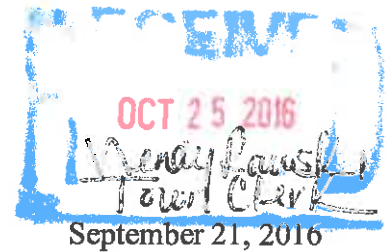


Town of Eliot - Board of Appeals Meeting



Roll Call

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

Absent: Jeffrey Cutting, Associate Member - excused absence

Call to Order

Chairman Hamilton stated it was a little after 7:00PM and that they would begin. He said thank you very much for coming tonight. He said that it was the regularly scheduled meeting of the Board of Appeals continued from the meeting of September 15th.

Chairman Hamilton said that before he progressed, he would just like to read the reason they continued the meeting. He said that under Eliot Code 45-50, any hearing a party may be represented by an agent or attorney, the Board of Appeals shall not continue hearings to other times except for good cause. A continuation of a hearing to a time and place certain announced at the meeting does not require a re-notification of abutters, officials, agencies, interested parties etc.

Chairman Hamilton said the reason we called for and continued this meeting tonight is that the Board did not receive enough notice for the Board to prepare for the hearing. He said that he appreciated the extra effort to come out tonight and the meeting is open.

Chairman Hamilton said the first order of business is that there will be no streaming tonight, but he believed the meeting was being video-taped and would make every attempt to put this on the website later this evening or tomorrow if it all worked. He said that there is no video streaming here because it is set up at the Town Hall.

Someone from the audience stood up and said Mr. Chairman, and said he had a way he could save money and save time, and had a small statement he wanted to make, and thought it would be beneficial for everybody. He said he was Robert Fisher.

Chairman Hamilton asked him to hold until they actually began the meeting.

Chairman Hamilton said, so again, the meeting will be on the website.

Chairman Hamilton said tonight they were considering an appeal, and it was an administrative appeal. He said the means they use to make a decision on an administrative appeal was called an appellate review, which means all the material, in this case the Planning Board, but either the Planning Board or Code Enforcement Officer, either case for an administrative review.

Chairman Hamilton said that all of the material up until the time they made the decision is what the Board of Appeals will use to determine whether they acted clearly contrary to Code or within the tenants of the Code of the Town of Eliot. He said that new material that has come in after the decision is not considered by the Board, regardless of how substantive it is. He said, again, this is an appellant review and that is how we will proceed tonight.

Chairman Hamilton requested that all electronic devices be silenced at this point.

Chairman Hamilton said he was going to briefly read, as he did on September 15th, the nature of the Public Hearing on the agenda. He said Donald MacNeil, Jane MacNeil, Michele Meyer, Jay Meyer, Connie Weeks, Rosanne Adams, and he believed Robert Fisher, were requesting an administrative appeal of the Planning Board decision to approve a modification of an approved subdivision plan for property owned by William and Wendy Gilbert, located at 241 River Road, Map 19 Lot 88, located in the Suburban District and Limited Residential Resource Protection Zone.

Chairman Hamilton stated that the application was filed on and received by the Town Clerk on August 29th. On September 6th, the Town of Eliot, to the attention of Kate Pelletier, from the Planning Department received this letter:

Dear Ms. Pelletier,

We are writing today in regards to our Request for Administrative Appeal of the Planning Board decision on the Gilbert's property Map 19 Lot 88 on August 2, 2016. We filed this Appeal with an inadequate understanding of what was actually voted on and approved by the Board. We now have a clear understanding that the decision was for an exception for the Gilberts lot only, and no deed restrictions were removed. We hereby revoke our Request for Administrative Appeal in this matter.

Best Regards,

Donald and Jane MacNeil (this was not read but the letter is signed by both)

(end of letter)

Chairman Hamilton said that what that does, as of the 7 (seven) people that initially filed the appeal, there are now 5 (five), and there are no abutters. He said before they get into the issue of standing, he would like to first address the issue of timeliness. He said that he believed the decision of the Planning Board was on August 2nd, and the application was received on August 29th for the appeal, so it was within the 30 (thirty) day time limit and it definitely is within the time frame, so it passed the timeliness test.

Chairman Hamilton said the next test was the test of standing, and before he opened the Public Hearing, and before they actually determined standing, before they open the Public Hearing, he believed one of the applicants, one of the appellants, would like to say something. He asked them if this was the time they would like to address this and asked them to state their name for the record (to Robert Fisher).

Rosanne Adams answered, he can't hear you. She stated her name was Rosanne Adams of 657 Goodwin Road and that she would give the members copies (and Mr. Fisher passed them out).

Ms. Adams said that she believed they had received a letter from Jay and Michelle Meyer and also Constance Weeks, that they can speak on their behalf.

Chairman Hamilton said that was correct, and that he would read the letter at this point:

Dated 9/20/2016

Dear Ms. Ross: in the matter of PB 16-13, the Board of Appeals hearing scheduled for Wednesday, 9/21 at the Grange Hall, please be advised that Jay and Michele Meyer and Constance "Connie" Weeks will not be in attendance.

We appoint Robert Fisher and/or Rosanne Adams to speak on our behalf with regard to this appeal.

Should you have any questions or concerns, please feel free to call.

Respectfully,

Michele Meyer
Jay Meyer
Connie Weeks

(end of letter)

Ms. Adams said this letter was to Mr. Bill Hamilton, Chair, Eliot Board of Appeals, Ms. Heather Ross, Eliot Code Enforcement officer and the Board of Appeals members. Ms. Adams said this was from the appeals group, the 5 (five) of them.

Dear Ms. Ross, Mr. Hamilton and BOA members:

Our group appeal of the Planning Board decision to waive a restrictive covenant is simple. We contend the Eliot Planning Board does not have the legal authority to change, waive, remove, or alter a private deeded covenant. The restrictive covenant was owner imposed, a contract arising out of an agreement between private parties, in this case the Laniers (and their heirs and assigns) and those to whom they subsequently deeded their properties, which comprise the minor subdivision on River Road. Ultimately, waiving or altering this covenant is a civil matter, one for the courts, and not within the purview of the Planning Board.

Nowhere in the minutes of the 1977 Planning Board, concerning this subdivision, does it say the Planning Board made a decision to place a restrictive covenant on the property. The 2016 Planning Board, which contends the 1977 Planning Board placed the covenant and as such they may waive it, should have sought sound legal advice, as was suggested by several members of the Planning Board, and should not have made the private deed restrictive covenant a part of

their review of the Gilbert's request to subdivide.

The Planning Board assumed a power they do not legally possess. They should have instead instructed the applicant to return to the board with their plan once they addressed and resolved the civil matter.

It should be noted that the Planning Board's move into the area of waiving private deed restrictions and their decision in this case, clouds the Gilbert's deed and the deeds of countless properties in Eliot. Every property owner whose land is either benefited by or burdened by a covenant of any sort will now face challenges to their property rights if their deed only makes a reference to a document that articulates the covenant but fails to describe what, in the referenced document, is actually meant to apply to the deed and the property.

A member of our group sought out, and has been communicating with John Lanier of Colebrook, NH. He is the son of David S. Lanier. He informed us that the deed restriction was not put on by the Planning Board in 1977 but by the Lanier Family, which included his father. We put him in touch with the Gilbert Family. John Lanier has since informed us that the Gilberts and he have spoken and he has made known them his feelings and expectations concerning this matter.

We therefore are pleased to withdraw our appeal.

(end of letter)

Chairman Hamilton said thank you.

Chairman Hamilton said, so there is no appeal at this moment and the Planning Board decision stands. He said that it has not come before the Board since there is no appeal in front of us tonight.

Chairman Hamilton said he thanked all for coming tonight and that they had not even actually opened the Public Hearing because there is no Public Hearing.

Chairman Hamilton said thank you all for coming and we will continue with some regular Board of Appeals business.

(clapping and lots of chatter for over 5 minutes while the audience departed)

Chairman Hamilton said that they were going to continue their meeting and that you were welcome to stay, but if they wanted to continue their conversation, to leave the building (to all talking in the room).

Review of August Minutes

Chairman Hamilton said the next order of business is review and approval of minutes of August 18th, 2016. He said he will go page by page, page 1, 2 etc. Chairman Hamilton said he was going to read the numbers on the left hand side and stated some of the minutes were not collated

correctly so there was some confusion, but that his seemed to be okay.

Mr. Rankie said he got to a point where there was a high number and then a low number so he stopped at a certain point because he got frustrated trying to go back.

Chairman Hamilton said he would prefer they do at the next meeting and Mr. Rankie agreed.

Chairman Hamilton asked if that was a consensus.

Mr. Rankie asked that he didn't know who made the copies but that it appeared they got out of order and double sided.

Ms. Ross said she was not sure what happened but she knew that there were some issues with the copier and the stapling, so whoever was doing that, that could be why. She said she would have them re-do them.

Chairman Hamilton said would you please, that would be great.

Mr. Rankie said he would print his own if it was emailed to him as well.

Chairman Hamilton said, why don't we have them put them in our box, and said he did not need one as his was fine.

Chairman Hamilton confirmed they would delay the August minutes until the next regular meeting.

Review of By-Laws

Chairman Hamilton said Ms. Lemire gave us copies and they are in the process of amending the by-laws of the Board of Appeals as it is one of their authorities, and then reviewed by the Town and are in the middle of reviewing it now. He asked if everyone was prepared to do that tonight?

Ms. Lemire said the only change was on page 3. She said she updated the sections, the ordinances, the articles, under which we have the authority to review under administrative appeals. She said that was the only difference.

Mr. Marshall said seeing as how they have already approved these, he said he would make a motion to accept as corrected, seconded by Mr. Billipp.

Chairman Hamilton said they had gone through these.

Discussion

Mr. Rankie asked if they would be able to amend if they are not going to take time. He said the reason they got the finished copies was to go through and make sure, check the checker, if you will. He said as long as the motion can be amended, unless they want to sit and check the

checker right now. He said if they check the checker and find something, you know he is not perfect and would be comfortable.

Mr. Marshall said he would be comfortable in waiting a few minutes while he would take a look through.

Mr. Rankie said it was up to him, he said he is a slow reader.

Mr. Marshall said that was alright as they were destined to be here until midnight anyhow, so a few minutes is no big deal.

The Board members read through.

Ms. Lemire asked Ms. Ross if she knew what section growth management was in.

Ms. Ross said section 29 and Ms. Lemire said thank you.

Chairman Hamilton said they are looking at Section 3.9.

Mr. Billipp said they were somewhere in chapter 29.

Chairman Hamilton said it is not a very big chapter.

Ms. Ross said for the appeals section, 29-8.

Chairman Hamilton asked to make that clearer.

Ms. Lemire said she forgot to make the crossover, 3.9 is in the Permit Limitation Ordinance, for the Growth Ordinance cross over, in 29-8. Ms. Lemire said Permit Limitation Ordinance is now the Growth Management Ordinance.

Mr. Billipp asked if she could cross out the Section 3.9.

Ms. Lemire said no.

Ms. Lemire stated it is now Article 6.

Chairman Hamilton said he did not see Article 6.

Ms. Lemire said appeals and variances, Article 6, it was 25-72, top of the right hand page.

Chairman Hamilton said, let's include that and that this is totally confusing.

Ms. Lemire said it was actually Article 6, appeals and variances, and then after that is goes 25-71, 25-72. She said it was all of Article 6.

Chairman Hamilton said 33-82, administration and appeals, remove section 503.

Ms. Lemire said she would replace the old ones with the new ones.

Mr. Marshall asked if they needed to bring this back again.

Ms. Lemire said whatever they are deciding tonight will be in there.

Chairman Hamilton said and section 1003 of 41-65.

Ms. Lemire said section 1003 goes away.

Chairman Hamilton asked they are not going to cite the old section on there.

Ms. Lemire said, no, no, all of those are going away.

Chairman Hamilton asked Ms. Lemire if she will redraft this, and Ms. Lemire answered yes.

Mr. Billipp asked Mr. Marshall if he would consider a motion to review and approve at the next meeting when Ms. Lemire has made the final changes.

Mr. Marshall said he thought that would be appropriate although he would like to put it away.

Mr. Marshall said he would revise his motion to postpone the approval of it now until they see the corrected drafts, and Mr. Billipp seconded the motion, agreeing to the amended motion.

Chairman Hamilton asked if any other discussion.

Mr. Rankie said the only thing he saw from his hand notes to what they have done is on page 6, Article 8, Appeal Procedure, under Section B, of the by-laws. For whatever reason, we started that sentence with "only in cases where the application does not meet the timeliness criteria." He said there we put in "only" in front of that and if it is not applicable, no big deal, it says the same without only. He said they talked about it and he wrote it down, but it is okay either way.

Chairman Hamilton said it was just addressing timeliness and they already have statute.

Mr. Rankie said he was good.

Chairman Hamilton asked if anything else.

Chairman Hamilton said they had a motion to continue this at the next meeting.

All were favor to continue – 5-0.

Chairman Hamilton said that that was all he had for review tonight and they didn't do any of it. He said he guessed everybody was sort of anticipating they would be here tonight and probably

would not have a chance to review the minutes.

Other Business

Chairman Hamilton said, let me open the meeting for other business as needed, and Ms. Lemire approached me before the meeting started, that she had something she would like to bring up.

Ms. Lemire said that this had to do with the bias issue Mr. Rankie raised, and she would like to address it. She said he raised the issue according to the paragraph in the MMA Planning Manual, Board of Appeals Manual, that says:

Whether a board of appeals hears an appeal 'de novo' or in an 'appellate capacity', it probably is not a good practice for board of appeals members to attend planning board meetings on applications which are likely to be appealed to the board of appeals. The board of appeals should be making its decisions based on evidence presented to it as part of its own proceedings. By not attending the planning board's meetings, the appeals board will minimize bias and due process problems with its own proceedings by ensuring that the only information which will affect its decision on an appeal is what is presented directly to it and of which all participants will be aware. Board members who do learn information outside the board of appeals meetings have an obligation to note that information for the record."

Mr. Marshall asked that was the manual not statute?

Ms. Lemire said that was what she was assuming he was basing his decision on.

Mr. Rankie said he was here and she could ask questions.

Ms. Lemire said she was speaking right now.

Chairman Hamilton said let's hear her out.

Ms. Lemire said that Mr. Rankie used this paragraph as the basis on which he raised a bias on my part that he believed disqualified me from sitting for Planning Board appeals:

Ms. Lemire said that she had some issues with this paragraph, partly because it is telling us that they have to second-guess every single application that comes before the Planning Board and who might possibly appeal it, and they can't do that. That was one issue she had with the paragraph.

Ms. Lemire said it conflicts with their by-laws. On the first page under the general provisions it states:

"B. It shall be the responsibility of the Board to become familiar with all the duly enacted ordinances of the Town, which it will be expected to act upon, as well as with the applicable State statutes. Town Ordinances under the jurisdiction of the Board include:

- 1. Zoning Ordinance*
- 2. Subdivision Ordinance*
- 3. Site Review Ordinance*
- 4. Permit Limitation Ordinance (now the growth ordinance)*
- 5. Floodplain Management*

C. It shall be the responsibility of the Board to become familiar with the community goals, desires and policies as expressed in the "Comprehensive Plan" and grant the minimum relief that will ensure that the goals and policies of the plan are preserved and substantial justice is done.

E. New Member Orientation - Prior to their first meeting, new Board members, both regular and associate, will attend an orientation meeting. The purpose of this meeting will be to explain the functions of the Board. The meeting will be led by the Chairman of the Board, or his/her designate. As part of the discussion, the various official reference materials will be identified and distributed. The list of reference materials includes the following:

- 1. Handbook for Local Appeals, a Legal Perspective*
- 2. Ordinances Governing Boards, Commissions and Committees*
- 3. By-Laws of the Eliot Board of Appeals*
- 4. Procedural Guidelines for the Conduct of Public Hearings*
- 5. Board of Appeals "Notice of Decision" Form*
- 6. Town of Eliot Municipal Code of Ordinances*
- 7. Town of Eliot Charter*
- 8. Town of Eliot Comprehensive Plan"*

Ms. Lemire stated that this issue of the appearance of bias has brought her ability to be a productive, functioning member of the Appeals Board into question. Mr. Rankie raised the issue of the appearance of bias because of her employment status as the recording secretary for the Planning Board. She said she is required to attend meetings for the sole purpose of taking the minutes of those meetings. She said his stated desire is that she not sit on the Board whenever an appeal of the Planning Board is before them.

Ms. Lemire said that Mr. Rankie believes she has special knowledge and that it takes in-depth analysis to write minutes, neither of which are true. She said everyone has access to the same

knowledge, if they care to avail themselves of it, especially now that we have all boards and committees video-streamed. Ms. Lemire said her minutes are public and speak for themselves. She said she writes only what is spoken at the meetings and it is not her job to analyze anything. Ms. Lemire said her job is to accurately record what was said as it becomes a historic document, and part of the official record, of the Planning Board process with any application before it.

Ms. Lemire said she holds herself to a very high ethical standard in her work as a recording secretary and as a member of the Board of Appeals. She said they are to be governed by the rule of law – Town ordinances, State statutes and the Town Charter, under which they operate and have their decision-making authority. She said their by-laws require all of them, every Board member, to become familiar with Town ordinances and State statutes, Comprehensive Plan and Town Charter. Ms. Lemire said that they need to understand these procedures and processes and rules in order to accomplish their purpose to give residents the opportunity to an unbiased and fair hearing.

Ms. Lemire said that she believed that the equitable application of the law must be made available to everyone, without prejudice. She said they are to interpret and apply the rules, as written, and there is no room for emotion-based decision-making.

Ms. Lemire said she has had discussion with the Town Manager and through the Town Manager, she will be sending questions to get legal clarification on this because this does need to be settled, thank you.

Chairman Hamilton said thank you, discussion.

Mr. Rankie said he disagreed strongly with a lot of what Ms. Lemire said about her not being affected by attending and recording and working with the planning assistant to prepare the meeting minutes. That said, he thought it would be most prudent for them if they simply wrote an inquiry to MMA legal staff and asked for their assistance in this matter. He said that he had seen this here and in other places, and he expressed it, if they all remembered, in previous meetings.

Chairman Hamilton said yes.

Mr. Rankie said he simply did not question Ms. Lemire's integrity, it really is an apparent conflict of interest. He said that anyone that has gone to a Planning Board meeting, and sees Ms. Lemire interact with the Planning Board, she has to ask questions for clarification etc. He said so rather than them saying, I agree, or disagree, find this line or find that line, MMA is there for our service and we pay for their service, and he felt that they do a good job of giving them some good feedback and avoid hard feelings or whatever. He said my thoughts, your thoughts, all of our thoughts. He said that is something as Chairman, you have direct access to them without asking anyone. He said he was happy to send him a link to them if he liked, he said he used them quite a bit for the Charter process. He said he didn't think our town uses them as much as we should because we are already paying a fee. He said he finds it odd, they teach the course. He said he would be happy with that and it would be the most productive way to approach this.

Chairman Hamilton said okay, and asked if any other discussion.

Mr. Marshall read the minutes of the Planning Board, he said which he guesses gives all the information that Ms. Lemire was privy to.

Ms. Lemire said, that's right.

Mr. Marshall said he could have watched the video streaming and what her interaction was with the Planning Board. He said anyone here could have and may have watched it. He said he would disagree heartily with MMA in the manual.

Chairman Hamilton asked why is that.

Mr. Marshall said that it is almost saying that we have to be ignorant, and he would say, having read the minutes, and familiarized, that is why we postponed this, so we could learn something.

Chairman Hamilton said exactly, yup.

Mr. Marshall said they could have said oh no, we don't want to be influenced by anything the Planning Board did so we are going into this cold and they are only going to hear those things presented. That would be the fulfillment, or the bringing out of what they are trying to do here. He said he spent several hours going through the material before this meeting tonight, which again, gives him any and all information that Ms. Lemire had. He said if she has a bias, he said he knows he has a bias, Mr. Rankie has a bias, and I'm sure you have a bias, that is human nature.

Chairman Hamilton said he did not think so. He said he does not come to this meeting with a bias.

Mr. Marshall said not to this case.

Chairman said he was talking about any case that comes before this Board, he does not come with a bias.

Mr. Marshall said he is not saying he has a bias to this case.

Chairman Hamilton said you just said we all have a bias; he does not have a bias.

Mr. Marshall said he did not state you have a bias to this case.

Chairman Hamilton said he does not have a bias to this case, not to any case. He said they gather information from all sources, from the appellate, from all the material that is available to them that the time that the administrative appeal is an appellate review. He said he thought what the MMA was saying that it is much like the same thing as if someone from the Planning Board decided to go on a site walk and look at a property, and nobody else went. That is totally not correct.

Ms. Lemire said that was not a good analogy and Chairman Hamilton said he thought it was.

Chairman Hamilton said that that person now has a special view of that property and nobody else on the Planning Board does because they didn't do a site review. He said so he has something, or she has something, that nobody else does.

Mr. Marshall said so we should all be ignorant.

Chairman Hamilton said no they should come on a neutral basis so they all get the same information at the same time. He said that is what he thought the MMA was driving at.

Mr. Marshall said he would like to see a property and be familiar with it, or look at it on Google Earth so that when people say things about the property he can look at that information and compare it to what he saw, and say I don't think that's totally the case, or yes that is the case.

Chairman Hamilton said it is discouraged, that is really discouraged.

Mr. Marshall said yes he knew it was discouraged, and he didn't think it was a good idea.

Chairman Hamilton said that if you have that feeling strongly, we should all go see it together so we have the same view, we all get the same feedback from the owner, you don't have special conversations with the owner that they have never heard about.

Mr. Marshall said he didn't say anything about having a conversation with the owner, he just said drive by and get the lay of the land.

Chairman Hamilton said let's get back.

Mr. Billipp said he thought it would be prudent to get some feedback from the MMA. It is awkward. We want to avoid any appearance of conflict or bias; I think we did the right thing. We are not saying Ms. Lemire is a bad person and he did not think Mr. Rankie said that she has bias or conflict. He said it is the prudent thing to do in this case until we get some direction from the MMA.

Ms. Lemire asked in future Planning Board cases?

Mr. Billipp said yes, until they get some direction from the MMA, if they feel her role as secretary could create bias.

Ms. Lemire said she still thought the Chairman's analogy was awful.

Mr. Rankie said in the minutes point that Mr. Marshall brought up, what is missing is they were presented in this case with minutes, the official version but all of the parts of the minutes that did not make it into this. He said you may take this personally Ms. Lemire, but he would feel himself personally if he wanted to get minutes to perfection, he might go back and watch the

video streaming, he might talk to the planning assistant, he would do everything he could to make the product perfect, and he said he could only look at things as to how he would do them.

Ms. Lemire said to Mr. Rankie, you are not hearing me.

Ms. Lemire said she is telling them that is not how she does it. She said she has no interaction with the planning assistant, she leaves the meeting, she goes home and does the minutes at her house. She said that there is no asking anyone for clarification, except if there are side conversations going on, she will stop the meeting and ask for clarification because she wants to make sure that what she is writing in that set of minutes is what that person actually said. She said she is on her own with the minutes, she doesn't get any kind of input, she does not work with the planning assistant for anything.

Mr. Marshall said that would be much like the corrections made where it has been brought up as that isn't the right part of speech or that is awkward, the point is the minutes need to reflect what was said, not what should have been said or what we thought was said or what proper English is. He said the exact words, in just what we said, if they made a mistake in their speech, that is what would be in the minutes. Not something that has been worked on with the planning assistant or anyone else.

Motion

Chairman Hamilton said can we get a motion to inquire to MMA about this issue.

Mr. Rankie moved, seconded by Mr. Billipp, to inquire to MMA.

Discussion

Chairman Hamilton asked if any more discussion?

Ms. Lemire said that the whole Board should see what is written up for questions.

Ms. Ross said it should be directed through the Town Manager, and Ms. Lemire said it absolutely should be directed through the Town Manager.

Mr. Rankie said he did not agree and he would not modify the motion for the Town Manager, but that he would modify his motion for the Board members to look at. He said he is not going to modify his motion, the Chairman has sat here and listened to what they said and what their concerns are, and he believed he had no bias on this issue, he can present himself clearly to the MMA so he stands with his motion.

Mr. Billipp said it is a relatively simple question and concept, he said the Chairman will know how to ask the question.

Someone from the audience said Mr. Chairman, and the Chairman said the Board is discussing the issue and this is not a public hearing. He said he would be happy to hear what she had to say

after they make their motions.

She said that what she did not want to happen was for them to say they made the motion, and vote on it, and then no comment would be necessary.

Chairman Hamilton said it is not about the hearing.

She said she understood.

Chairman Hamilton said any discussion. All in favor.

Vote

3-2, opposed Mr. Marshall and Ms. Lemire.

Chairman Hamilton said he would draft a letter and will actually send it to MMA.

Chairman Hamilton said to the lady who just spoke in the audience, now you would like to make a comment?

She said yes, Janet Saurman, 22 Park Street, Eliot, ME. She said she appreciated the opportunity to speak tonight as it will save her writing a letter to the editor for the Portsmouth Herald. She said she thought what happened last week when Ms. Lemire was asked to step down from the hearing was most puzzling. She said first of all, Mr. Rankie, she said she understood he went to a Planning Board meeting last night, so there you go. She said secondly, what evidence does a citizen have as Mr. Marshall pointed out, that you all didn't sit home on your video and watch the meeting and start forming opinions and thinking about things. She said what we have from you is your word, that a) you either didn't do it, or if you did, it didn't bias you. She said, so for you to say to us we should accept your word that you have not brought any bias, but we can't accept Ms. Lemire's that she sits there and says she thinks she can do this without any bias, you are not being fair. Ms. Saurman said, take your word for it that you didn't watch the video, or if you watched it, it didn't influence you, but don't take Ms. Lemire's word for it. She said if anyone has taken recording secretary notes, you hardly even are engaged in the conversation. She said you are just so busy trying to write, trying to write, trying to write.

Ms. Saurman said, so for you to say to us, if I were to ask each one of you, did you watch the video, did you watch it, send a letter to MMA. Turn to Ms. Lemire and say, this isn't about you, this isn't about you. She said, let's be real, she is a human being and her integrity and her trust were questioned and that is how a lot of the public heard it, and that is clearly how Ms. Lemire heard it. Ms. Saurman said she thinks that the Board ought to rethink their decision to decide that Ms. Lemire can't do her job, her livelihood, and also serve on this committee.

Mr. Rankie said that he would like to make it clear last night that there was a public hearing that the Planning Board held relative to the Growth Ordinance. He said when the public hearing was concluded, he left the meeting, for the record.

Chairman said they passed a motion to inquire to the MMA staff and that is what they will do.

Someone said may I ask a question of the board, in regards to how these things are brought up.

Chairman Hamilton asked her to state her name.

She said, oh I am sorry, Melissa Horner, 16 Alvin Lane.

Ms. Horner said she was under the assumption that when a conflict of interest is something a member may or may not be dealing with, that it is up to that member to recuse themselves and share the information.

Chairman Hamilton said that is incorrect, it is the Board that makes the decision as to whether, through testimony, they believe that the person should recuse themselves. He said if they don't, then the Board can vote to recuse them. He said that is the way it is written in their by-laws.

Mr. Marshall said somebody can recuse themselves, they could.

Ms. Horner said another Board member could bring up a potential conflict of interest they see and that it how it is decided?

Mr. Marshall said a direct family member.

Chairman Hamilton said that was correct, that is how it works, and that is through Robert's Rules as well. He said that is the standard they use, in addition to the by-laws and the Code of the Town of Eliot.

Chairman Hamilton said okay, is there anything else?

Ms. Saurman said thank you Mr. Chairman, thank you.

Mr. Rankie said back to our agenda, other business as needed.

Chairman Hamilton said correct, other business as needed, or other business, that is where we are now.

Mr. Rankie said it is somewhat relevant tonight, but is there anything that we might be able to do to help our fellow citizens understand what our job is, to uphold the ordinance of our Town. He said he questioned because of the last correspondence they all received in their in box, about the appeal that didn't go on tonight.

Chairman Hamilton said they didn't have the hearing tonight, so please don't read it.

Mr. Rankie said he wouldn't.

Mr. Rankie said when people come to us and tell us that person is a super nice person so we

should relax the rules. He said it is our job to sit up here and uphold the rules and ordinances and he said he will go back to Mr. Cutting who is not here tonight. He said it is our job to uphold the ordinances of the Town and State laws. He said they may not be a popular thing, that is our job and our job stinks sometimes, but it is our job. He asked is there any way we can get that out to the people so they know what we sit up here for?

Chairman Hamilton said I think you just did Mr. Rankie, it's on tape.

Mr. Billipp said he thought the Chairman did a good job of telling the audience and during a Public Hearing that they are doing their best to follow the Code. He said or anyone in the Town that watches the video, they can tell they are not making the stuff up, that there is a large amount of material they are trying to follow.

Mr. Rankie said when people get emotional, they don't hear anything but their emotions.

Chairman Hamilton said that is why they have Public Hearings so that people can express their emotions, and that is fine too. He said their view and their function as given by the Town and appointed by the Town and by the State Legislature, is incredibly narrow, a very narrow focus when it comes to determining whether the Planning Board acted clearly contrary to the Code, or if the Code Enforcement Officer acted clearly contrary to the Code, as far as administrative appeals. He said as far as variances, the appellant needs to meet five (5) very rigorous standards. He said if they meet four (4), it is not enough. Chairman Hamilton said the Legislature has told us they have to meet five (5), and so does our ordinance. He said they are in somewhat of a position to determine whether, indeed, they did meet the criteria and there is a little bit of interpretation going on. He said essentially their job is to know the Code solid and to apply it solid, that's it. He said personal feelings, whether an appellant is popular or not, makes no difference and has no bearing on a case. He said first of all, can we hear a case, and tonight we didn't even have a chance to address the standing issue. He said they have very strict guidelines they need to follow that they have no choice about.

Chairman Hamilton said if he does a lousy job and if somebody calls him on it, and says look you didn't do the standing test, he will take the hit. He said in most cases, they have a fairly good procedure here to review anything that comes in their purview. He said there are things they can't listen to because that is not what the Town asks them to do. He said he hoped that clarifies.

Chairman Hamilton asked if anything else.

There was none.

Adjournment

Mr. Marshall moved, seconded by Mr. Billipp. All were in favor.

Vote: 5-0

Meeting adjourned at 8:07PM, approximately.

Respectfully Submitted,
Stefanie Langlois
Recording Secretary

Approved By S: /
William Hamilton, Chairman


Date Approved: October 20, 2016

