules trump these three criterion.

Mr. Marshall said he didn't think that is the case at all. The Board would evaluate the issues but it still has to follow Robert's Rules too.

Mr. Rankie did not agree with that.

Mr. Marshall said that is the criteria we are going to look at, we still follow Robert's Rules.

Chairman Hamilton said that, logically, someone on the board is going to have to change their mind on the Board, even if they all voted in favor. He said if somebody believes that we didn't look at something, or somebody lied to us about a testimony and we based our decision on that lie and then somebody comes up with a solid justification.

Mr. Marshall said we have to look at it with the faith that somebody on the prevailing side is going to be honest enough to do that.

Chairman Hamilton said so maybe we just leave all of that there, and we operate the way we do.

Mr. Marshall added and the 10 (ten) days and the 45 (forty-five) days.

Chairman Hamilton said yes, change those.

Ms. Lemire said she still needs to figure out how to add the 45 (forty-five).

Chairman Hamilton said the same way as above, let's re-do the Reconsideration section. He read it aloud.

Ms. Lemire said separate out the party and the Board. Chairman Hamilton said take out the word "or Board member."

Chairman Hamilton asked if that seemed right.

Ms. Lemire said yes that makes more sense, it is clearer.

Ms. Lemire said so, the next point she had on this one, the party and the Board are both included in the first sentence. She said that we are including the party and a board member but she wants to separate that out. Ms. Lemire said the three criteria in the by-laws now, apply both to parties and to the Board Members: do we want to keep it that way?

Chairman Hamilton said yes, he thought so.

Ms. Ross said you should just follow what the statute says just because anything like that that gets reconsidered will normally end up in court, and then, at that point, you would not want to come back and say you did not follow state law exactly as it was written.

Chairman Hamilton said it doesn't give any reason, the State Law doesn't give any reason, well maybe it does.

Ms. Ross said that she doesn't know that you have to have a reason under state law, anybody could request a reconsideration.

Ms. Lemire said that is true, they can reconsider.

Chairman Hamilton said but these are their by-laws so they give the Board a reason to look at why they should reconsider.

Mr. Marshall said the appellant is going to do that.

Chairman Hamilton said right, but in looking at the by-laws, an appellant can say, I can go for an appeal, reconsideration, because this guy is lying through his teeth.

Ms. Lemire said that number 3 under Reconsiderations was put in there because we were having that problem for a while; that they would come in with similar requests. Chairman Hamilton said substantially different from the previous one.

Chairman Hamilton said he thought they need to keep those three but they should also include F and read the F aloud out of the by-laws.

Ms. Lemire said okay and then we can put the 1,2,3.

Chairman Hamilton said yes, but then "only if."

Chairman Hamilton said now it refers to the Town of Eliot because these are three things that Mr. Trott, or whoever wrote this up felt, that the Board of Appeals in Eliot needed to look at.

Ms. Lemire said especially number three, she remembered that one.

Chairman Hamilton said so maybe include 1,2,3, does that make sense, after paragraph F?

Chairman Hamilton asked if that made sense to everyone.

Mr. Marshall said he thinks so.

Ms. Lemire said, basically, we are just saying the same thing; that just the time frames have changed in paragraph F, and the way they have the last sentence, it is almost the same as the last piece of theirs, and she can add the 3 under it.

Chairman Hamilton said yes, that will work; are we good, does everyone agree? He said okay, as everyone agreed.

Chairman Hamilton said the last page is Severability, 12, so that seems good?

Ms. Lemire said yes, that was an easy one.

Chairman Hamilton said if everyone agrees, Ms. Lemire do you want to write that up, and then he can look at, and everyone can look at it. He asked if it needs to be signed, yes it does.

Ms. Lemire also answered, yes it does.

Town Manager Survey

Chairman Hamilton said that the next order of business was what the Town Manager sent out, and you all received; a Boards, Committees, and Functions Self-Assessment Survey. Chairman Hamilton said the Town Manager sent it to me, but I requested the Town Manager send it to all of the Board, as well, so we are all part of it.

Chairman Hamilton read the description on the Town Manager Survey aloud to all.

Mr. Billipp said, so, they will be seeing one answer from the Board rather than everyone doing it on their own.

Chairman Hamilton said he thought so, we can do it anyway we want to, we can put them in separately; that Mr. Cutting is the only that sent me his information.

Mr. Billipp said he did his, as well.

Mr. Rankie said he's done this before for the Harbor Commission and the 1-10 doesn't make sense for all so it is imperative that you need a comment, too.

Chairman Hamilton agreed, as well, and said the comments need to be filled out for sure.

Chairman Hamilton said on a scale of 1 lowest and 10 highest, "How clear are your mission and goals?"

Ms. Lemire said very clear.

Chairman said 10 and are there any comments?

Chairman Hamilton said, do you want to say our goal is to address the 3 types of appeals, or maybe we don't need to say anything.

Ms. Lemire said she didn't think they needed to say anything. Mr. Marshall agreed.

Chairman Hamilton said number 2, "To what extent do you think you need to revise your mission?". Mr. Billipp said if we think we are clear then we don't need to do anything. Chairman Hamilton said, so, that is a 1. Mr. Marshall said that that was the whole problem with tonight's appeal and there was no decision we could make or action we could take. Mr. Rankie said to Mr. Marshall that's not a bad thing. Mr. Marshall said we are pretty sure what our mission is.

Chairman Hamilton said number 3, "Rate the level of effectiveness as a group, how well your group functions?". Mr. Billipp said our group functions very well. Chairman Hamilton said he wanted to read Mr. Cutting's comments, as he did return it. Under 2, he put a 7 down. Mr. Cutting wrote, he does believe they need clarity as a group as to the laws that govern our group, so we don't display views that are arbitrary to the laws of the

State of Maine and the By-Laws of the Town of Eliot and personal opinions should be kept to a minimum, which could confuse the applicant and put us in a bad light at the Superior Court level if an applicant chooses to take our decision to court.

Ms. Lemire said it is a good reminder for all of us to keep our personal opinions away because we can't make decisions on personal opinions.

Mr. Billipp said he filled it out and it's in the car so he would just grab it.

Chairman Hamilton said this goes to the Town Manager, do we want to include Mr. Cutting's or just give one and keep his internal. Chairman Hamilton said there is nothing else we feel we need to revise, our missions are clear. Chairman Hamilton asked, are we going to put a 1 on number 2 now, Mr. Cutting had a 7 but he also had a 7 on number 3.

Ms. Lemire said we don't need to revise our mission at all.

Chairman Hamilton said he didn't think they could, even if they wanted to.

Chairman Hamilton said number 3. "Rate your level of effectiveness as a group on how well your group functions.

Mr. Billipp said he gave it a 10.

Mr. Rankie asked how do you define effectiveness?

Mr. Billipp said the Board does not have a lot of confrontation or confusion during meetings, they usually get to a consensus, and all of that would be effectiveness.

Mr. Rankie said he questioned some of their decisions.

Mr. Marshall said they will always do that; that he questions some decisions as well.

Ms. Ross said there is a lot of diversity with their thoughts.

Mr. Rankie said their job, there are not that many variables.

Chairman Hamilton said, do we function well, that is what they are asking.

Mr. Billipp said we make decisions and that is being effective; if we threw up our hands and said nobody can decide anything that would not be effective.

Chairman Hamilton said for example, well if always said, well let's talk to the Town Attorney, we can't make a decision tonight, come back next month. Chairman Hamilton said he thinks they are pretty effective in making decisions. Mr. Cutting's comment on number 3, the Chairman does a great job but I wish certain members, alternates, could

keep more on topic and not try and run the meeting in place of the Chair. Chairman Hamilton said he respects Mr. Cutting's comments, no questions about it, and asked if they wanted to make any comments.

Ms. Lemire said she didn't know if she would put a 10, but a 9.

Mr. Billipp said 8 or 9.

Mr. Marshall said a 10 that would intimate perfection.

Chairman Hamilton said, so, a 9 on number 3.

Chairman Hamilton said number 4; "To what extent do you believe your Board or Committee is valued by Town Officials?"

Mr. Billipp gave it a 7 or 8.

Mr. Marshall said he didn't like the question; he is concerned how they are valued to the town citizens.

Chairman Hamilton said let me read you Mr. Cutting's comments, 'based on the way consent agreements have been handled in the past and the way other matters have been handled in the Town,' he is not sure the Select Board always has our back, and may not fully understand what the BOA does, in the town, which is interpret the laws of the State and the by-laws of the Town.

Mr. Marshall said he would include Mr. Cutting's comment.

Chairman Hamilton said Mr. Cutting gave it a 5.

Mr. Marshall said he agreed with that.

Chairman Hamilton said, anyhow, what do you want to put on that one.

Mr. Billipp said 5-6 and plagiarizes his comment. The Board all agreed.

Chairman Hamilton said number 5; "To what extent do you have trouble getting a quorum?"

Ms. Lemire said never and they gave it a 1.

Chairman Hamilton said number 6, "To what extent do you have trouble getting new or keeping existing members?" They said a 1 and no discussion; all agreed.

Chairman Hamilton said number 7, "To what extent does committee paperwork, such as

posting of agendas, writing minutes, pose an issue for your group?”

Mr. Marshall said he did not ever recall a situation.

Chairman Hamilton said all of our minutes are on time; that we don’t have a three-month delay between meetings and approving the minutes, usually.

Mr. Billipp said give it a 1.

Chairman Hamilton said number 8, “What extent do you feel more support is needed from other staff?”

Ms. Lemire said she didn’t think they needed any more support and, when situations arise when they need something out of the ordinary, she feels they get all the support they need.

Mr. Marshall said it’s kind of “if it isn’t broke don’t fix it”.

Chairman Hamilton read Mr. Cutting’s comment, he sometimes feel the Town Planner and Code Enforcement Officer have different agendas than the Board.

Mr. Marshall said they have a different window they are looking through.

Ms. Lemire agreed. Ms. Lemire said she disagreed with that completely; she wouldn’t include that statement at all. Ms. Lemire said that getting materials for some of the meetings is that the Planning Office and the Code Enforcement Office are flat out all the time; both of them need help and they are doing the best they can, as quickly as they can, in the most efficient and effective way they can.

Chairman Hamilton said that what Mr. Lee is asking of us is where there is a deficiency.

Ms. Lemire said it needs to be clear we are not being critical of those offices.

Mr. Rankie said that he disagrees; that if the material is tardy, it is tardy, and nothing that Ms. Ross has been required to give us or support from the CEO has ever been tardy. Mr. Rankie said that things from the Planning Department, things are very tardy, and our job is to recognize that it is tardy and for us to make excuses for anyone is not our job.

Ms. Lemire said she is not making excuses but she is discussing the reality.

Mr. Rankie said his view sitting here, that is not his view, that could be your view because you are involved in some of that (to Ms. Lemire), but to our view here, if we don’t get the material we need until the day of a hearing, that is tardy, that is bad.

Ms. Ross stated that they have had discussions with Mr. Lee about getting an

administrative support, at least part time, to get the Board of Appeals files combined from the vault; that everything is kind of haphazard over the years, and putting together all the folders, and make sure everything is secure, and doing administrative support.

Chairman Hamilton said, so, you have had that discussion; so maybe, if they include the fact that is what we need, that would support the notion that you have already discussed and it needs to be addressed.

Mr. Billipp said that they can; that there have been cases, at times, when information from the Planning Board is not timely fashion.

Chairman Hamilton asked what they wanted to rate it.

Ms. Ross said, sometimes, it is two things; that the planner has to bring to the Planning Board to get information from, and not just the Planning Department, but information that needs to be discussed at the next Planning Board meeting and it could be that the Planning Board meeting and the BOA meeting are fairly close.

Ms. Ross said that, like in the case that she thought they were referring to with the elderly housing, it was just tight time constraints between those two meetings.

Mr. Rankie said that, if he is remembering the right one, with that particular case, it was not detrimental to the Town because the appellants withdrew their case. Mr. Rankie said, looking at the Town's position, when we receive 20 some pages the night of the hearing, if he remembered correctly, they were not even going to look at that so the Town won't even get a view from those pages. Mr. Rankie said that, in that case, it wasn't going to hurt anything because it was withdrawn but had it not been withdrawn, that would have been a problem.

Ms. Ross said a lot of that had to do with the dates from the Planning Board, and when it was approved, and the date that it was heard from the board (planning) was such a tight timeframe; that the information was lengthy that needed to get to the Board to show the Planning Board's side of the piece. Ms. Ross said it was just that set of circumstances.

Ms. Lemire said it is not the norm.

Ms. Ross said it is not normal.

Ms. Lemire said she is right, Ms. Pelletier has to approve anything.

Mr. Billipp said that there have been rare cases where they did not get information when they needed it, or came in too late, but rare.

Ms. Lemire said most of the time they get it.

Chairman Hamilton said there have been rare cases when the Board of Appeals has not received, and Ms. Lemire added, information in a timely manner.

Mr. Marshall said sometimes the packets are big.

Ms. Lemire said yeah, no kidding.

Mr. Marshall added, and complicated.

Chairman Hamilton said how do we want to rate it?

Mr. Billipp said he gave it a 2, low number, then 2 to 3. Chairman Hamilton asked if that was consensus.

Ms. Ross said maybe if you feel that additional administrative support would help or anything of that nature.

Chairman Hamilton said it affects the Town because they are not given the information the Board needs to look at. Chairman Hamilton said the support is needed from the Town for the Board to do their job and it's sounds more like a 3 or 4 than 2.

Mr. Rankie said is the word 'rare' right, is that accurate. Ms. Ross said it's been once since she's been here in 2 years. Chairman Hamilton said the Libby case.

Mr. Rankie said the Littlebrook case; that that came in the day of the hearing, as well.

Ms. Lemire said it didn't come in the night of; that it was a couple of days ahead.

Mr. Rankie said he remembered the attorney complaining, as well, and that he wasn't sure it is fair to say rare.

Ms. Lemire said that, in all of the cases in the last five (5) years, it is rare.

Chairman Hamilton said, can we just say that there have been cases that the Board of Appeals has not received necessary information from the Town in a timely manner, instead of the word rare. Chairman Hamilton said it's not from the applicant; that this is the Town needs to provide us; that, if an applicant gives us a 30 page, we are not going to read that, either, the day before a hearing.

Chairman Hamilton said what do we want to rate that, number 8? 3 was agreed.

Ms. Lemire said yes 3. Chairman Hamilton said 1 being no problem and 10 being lots of problems. Chairman Hamilton said 3 asked Mr. Rankie and he said yes, and everyone on the Board agreed.

Chairman Hamilton stated okay, last one, "To what extent is your group's work hampered by lack of resources or people?"

Mr. Billipp, gave it a 2, a very low number; that he didn't feel they are hampered by lack of resources.

Ms. Lemire said resources would be administrative staff here at Town Hall.

Mr. Marshall said he would concur.

Mr. Billipp said we rarely have a case where we are not provided things and given time to review, and we don't have to cancel a hearing because we didn't get something.

Ms. Lemire said it's very rare where we have a case and have continued.

Mr. Marshall said not that he can remember.

Ms. Lemire said because that meeting went until 2:00AM.

Chairman Hamilton said Mr. Cutting's comment on this is a 1, not a problem, for number 9.

Chairman Hamilton asked if members wanted to make a comment. All members said no.

Chairman Hamilton said that is enough; that he will fill that out and send it in to the Town Manager now that we have consensus on that.

Chairman Hamilton said there was one other thing, he got from the Town Manager. There was the Libby case, the continuance he believed, continued. The Town Manager sent this on July 22, 2016. Chairman Hamilton said it's a notice from the Superior Court regarding the Libby and Falzone-vs. the Inhabitants of the Town of Eliot, and "hereby order that all proceedings and deadlines in this action are stayed until August 15th"; that last time it was until July 15th.

Ms. Ross said she believed it was withdrawn and there are abutters purchasing the property.

Chairman Hamilton said okay anything else?

Mr. Rankie said Chairman, I've done a little research as far as some of the things we have talked about, our decisions, and I'd like to be able to share this. He said it is precedent setting cases and he'd be happy if he passed them out and they talked about them at the next meeting.

Chairman Hamilton said he would prefer that, as well.

Mr. Rankie said you get a basic class and you are all done.

Ms. Lemire said she would like MMA to come down and do a class.

Mr. Rankie said it is up to you if you want to discuss at a further meeting or not.

Mr. Billipp said these should go to those that are not here.

Chairman Hamilton said also to the CEO.

Chairman Hamilton said Mr. Cieleuszko officially resigned.

Chairman Hamilton said Mr. Cutting did not contact him.

Ms. Lemire said he didn't contact you, and there was nothing from the previous meeting about that?

Chairman Hamilton said he did not believe so.

Ms. Lemire said he is usually pretty good about that, and maybe there is a reason that Mr. Cutting is not here.

Chairman Hamilton said he was surprised he is not here (Mr. Cutting).

Ms. Lemire said we can verify that next time.

Adjournment

Chairman Hamilton asked if there was any other business.

There was none.

Chairman Hamilton asked for a motion to adjourn.


Ms. Lemire moved, second by Mr. Marshall to adjourn. All were in favor.

Vote: 5-0

Meeting adjourned at 8:50PM, approximately.

Respectfully Submitted,
Stefanie Langlois
Recording Secretary

Approved By: _____



[Type text]

William Hamilton, Chairman

Date Approved: _____