

ITEM 1 - ROLL CALL

Present: Bill Hamilton - Chairman, Charles Rankie – Vice Chair, Ellen Lemire-Secretary, John Marshall, Cabot Trott, Jay Meyer – Alternate, Rosanne Adams – Alternate

Also Present: Ms. Ms. Bishop - Code Enforcement Officer, Deborah Parent – Recording Secretary.

ITEM 2 – PUBLIC COMMENT PERIOD

There was no public input.

ITEM 3 – PUBLIC HEARINGS

Meeting was opened at 7:00 PM.

Mr. Hamilton stated we have two public hearings tonight. He briefly went over how the procedure will work. The hearing will be opened and then the requests will be read. We will determine the voting members and then we will determine whether there are any conflicts of interest among the voting members. If there are any conflicts, we have two alternate members and we will go to an alternate member if need be.

We will then determine the parties to the action. In cases of certain appeals, if it's an appeal of an administrative appeal for example, an appeal of a decision by either the CEO or the planning board. Then we will determine jurisdiction; what the Board of Appeals uses to apply to the appeal that's being considered. Then we will determine standing. The code ordinances require that any appellant must have standing to come before the Board of Appeals. Then we will determine timeliness. There are certain rules regarding timeliness in submitting certain appeals. Then we will determine the type of review, Appellate Review or de novo review. These are the two issues that will be clarified as we go through the process.

The way the appeal will go; the appeal will be opened for public hearing for the specific appeal, it will be read and then the appellant will be asked to present, after all has been determined. The appellate will be allowed to state their case uninterrupted and then questions will be open to the board and abutters of the appellate. All questions are to go through the chair. Then all questions from interested parties will be asked/answered through the chair. Before closing the public hearing, the non-voting members can weigh-in on their opinions. After the public hearing is closed there will be no further public participation unless requested by the board for more information. The board then deliberates and will come to a decision.

Public Hearing Opened at: 7:04 pm

1st Public Hearing:

A. Thomas and Elizabeth Orcutt, 15 Pleasant Ave., requesting an Administrative Appeal of a decision of the Code Enforcement Officer regarding Building Permit #20-203 for property located at 17 Riverside Drive, Map 3, Lot 4 in the Village Zoning District and the Shoreland Zoning District.

Bill Hamilton stated to the voting members tonight, are there any conflicts of interest; if so, please state at this point. If there are none the voting members tonight will be the regular members of the board except for the one that is having trouble connecting tonight, so it will be regular members plus Jay Meyer. Are the appellants here? Or I understand there is an attorney representing them. The CEO's decision was rendered on 4/14/20 and your appeal was 5/11/20 and therefore you met the timeliness standard, it has been met. As far as standing, you are abutters, is that correct?

Mr. Strosahl stated that is correct, Mr. Chairman.

Bill Hamilton stated, so you have standing and timeliness. The type of appeal that we are going to consider tonight is a de novo appeal, meaning that the board will look at this appeal. Let me read the distinct qualification. It's because it's in the shore land zone and even though it's an administrative appeal, any decision of the CEO in the shore land zone will be handled by the Board of Appeals as a de novo review, meaning that when acting in a de novo capacity the Board of Appeals will hear and decide the matter afresh, undertaking its own independent analysis of evidence and will reach its decision accordingly. In other words, with an appellate review, we simply review the material that the CEO or planning board had in front of it, or her or him at the time they made the decision. Any new information or evidence is not allowable for our considerations, but in a de novo appeal, new information, everything is on the table because somehow that's what our code allows us to do in this case and that's how we are going to proceed in this case. Now I'm sorry, the appellant please go ahead with your testimony.

Attorney Strosahl stated, thank you Mr. Chairman. This is Attorney Andrew Strosahl and I'm also here with Attorney Mark Lawrence. We are representing Thomas and Elizabeth Orcutt who are abutters to the property in question and their address is 15 Pleasant Ave, in Eliot, ME. I believe in their filing you will see 3 different exhibits, the first one being labeled 1, second 1A and the 3rd Exhibit #2. The reason that we are here before the board this evening was a concern on specifically the setback that should be the rear setback, which should be 30' between the Orcutt's property and the property in question that is a proposed site plan for 17 Riverside Ave. Prior to the meeting this evening we were in contact with the CEO, Ms. Bishop and she provided us with an updated proposed site plan for 17 Riverside Ave. that was prepared by Susan Haas, and in that site plan it appears that now the setbacks have been met. The front setback is 30' as required, 20' on the side, 30' to the rear, which is the main concern of the Orcutt's because they will be the rear abutter. And so, with that, if that is in fact the plan, they, we and the Orcutt's would be satisfied with that plan and would have no objection to it. So, with this late information this evening we would just be seeking clarification that this proposed site plan that was passed to us yesterday or earlier today is in fact the plan going forward. That the

7:00 PM

building permit was issued and there were no waivers necessary; that in fact that 30' setback is being met for the rear and, also once we have that clarification, just the assurance that no ancillary structures will be allowed to be put in that setback, such as air conditioning units or anything else that might be a fixture on the property that would be allowed in that setback area. So, Mr. Chairman, just for clarification, it appears that we do not have an appeal before your board if this plan is in fact the plan that was the reason that the permit was given for the property.

Bill Hamilton stated, thank you; questions from the board to the appellant?

Ellen Lemire stated I don't have any at this time.

Bill Hamilton asked, Jay?

Mr. Meyer stated no, I don't have a question at this point either.

Bill Hamilton asked, Charlie?

Charles Rankie stated, I will if it's appropriate, Mr. Chairman, I would just direct to the Code Enforcement Officer to confirm or to say that the understanding is not true; could save a lot of time.

Bill Hamilton replied, okay

John Marshall stated, ditto

Bill Hamilton asked, will the code officer please ... John, do you have any thoughts?

John Marshall stated no. I concur with Charlie.

Bill Hamilton replied, okay

Ms. Bishop (CEO) answered, so the plan that was emailed today is showing that the structure can meet the setbacks. The surveyors are going to go out and stake out the property prior to construction and develop a more consistent plan. The permit was issued based on the fact that the structure can meet, can be met within the setbacks but they won't actually be able to pin that out until they go to start construction. So, yes this can confirm that this would be a site plan that shows that the setbacks will be met. However, it might change slightly with the survey and may have to shift the house one way or another or make it smaller; in the end though it will still meet the setbacks as the permit requires.

Attorney Strosahl asked, may I ask another question Mr. Chairman?

Bill Hamilton replied, yes, go ahead.

7:00 PM

Attorney Strosahl asked, may I question the CEO?

Bill Hamilton replied, yes you may, through the Chair.

Attorney Strosahl stated, okay. So just to clarify, this will definitely remain within the setback and that any shift of the building would be to minimize the structure that is proposed and that there would be no expansion of the proposed structure into the permitted setbacks, correct?

Ms. Bishop replied, correct; there will be no expansion beyond the setbacks. The setbacks will be met, just whether or not they keep the same structure that's proposed in the site plan in front of you or make it smaller or change a little bit. In any event it still will have the required setbacks met per the surveyor staking it out.

Attorney Strosahl asked, and because there were multiple exhibits and multiple drawings rendered of this building, the result in the proposed site plan that we see here that was emailed today, did that reduce the structure to fit into the proposed site? Is that how they were able to arrive at the, being able to build within the setbacks?

Ms. Bishop replied, well this was actually prior to them requesting a miscellaneous setback. They had developed this plan. This is why we were able to show that they wanted the requested setbacks but they weren't granted them; they still had a building envelope. So, this plan actually came out prior to the Board of Appeals meeting that was previously held. The plan that was referenced for the permitting part to Mr. Orcutt was the Exhibit #2 in the packet. In which it still shows that pretty much just scaled out that the setbacks are being met, it's just that it's a hand drawn drawing rather versus a survey plan; and this survey plan that is the preliminary plan in front of you, of course is not stamped, signed, or anything. So, as the final piece of that prior to the construction beginning, they will pretty much finalize the plan,, which looks very much similar to this and is still not going outside those required setbacks.

Bill Hamilton asked, are there any other questions to the CEO by the board?

John Marshall replied, yes.

Bill Hamilton stated, by the board first, then Mr. Orcutt.

John Marshall asked, I'm wondering, looking at these drawings which are a bit confusing, how are we determining what is the front yard, the backyard and side yard, when we have a situation where the road only comes to the corner of the property?

Ms. Bishop replied, the survey did take a little bit of time for the surveyors to research. We did the research to figure it out. The end determination per the surveyors was the corner, basically that corner, where it is showing on that preliminary drawing that 30', that is where the front is not typical, on the corner side

7:00 PM

John Marshall replied, so the corner is still the front yard?

Ms. Bishop answered, right.

John Marshall asked, so how do you choose which is the back?

Ms. Bishop replied, it'd be the opposite of the front.

John Marshall asked, so that's just the back corner?

Ms. Bishop stated, it's a unique situation on this one because, right, in somewhat because of the shoreland setback.

Bill Hamilton asked, so just for clarification, you are saying the front yard, is the 195' dimension on the property? Is that correct?

Ms. Bishop replied, well not the whole length of it but just where they have shown that. See where Riverside Drive is on the plan? In that corner, so that's where the access comes into the property so it's not ... it's the front right there, I believe it cuts off there.

Bill Hamilton stated, yeah, I'm still confused as to where the rear of the property is. Where's the rear setback? Is that the setback that abuts the Orcutt's?

Ms. Bishop replied, yes.

Bill Hamilton stated, okay, so there's going to be a 30' instead of the first drawing where there was a 20' setback. Now it's a 30' setback, which is required by the code as a rear setback, correct?

Ms. Bishop replied correct, yes that's correct.

Bill Hamilton asked, now I have one other go ahead.

John Marshall stated, it just looks like that what we are now calling the rear could just as easily be the side.

Bill Hamilton replied, yes, but it's been determined apparently by the CEO that the front setback is at the corner and along that 195' section; and then the side setbacks would be the river and the right-hand side, which was initially called the front. Is that correct, Ms. Bishop?

Ms. Bishop replied, right.

Bill Hamilton stated my only other question, and I wish we had received a completed application by the CEO of this application, is the square footage of the proposed construction. Do you have dimensions on the square footage? Because clearly as this is a non-

7:00 PM

conforming lot of record in the Village Zone and Shoreland Overlay a 20% coverage is the maximum. So that, I would assume, would be a requirement that would be attached to the permit and I have no computations here other than a rough sketch that was given. I really don't like to see that. I would like to see a much more completed application in the future. With dimensions and everything so the board can determine not only setbacks, but in this case since the board is also required to determine lot coverage in order to meet the Shoreland Zone and Village District requirements. That would be very helpful. So, do you have dimensions of this property as to the number of either length, width. I'd like a square footage number if I could get one.

Ms. Bishop replied, not in this packet it doesn't appear, same thing they're a little bit unique with the surveyors and the pandemic happening that things were somewhat not really in a reverse order but coming together again prior to that staking and prior to construction where they are finalizing all of this. So, when I issued the permit it was conditioned on the fact that being in compliance in order to meet the setbacks. The house plans from what I understand are changing slightly and I don't have an updated copy of them in this packet, I apologize.

Bill Hamilton stated, well I think in the future, it would be very helpful to have that information because, again, that's something that the board needs. You are a CEO is certainly responsible for enforcing the lot coverage, the requirement of the lot coverage ...

Ms. Bishop replied, yes.

Bill Hamilton continued, but we also as a board would not want to approve something like this if the lot coverage exceeded the 20%.

Ms. Bishop replied, right, based on that preliminary plan again it will come out on the final survey plan it's called out is the 20% but does not give the actual proposed.

Bill Hamilton stated, it actually does give the dimensions from what I gleaned from the first application of the waiver and it looks like it's the same maps. The same exact thing, and it is specified and it's exactly 20%, so I'm assuming that the building permit is going to require that this structure be not in excess of that 20%, is that correct?

Ms. Bishop replied, yes, that's correct.

Bill Hamilton asked, okay any other questions of the CEO? Any other questions from the...Rosanne, yes.

Rosanne Adams asked, I'd like to know the reasoning behind why you called that area the front; and I ask that because in our definitions in the code it says the front lot line means on an interior lot, which is described as any lot other than a corner lot, the line separating the lot from the street is the front. And so, I'd like to know when I look at this it comes into the front of that lot. And so, I'm wondering why it's considered the front being on the corner of that?

Ms. Bishop replied, I know there was confusion with the surveyor first doing the research because of the older determination, final determination with that survey research with the front. The corner lot typically, I'd have to look at the definition but when you typically have two streets ...

Rosanne Adams replied, yes.

Ms. Bishop continued, could be a corner lot but the front was called out in this particular case here based on the surveying research.

Rosanne Adams asked, and that road doesn't go all the way through?

Ms. Bishop replied, it does not appear to. It looks like it stops right at the lot line.

Ellen Lemire asked; there's no right of way?

Ms. Bishop replied, it goes right up through the lot line and then the access way is the driveway beyond that.

Bill Hamilton asked, it is a private road, is that correct?

Ms. Bishop replied, yes.

Rosanne Adams stated, thank you.

Bill Hamilton asked any other questions from the board to either the appellant or the CEO at this point? Charlie? Yes.

Charles Rankie stated, I don't know if this relates to this Mr. Chairman. Two questions. The first is the point of the 20% coverage. I think that it's a good point. Is it possible for us to put that in the Findings of Fact to make sure that it's covered? That's my first question.

Ellen Lemire stated, yes.

Bill Hamilton replied; we can certainly do that.

Charles Rankie stated, okay. The second question is almost a follow-up for what the Orcutt's attorney mentioned about air conditioning units, or whatever, in the setback space. That has not been addressed by the code officer. Is it permissible in the setback for an air conditioner and any other item, that's a question?

Ms. Bishop replied, I know they have, I haven't seen a proposal for an air conditioner on here. They did have a proposal in the setback in a previous plan and they had mentioned that the bulkhead could go away if they needed that they would put it on one of the ends

7:00 PM

that meets the setback. As far as air conditioning units something that is hanging out of the house, I don't see anything in the ordinance that speaks to overhang for appliance-type items.

Charles Rankie stated well bulkhead is no disputing; a bulkhead is part of the structure so that couldn't be outside the setback. If I'm hearing what I think I'm hearing, I think that the appellant is going to withdraw the appeal so I would say that they would want that condition where could we also assure that any such (bulkhead) is not in the setback?

Bill Hamilton stated, I think that any structure including a roadway, including any other out buildings will all be part of the 20% footprint. So, if the air conditioning unit was a large free-standing, central air conditioning unit it would have to be within the 20' setback, 20' lot coverage, I believe. Is that correct Ms. Bishop?

Ms. Bishop replied I believe, probably. I'm looking for the ordinance to see if it's real specific to that but if it's a footprint, called out as a footprint structure, then yes.

Bill Hamilton stated, okay.

Attorney Strosahl stated, thank you Mr. Chairman, this is attorney Strosahl again. We are seeking clarification that if there is an air conditioning unit, and we are more speaking of a central air conditioning unit that would be sitting on the ground not a window unit that would be hanging out of the structure, that we would want to ensure that that was not allowed into the 30' rear setback.

Bill Hamilton stated, okay I'm not sure what our jurisdiction is in that case. Again, as long as the 20% lot coverage if that central unit happens to be in the rear and it's still within the 20% lot coverage I don't know whether we have any authority to prohibit that. Ms. Bishop do you have any notions on that?

Ms. Bishop replied, no, I'm looking right now for some clarification on that.

Bill Hamilton stated, I don't think we could make that as a condition of approval for example.

Ms. Bishop stated, right yeah, because I would agree with what you just said as part of the coverage because it could still, could go, it would have to meet the setbacks it would appear and count as their lot coverage.

Bill Hamilton stated, correct so it would have to meet the 30' setback as well as within the 20% lot coverage.

Ms. Bishop stated, yes, per the definition of structure.

Bill Hamilton stated, yes that's correct, so we can't prohibit an air conditioning unit in the 30' setback area as long as it doesn't exceed the 20% lot coverage.

Attorney Strosahl asked, Mr. Chairman, are propane tanks or decks included in that as well?

Bill Hamilton replied, I will have to defer to the CEO.

Ms. Bishop stated, decks have to meet setbacks for accessory structures. Propane tanks, technically it doesn't look like it's excluded from a structure.

Bill Hamilton stated, I would think that it would be but then again some more research on it.

Ms. Bishop stated, yeah it looks like the only thing it's excluding is fences so pretty much any other type of use would be a structure it appears

Bill Hamilton stated okay.

Ms. Bishop continued, but I would have to do some follow up clarification.

Bill Hamilton stated, okay. The CEO is very much aware of your concerns and I would think that as the process goes along there will be inspections. And if your concerns are not met, I would think that you should be in touch with the CEO. because even a large propane tank would still be part of, I believe, would still be part of the structure which would need

Ms. Bishop stated, yes.

Bill Hamilton continued, to be part of the 30' setback and fit within the 20% building lot coverage. Does that answer your question sir? Mr. Strosahl?

Attorney Strosahl replied, yes it does answer my question. Thank you, Mr. Chairman.

Bill Hamilton asked, okay are there any other questions from abutters? First of all, I know, Mr. Orcutt, you had your hand up at one point. I'm sorry we were still going through the board's questions but you certainly have the ability to speak with us at this point.

Mr. Orcutt stated I'm all set.

Ellen Lemire stated Attorney Lawrence has had his hand up for a while.

Bill Hamilton replied, okay, I'm sorry, go ahead.

Attorney Lawrence asked, I just wanted to make sure from the CEO the building area that is being talked about is the red outline, is that correct?

Ms. Bishop replied; that is correct.

Attorney Lawrence stated, okay and that seemed to me you talked about it being 20% of the property. I see that to be coming in about 2,300 sq. ft., which is the property. 20% of the property is 3,600' so that area would seem to be well under the 20%.

Ms. Bishop stated, okay. Good and we'll be able to run that number as well with that final plan.

Attorney Lawrence stated I was just referring that to members of the zoning board said that well they are already consuming 20% so they couldn't go into the setback. But my point is that they are not already consuming 20%.

Bill Hamilton stated, well again, we are so confused by the...because the application, as far as I'm concerned, the application wasn't complete because it had no...didn't have the renderings so that we could determine the lot coverage. But from what I understand the initial sketching that was done did meet exactly the 20%. The lot itself is 18,902 sq. feet and the structure and everything else came out to 3,780 square feet so that is exactly 20%. Now, if it exceeds that, that's a code violation. Does that answer your question Attorney Lawrence?

Attorney Lawrence replied, it does and it doesn't because it's not matching up with the final sketch we were provided with this afternoon.

Bill Hamilton stated; okay.

Attorney Lawrence stated; and my only concern ...

Ms. Bishop stated, which will be updated, excuse Mr. Chairman, may I speak?

Bill Hamilton stated yes, Attorney Lawrence, you were in the middle of a sentence. I'm sorry, go ahead.

Attorney Lawrence continued, yes. I was going to say my question for the CEO, is there going to be a reissuance of the permit or something if it does not meet what the Orcutt's expect from this meeting. Is there going to be something from which they then again could appeal?

Ms. Bishop replied, yes. The permit has been issued already, just conditioned on those items. So, as those items come in, Mr. Orcutt can review them take a look at them. If you want me to email them, however you want to take a look at those and feel comfortable with them, that's totally fine. If for some reason there was a code violation there, we would put a stop work order on it immediately.

Attorney Lawrence stated; okay.

7:00 PM

Bill Hamilton asked any other questions to the CEO or the appellant or to the Board at this point?

Ellen Lemire stated I'm still not comfortable with the designation of the corner of the lot being considered the front lot line.

Bill Hamilton stated; yeah.

John Marshall said I, as well, don't understand why the short dimension of the property is not the front and the waterfront the back?

Ellen Lemire stated that's right.

John Marshall stated it's just, I just don't get it.

Ms. Bishop replied it's where the access...

John Marshall continued the access is ...

Ms. Bishop asked, may I speak to that?

John Marshall continued, the access appears to be on front than on the side, more on the short boundary than the long boundary.

Bill Hamilton stated, well again since there really is no road that goes across the front part, the short area 90' section and it seems to stop right at the corner of the 90' and 195', the one that goes towards the river so I guess it was the determination that it's the front.

John Marshall stated, well you've made my point. It comes to the corner, it doesn't come to the long dimension. It doesn't really come to the front dimension though it does, according to the drawing and what I saw on Google Earth, it does appear that it is more on the short dimension than on the long dimension.

Ellen Lemire stated; yes.

Bill Hamilton stated, I too looked at Google Earth and I could not determine where the driveway went. It didn't...I couldn't determine whether it went on the 90' section or whether it just stopped right there.

John Marshall stated, again, you are just reinforcing my contention that I don't get it.

Bill Hamilton stated, right, right, but as Rosanne had said, the front lot line is determined by where the driveway, or where the roadway, is and since the roadway ends at the corner it sounds to me, and it sounds like that's the determination the CEO has made, is that you could choose either. And I guess that in order to make the lot fit better they chose the longer. It makes sense. Well, I don't know if it makes sense but that's what they chose

7:00 PM

and I don't know what the argument against that would be since I don't see that the road-way goes either in front of the 90' section or goes anywhere on the other side on the 190' section. It is confusing, John, and I agree with you it's not a clear case but I don't know how, either way, we can determine what is the front and what is the side.

John Marshall stated well, we seem to have brought more questions to the floor than we have answered in this meeting so far. You have said that the house is some 3,000 feet and Mr. Lawrence has said that is some 2,300 feet. That's quite a stretch.

Bill Hamilton stated, well, it's not just the house.

John Marshall replied, that's an important number.

Bill Hamilton stated, yeah, it's not just the house, John, that was the cumulative lot coverage which is, if you look at the map and it says the gravel is 493 square feet, the house is 2,365 square feet, and other.

John Marshall asked why do we count the gravel? That's not impervious.

Bill Hamilton replied, well that's the way the surveyor has called it - non-vegetative lot coverage calculation.

Ms. Bishop stated right.

Bill Hamilton stated, and Ms. Bishop can you address that?

Ms. Bishop replied, yes that would be correct, it's impervious ...

Bill Hamilton stated it's impervious.

Ms. Bishop continued it would be impervious.

Bill Hamilton stated, so that would account for part of the lot coverage then.

Ms. Bishop stated, it's within the 20% that's allowed with the Shoreland Zone. That would be the intent with that but, yes, it would count toward that.

Bill Hamilton stated okay.

John Marshall stated last I checked gravel wasn't impervious.

Ms. Bishop replied I believe within the Shoreland zoning rules it's considered impervious because it's not vegetative.

Bill Hamilton stated so, the numbers match up, John. The size of the house is the same. It's still 2,365, which is what Attorney Lawrence had mentioned, and then the cumulative

7:00 PM

with gravel and other, which is probably some other accessory buildings. 922' comes to 3,780' which is exactly 20% of the total lot size, which is 18,902 sq. ft., so they haven't increased the size by choosing that particular designation of being the front yard. There are a lot of questions; it is confusing, there's no question about it. There's no roadway there. If there was a roadway, there would be no question but there isn't. The road seems stop.

Charles Rankie stated it's an unimproved, to back up to what you said Mr. Chairman, you come to that corner it's an unimproved lot, so, the developer really gets to determine what's the front and which way they are going to access it, I would say.

Bill Hamilton stated okay that makes sense. Yep, any other questions, yes, Cabot?

Cabot Trott asked does this have a detached garage. Is there a garage built into this building?

Ms. Bishop replied, the final plans are not created so I don't have that in front of me. But if there were a garage it would still go towards their lot coverage and stay within setbacks.

Cabot Trott asked my only question is which way is the garage door is facing? That would be to the driveway leading to the road, I would think. That's just how I'm looking at this, not as the square footage or anything else, but going back to the front of the road is 911 and where everyone else considers where the road is and where the driveway comes to the house ...

Ms. Bishop replied right.

Cabot Trott continued, as you spoke so, if all we have is that footprint drawing, I didn't know if we had any idea where they were, as the builders, looking at where the garage and driveway were coming in because there is quite a bit of room there from their little drawing as to where they could put the road. That's all. I was just wondering that part.

Bill Hamilton stated okay any other questions?

Ellen Lemire stated I have a question

Bill Hamilton replied yes.

Ellen Lemire asked okay, so Note 10 on the plan may be subject to a right-of-way as described look at page, per abutted parcel.

Bill Hamilton stated right, which is the parcel just to the right of that corner, which is I believe also the, yeah.

Ellen Lemire asked and there is no right-of-way through the Orcutt's property?

Bill Hamilton asked do we have a deed description on this property. I don't believe we do, that's a problem.

Ellen Lemire stated yep, a through-easement would make a huge difference.

Bill Hamilton asked how so Ellen?

Ellen Lemire replied well, it would clarify the front lot line.

Charles Rankie stated I don't know that I would agree with that. *(inaudible)* ... surveying easement, can you weigh in on that John?

Bill Hamilton asked who did you want to weigh-in?

Charles Rankie stated I think John has had some experience with that as well.

John Marshall stated we usually...one would figure whatever side of the property went along the road but we don't have that situation.

Charles Rankie stated Mr. Chairman, I think that, since this is a de novo, I think the square footage is an important item. However, I think that we've dealt with, and perhaps satisfied, the appellants issues so this other stuff we are talking about is probably in is no ... *(inaudible)*

Bill Hamilton stated okay.

John Marshall stated it appears Mr. Lawrence is trying to get his foot in the door here.

Ellen Lemire stated yes, his hand has been up for a while.

Bill Hamilton stated I'm sorry, go ahead.

Attorney Lawrence stated, I apologize, and I just wanted to make the point and I don't know if it clarifies the frontage issue, but the northeast side of Riverside Drive, not where the 30' is drawn from but the northeast side, that's the corner of this lot, so this lot essentially runs by the end of Riverside Drive so that's why it's considered the front of the property. And from our perspective, there is not a right-of-way to the Orcutt's property across that; that that would be in the Orcutt's deed. If there was not in that this part of the deed, it would be in the Orcutt's deed and the right-of-way would not necessarily make a frontage because it has to be a public road or a private way essentially meeting the minimum requirements of a public road. So, the road access is from Riverside Drive and that Riverside runs across that long section of the property and that's why that's the front.

Bill Hamilton stated thank you. Alright, any other questions before I close the public hearing?

Ellen Lemire stated no.

Bill Hamilton stated okay, I would like our two members that are not voting members, that would be Cabot and Rosanne, to weigh in if you have any questions about this particular appeal. Cabot?

Cabot Trott stated well because I was in late I don't have it all but there are a few things that I do agree with you, Bill, on having the packet or the application completed better ...

Bill Hamilton stated yeah.

Cabot Trott continued and I still question that the road, I see it from both points and I think that's a tough one to go and I feel as long as we fit into the square footage and stay within the lot lines, the setbacks, then I guess it's kind of who looks at where that road or driveway comes in as more of an opinion than anything else.

Bill Hamilton stated okay thank you. Rosanne, any comments that you would like to make at this point?

Rosanne Adams stated again just about the front and I think Mr. Lawrence explained it very well. Searle's of course don't appear to have that 30' setback all along their whole side of their property but I guess they are all set with that. If I'm reading this map right, they only have the 30' from the front edge of the building.

Bill Hamilton stated, and the rear setback which abuts the Orcutt's.

Rosanne Adams stated and the rear, but alongside the rest of the building, the Searle's only have 20'...

Ellen Lemire stated right.

Rosanne Adams continued but they haven't testified so I guess they are fine with that.

Bill Hamilton stated thank you. So, if there are no other questions or comments, I will close the public hearing and we will give some findings of fact for our recording secretary.

Since the property is located in the Village District in the Shoreland Zone, the administrative appeal will be a de novo review, as required by section 44-47 A(c). The property is a non-conforming lot of record and again, when acting in the de novo capacity, the board should hear and decide the matter afresh undertaking its own independent analysis of evidence in reaching its decision.

The appellant under 45-50 is an abutter to the property and therefore has standing and the decision of the CEO building permit 20-023 was dated 4/14/20. The appeal was received

7:00 PM

5/11/20 and met the timeliness. The owner of the property requested a setback waiver which was denied on 2/26/20 because the Board of Appeals determined that waivers are not allowed in the Shoreland Zone, only variances. A 20% maximum lot coverage is allowed in the Shoreland Zone and the code enforcement enforces that. The appellant is really not contesting the location of the property as long as the 30' setback is met to his property line. If there is any air conditioning units, that will still need to be within the lot coverage area.

Bill Hamilton asked, anything else that I may have been forgotten?

Charles Rankie stated yes, Mr. Chairman, you said the location of the property. I think you meant the location of the structure.

Bill Hamilton replied yes, location of structure, thank you. Anything else? At this time, we will entertain a motion

John Marshall stated I think Mr. Lawrence has his hand up.

Bill Hamilton stated I'm sorry, I don't see his hand up. I'm sorry, yeah, go ahead Mr. Lawrence.

Charles Rankie asked aren't we closed?

Bill Hamilton stated the public hearing is closed, yes, sorry. As we proceed at this point, we will entertain a motion to approve or deny the application. Is there a motion?

John Marshall stated I don't see just how we can make a motion. I thought I heard that the appellant had retracted the case?

Charles Rankie stated withdrawn the appeal. Can we step out of the private just to ask the representative of the Orcutt's if he has withdrawn his appeal based on the Findings of Fact?

Bill Hamilton replied yes, we certainly can. Attorney Lawrence, has the appellant retracted the appeal at this point? It wasn't clear. It sounded as though he was okay with the way that the house was situated and the fact that the setback was 30' from his abutting property. He didn't say, I don't think he said, that he was withdrawing his appeal. Is he withdrawing the appeal?

Attorney Lawrence stated, subject to Mr. or Mrs. Orcutt telling me I'm wrong, I believe we are withdrawing the appeal. Subject to the ability to come back if what has been said here by the CEO turns out to not be the actual permit that was issued.

Bill Hamilton stated okay, why don't we put that, see that, I'm trying to think how that can, I'm sure that can be arranged with the CEO.

7:00 PM

Charles Rankie stated I think I have an idea, Mr. Chairman.

Bill Hamilton replied go ahead, Charlie.

Charles Rankie stated I would move that we accept the withdrawal of the appeal, conditioned on the Findings of Fact be followed and met by the CEO.

Bill Hamilton stated I think that's a fair motion.

Ellen Lemire stated I'll second that.

Bill Hamilton stated motion has been made by Go ahead, Charlie.

Charles Rankie stated that would allow Attorney Lawrence or the Orcutt's to not have to worry about missing their 30 days. It would simply be that an order wasn't followed and they could follow up on that at their will if it wasn't followed. I think that would satisfy all parties.

Bill Hamilton continued okay, who seconded the motion?

Ellen Lemire stated I did.

Bill Hamilton stated okay Ellen; so, Charlie made the motion, Ellen seconded it; any further discussion? **Motion to accept the Appellants withdrawal of their appeal.**

ROLL CALL VOTE:

Bill Hamilton:	Yes
Charles Rankie:	Yes
Ellen Lemire:	Yes
John Marshall:	Yes
Jay Meyer (Alt):	Yes
5-0	
Motion Approved	

Findings of Fact:

1. A public hearing was held on 6/18/2020
2. The owner of the property is Raymond Nuefeld.
3. The applicant is an abutter who has demonstrated a legal interest in the property by meeting the definition under Sec. 45-50 of the Eliot Ordinance.
4. The applicant met the timeliness requirements as defined under Sec. 45-50.
5. A completed application was submitted on May 11, 2020

7:00 PM

6. The applicant requests that permit #20-023 issued on 4/14/20 shall meet all setback and lot coverage requirements.
7. The owner of the property in question submitted a request for a waiver setback, which was denied by the Board of Appeals on 2/26/20 because the Board determined that waivers were not allowed in the Shoreland Zone, only variances.
8. A 20% maximum lot coverage is allowed in the Shoreland Zone and the Code Enforcement Officer will enforce that maximum.
9. The appellant is not contesting the location of the structure so long as the 30' setback to his property line is met and if there are any stand-alone air conditioning units installed they will still be within the 20% lot coverage area.

5-minute break

8:09 PM

Second Public Hearing:

B. Charles Pettigrew and 3 others requesting an Administrative Appeal on a decision of the Code Enforcement Officer regarding property located at 314 Beech Road, Map 38, Lots 10 & 46, in the Suburban Zoning District.

Bill Hamilton opened. Are there any conflicts of interest among the regular board members hearing this appeal?

Ellen Lemire stated no.

Bill Hamilton stated, if not, then the 5 regular members will be voting tonight on this appeal. The appeal was brought by Charles Pettigrew and three others. I'm going to mention those three names in case you need to proceed to Superior Court; you need to verify that you are part of the meeting. Michael Christy, Kathryn Spellacy, and David Brodeur. Okay, so the four appellants are here. Is anyone here on the other side?

Katherine Holmes stated, Hi, my name is Katherine Holmes and I'm here representing the owner of 314 Beech Road.

Bill Hamilton stated okay, thank you. So, the 5 regular members will be voting tonight. Mr. Pettigrew and the other 3 appellants have standing as abutters. As far as timeliness, the CEO's decision of 4/28/20 declaring that Mr. Downes is an automobile hobbyist and therefore exempt from the definition of auto graveyard, which is not allowed in the Suburban Zone, that was issued on 4/28/20; and the appellants, their appeal was received on

7:00 PM

5/17/20 thereby within the 30-day requirement for timeliness. So, you have met both the requirements of timeliness and standing. So, the Board of Appeals can hear your appeal. This will be an appellate review. In other words, this is a review by the Board of Appeals on the decision of the code enforcement officer and we will review all the material that the code enforcement officer had to make this determination. New material that came after the decision is not relevant to our deliberations. We are not like the Superior Court; we are not a de novo review quasi-judicial board. We simply have to review the decision of the code enforcement officer to determine whether it was essentially within the guidelines of the Town of Eliot's ordinances. So I will open the hearing and the appellant, I don't know who is going to represent the appellants, you did provide us with an extensive application which I believe we are all very familiar with. I know that I am. And rather than spend the entire evening going back over all that information, I wish we could in summary, one of the 4 of you give us the summary of your appeal. We have read it as it is but to be on record and to be part of this recording for review who would like to, you can certainly all come in and testify as we are moving through, but there should be just one person that would be the representative and who would that be? Mr. Pettigrew, okay.

Mr. Pettigrew stated I was going to do that because I wrote a good portion of it and the other three were just going to comment as appellants, or as abutters.

Bill Hamilton stated that's perfect.

Mr. Pettigrew stated that's perfect, and I was just going to ask you that...if you just kind of wanted me to give you the gist and then, if there's questions, instead of going through the whole thing.

Chairman Hamilton stated, yes, I would appreciate that. You can be as thorough as you like, but please don't go over the whole 328 pages; I think it was the application plus all your exhibits. It was very well done and very thorough, I appreciate it. So, you are on now, just give us your testimony uninterrupted and when you are done, we will ask questions of you and then we will ask questions of the code enforcement officer. This is your opportunity right now, so go ahead.

Charles Pettigrew stated okay. I apologize for the length of the appeal and the number, but I wanted to be as thorough as possible and also be able to back up my statements with facts and make it easier for you guys to just say if I say, this is what the law says, then you can look and say yes this is what the law says. So, my name is Charles Pettigrew and I reside at 289 Beech Road and thank you for hearing the appeal. Everybody did receive the note that said there was an addendum between pages, between exhibits 90 and then 91, 92 and 93?

Chairman stated, yes.

Charles Pettigrew stated I just wanted to double check that. First of all, I have lived at this property for over 22 years so it's not like I moved to a nuisance and I don't like it and now I'm trying to change it. I also just to kind of put out there, that I am a combat

BOARD OF APPEALS MEETING MINUTES (Remote via Zoom)

7:00 PM

veteran and I have fought, sacrificed and bled on two different continents to restore and uphold democracy and I hold those freedoms very dear. So, I believe, firmly, that a property owner has a right to do with their property what they wish, within reason. Likewise, the basic tenant of a democracy is that your rights end when they infringe upon others and that's really kind of what this whole appeal is about. The State of Maine under exhibit 20 of the appeal kind of sums that up under Statute 30A §3751. Auto graveyards are a public nuisance and pose a potential risk to the environment, particularly the ground water and surface water. We are all on well water, some of that 314 Beech Road property, I don't know exactly what's going to become what, is on a wetland and you know it does affect property values. It looks like a graveyard, it looks like a junkyard. There's also a noise issue. I don't know if this is due to improper maintenance, how the vehicle is operated, if it's got leaky or legal exhaust or what, but the noise of these vehicles is beyond annoying. One of the other abutters recorded these vehicles at 115 decibels. Initially the operator, I assume is Jace Downes, who is making faces at me right now, seems to be intent on harassing anyone and everyone as he continually, and I'm not going to scream in your ears here, but winds these vehicles up every morning on his way to work, or wherever he goes with just this 8 or 9 times, vroom, vroom, vroom and there's a driveway across the street from Littlebrook Road where their house is and then there's another driveway across the street from my house. So he has to intentionally drive almost 300' through the field to get in front of my driveway and do the same thing; and just vroom, vroom, vroom and the volume is so loud, if you have the air conditioner on and the windows shut, the T.V. on about $\frac{3}{4}$ you can still hear it. Same thing in the evenings and there's often, it doesn't seem to be any purpose; he just sits in the vehicle and revs it. Weekends are basically the same just throughout the day at random points of the day. The Eliot police complaint, the Eliot police claim they can only act if they catch him in the act as he said, he would never do that and they have deferred to the CEO who has taken no action as of this point. This behavior is an infringement on my right to the quiet enjoyment of my property, which is basically 75% of my complaint; or the vast majority but it is upheld as a constitutional right by the Supreme Court. Okay so you already answered (*inaudible*) just touched on it. Now the CEO in her letter to us, which wasn't actually a letter, it was a picture of a letter that was emailed to us, is claiming that it is a hobbyist use or more specifically she says it is an area consistent with hobbyist activities and not an auto graveyard. She says it's appeared to be used as an area consistent with an automobile hobbyist. So, she basically is calling it a de facto hobbyist use. She seems to take great pains to avoid actually saying hobbyist use, but she's still saying it's not an auto graveyard. And, therefore, it's a hobbyist thing and there is nothing she can do about it. But because she is making the blanket statement that it isn't a graveyard because it's a hobbyist activity but that it's used instead by a hobbyist, she's saying it's not a graveyard, a graveyard used by a hobbyist would be a hobbyist use. So, if we want to split hairs here where she says the property appears to be used as an area consistent with an automobile hobbyist and does not appear to be used as an auto graveyard or junkyard, so she's using the phrase "used" in the same context, likewise in the current thing in the Town ordinances, "*Use means the purpose for which land or structures arranged are designed or intended or for which land or structure is or may be occupied.*" So, since she has declined to take action against an auto graveyard, she's citing it to be consistent with an automobile hobbyist. That must be the purpose for which it at least, when she did her

7:00 PM

inspection, 24 unregistered vehicles were being kept; a hobbyist use. Now for the actual appeal itself, hobbyist, auto hobbyist, automobile hobbyist does not appear on the table of use. If you look at the Town of Eliot ordinances under 45-290 "any use not listed is a prohibited use." Other towns do allow hobbyists. There's a few exceptions to getting around the no use as a, like there are ones that the CEO could approve but the hobbyist use is not one of them, therefore it's a prohibited use. Likewise, Eliot has no ordinances regarding harbored hobbyists, pretty much all the towns that have hobbyist on the use table do have ordinances. It's the CEO's duty to enforce the town ordinances and State law, you know, Ordinances 2-51, 353, 45-101 and state statutes described, as in §3758A, not create new uses or allow activities. Other towns that do have ordinances on auto hobbyists wisely require screening to protect property values. They require that you have cement pads, or some other means to keep fluids from getting into the ground and to protect the environment. They also limit the number of vehicles. Like Vassalboro has a really good permit one, you know, I think it has (3) three vehicles, it has all these requirements, all of them, you know, it says these are your (3) three vehicles you are going to have to get permits, you have this long to get them done, if you get these ones done then you can have some more. That is a legitimate hobbyist. Each year you go for a renewal. That is what the CEO should be doing for a legitimate hobbyist use. And this is kind of where the restoration aspect comes in, now instead, by Ms. Bishop's logic, 314 Beech Road can have hundreds of vehicles on the property as he's a hobbyist in her mind and exempt from any limitations. An actual auto graveyard, for instance, you cannot have any vehicles within 300' of a well or cemetery and the pictures that are shown in the appeal there are vehicles well within 300' of wells and cemeteries. Not to mention there is nothing to protect you from the draining fluids leaking into the ground. There's no screening, nothing. Then the CEO's duties are to enforce the code. Now, in Exhibit 66, the Town Manager says if this is the BMV's very definition of a hobbyist yard operation, then so be it. And again, you know, trying to get around the term "use", but making it a de facto use by not taking action on it because it's an auto graveyard. The BMV, CEO and Town Manager do not define uses or ordinances in the town. The voters do! There's a lengthy process and that's one of the reasons why the appeal is so long. You know because the Planning Board, they have hearings on it. The town has had 17 years to get a hobbyist use on the books and they haven't done it yet. Now, I think the confusion here is coming from the idea of a general hobbyist use, activity operation yard; whatever you want to call it versus the actual hobbyist auto graveyard does not include text in the auto graveyard statute. Now, this supposedly came about between a conversation between Ms. Bishop and a Detective Hurley from the BMV. Now for the past two months I've been trying to get ahold of this Detective Hurley from the BMV. And the BMV is closed every time you email him or try to call him. You get "our offices are closed right now; we will get back to you as soon as we can". The state does not actively define what a hobbyist is but what it does say in the Antique, or in the graveyard statute under Exhibit 85, that it's a place where a hobbyist stores, collects, antique autos. The town actually points this out to Ms. Bishop. It can't just be an old vehicle. A lot of people see 25 years old and that's where they stop reading but it further goes on to say that these vehicles must be as defined in Title 29A §101, which is Exhibit 87, which means 25 years old, yep, vehicles over there are more likely than not 25 years old. But they have to either have ...

7:00 PM

(...screen went white. Charles Pettigrew can still be heard: he continued on after the screen cleared ...)

so, if you want to be considered to have the exemption for vehicles not to be counted against your (3) three or more vehicles for your auto graveyard. It has to be an antique. It has to be 25 years old. It has to either have the same engine, either made in the same model year or the same size, and it has to be substantially maintained as original. This is where you kind of get down to doing one's homework. When Ms. Bishop says she inspected the property she found twenty-four (24) vehicles. She didn't make any mention on what condition they were in. Now, if you look at Exhibits 32 & 33, the BMV detectives when they come out in September, six (6) out of seven (7) vehicles were determined not to be antiques, just because of rust issues. And I believe this is what Mark Mitchell was referring to when he had told Jace or Charles or Mary Lou or whoever he told, months ago, before I got involved in this, he should get them inspected. So, substantially maintained as original means you know, you can't have huge amounts of rust; I think you can't have any rust perforation. Brake lines, wheel bearing plates, Catalytic convertors on anything that is newer than an '83, original exhaust, brake pad thickness, steering slop, tire wear, dry rot, etc., can't be lifted. Can't have oversize tires and it is primarily to be used in functions of public interest; public, not private properties or private parties. Like the Eliot Festival Days Parade, the Cruise Nights Charity Car Show; now I think when this phone call was made to this Detective Hurley, since he had already seized six (6) of these seven (7) plates, so he knew what condition the vehicles were in, he may have said, "yes you could be a hobbyist, but he wasn't actually inspecting and saying each and every one of those vehicles were antiques. And you don't get to be a hobbyist and have the hobbyist exemption if they are not antiques. Therefore, it's an auto graveyard. If they are legitimate antiques, as if somebody comes down and says "yep" you know they are all in great condition, they all have been used in shows, parades, whatever, then that mitigates the whole worrying about fluids leaking into the ground. If all, the you know, stuff, gas lines are good, all brake lines are good, you don't have to worry about it being an unsafe vehicle like a fire truck that killed that guy in that parade. But it's basically Ms. Bishop's job to investigate and enforce the state law and town codes. And if she doesn't know how to do it herself, she is authorized to do so. You know, she's been given a complaint; that there's an auto graveyard across the street. Jace is claiming, or Charles or Mary Lou or whoever, Kathryn that he is a hobbyist and these are all antique vehicles and it's then her duty and due diligence to ensure that they are in fact, antiques. Instead, it appears that she chose to avoid doing this work and just hand-waived it as a hobbyist activity to avoid taking action which is not what she is supposed to be doing. In the ordinances, section 45-101 investigations, actions to abate, you know 102, and instead she cites it's a civil matter. I tried to stay out of this for a long time. The noise was aggravating me. You know I can see your guys' faces when you're doing this. I did. I tried to stay out of this for a long time and then one day I could smell gas from about 300' away. What I should have done was call the fire department. Instead, I didn't realize we were playing musical code enforcement officers but so when I finally got a hold of her she told me that the law is weak and it's unenforceable. Then I find these four (4) cases where this was actually defended in court. Two of them were actually the Town of Eliot was the prevailing party. Huddleston v. Eliot and Eliot ZBA v. Tim Fernmon and I don't

7:00 PM

know if this, cause I know that the police chief at one point had gotten involved in this that when the antiques were not antiques again he said that this is a civil matter. Well, the BMV disagreed. He got the BMV detectives down here seized 6/7 plates. At this point there's now ten (10) unregistered vehicles on the property and by this time it had been pointed out to her that the law had been repealed in 2002 cause her original statement was I, you know this isn't enforceable because it says you know unserviceable, uninspected junk or worn out and in 2003 they just changed it to unregistered or uninspected. So, at this point there are ten (10) uninspected or unregistered vehicles on the property. Now I understand wanting to have a hobby or needing to have a hobby. I have two (2) unregistered vehicles myself. I don't have time to work on them. So, I don't understand how anybody can think that 20, 30, 40 vehicles is a hobby of vehicles that you are going to restore and put back on the road. And again, I'm not going to go through all of these, looking at the numerous incidents that the Town of Eliot has been involved that seems much less pressing than auto graveyards; chickens, spike fences, several other cases where other code enforcement officers in other towns have taken action against hobbyist and auto graveyards. Being a civil matter is based on what the code enforcement officer does. Under the noise, just look at Exhibit 75, you know, my noise complaint, which she has not acted on, which is not in accordance with her duties under ordinance 45-407; and lastly if the board upholds her actions and does not reverse them, she will have in fact created a grandfathered situation under 45-191 so anybody that wants to start collecting Ford Escorts, Subaru GL's, whatever vehicle they want, they can just say "hey you know, we are a hobbyist" and nothing can be done about it. The same thing is how can anybody be expected to have the quiet enjoyment to their property when the precedent has been established that you file a complaint with code enforcement officer and she doesn't take any action and, therefore you know, we are requesting that you reverse the CEO's decision not to pursue this as an auto graveyard. Instead, take swift and aggressive enforcement action upon both unregistered and uninspected vehicles that do not strictly qualify for the hobbyist exception/exemption, as in being statutorily antique autos not just being 25 years old, and the noise issues at these properties and any association of these properties once they become subdivided; and to also continue to monitor this property for future compliance.

Bill Hamilton stated is that your testimony sir?

Charles Pettigrew replied, yeah, I think that sums it up without reading it word for word.

Bill Hamilton stated I'm sure you'll have plenty of time to add more testimony, but as an opening statement, is that pretty much what you have?

Charles Pettigrew replied yes.

Bill Hamilton stated let me ask the board if they have questions to the appellant. Ellen, you have your hand up. Go ahead

Ellen Lemire asked, Charles when you said that the CEO created a grandfathered situation you quoted a section of the ordinance, could you repeat that please?

Charles Pettigrew stated I tend to drift and I had notes to keep me from doing that, 45-191.

Ellen Lemire asked 45-191?

Charles Pettigrew replied, yep.

Ellen Lemire stated thank you.

Kristina Goodwin stated letting you know that David Brodeur has had his hand up.

Bill Hamilton stated anything else Ellen? These are questions from the board to the appellant at this point. Any other board members, Jay you had your hand up. I'm sorry, Cabot go ahead.

Cabot Trott stated Charles you said that there were, you had people come down and do inspections, you could smell the odors of gas and things. I looked and you did a hell of a job putting together your package, but now I can't find it. Did they find any leaks or any hazardous spills with that inspection?

Charles Pettigrew stated, okay no, but I can tell you that this is what happened. I smelled gas and it was ridiculously strong. So, at first, I thought it was one of my vehicles so I checked all of my vehicles. None of my vehicles were leaking. So, I checked the lawn tractor, checked the snow blower, got my wife out there, got my neighbor David Brodeur and we could all kind of follow our nose and it was coming from 314 Beech Road. One of the vehicles in the field now by that time, so I called the town hall expecting to get a call back from the CEO but this was apparently during the time when Mark Mitchell was only working 2 days a week. I did call someone from the DEP but the DEP did not come out until almost 2 weeks later and we had had 15" of rain, so it was very unlikely that they were going to find anything. That water is either in the ocean now or it is now in the ground.

Cabot Trott stated thanks.

Bill Hamilton asked any other questions from the board to the appellant?

Ellen Lemire stated not at this time.

Bill Hamilton stated I have a couple of questions, you cited Eliot code 45-290....

Charles Pettigrew replied, yep.

Bill Hamilton continued as saying that any use not listed in the list of permitted uses, is a prohibited use. Is that correct?

Charles Pettigrew replied yes.

Bill Hamilton stated and that is indeed the case.

Charles Pettigrew stated yes.

Bill Hamilton stated I might also mention just as a piece of information: that under 45-290, also if you look down that list a little bit further, it says under equipment storage, it says, "trucks, three (3) or more is a prohibited use in the Suburban Zone" as well, under 45-290. So, it seems as though in addition to the definition of automobile graveyard and the fact that there is no definition of automobile hobbyist you are correct in that statement. I just wanted to clarify. I'm sorry, go ahead, Ellen.

Ellen Lemire stated David Brodeur has his hand up.

Bill Hamilton stated this is questions from the board to the appellant at this point and then we will go on to the other appellants.

Charles Pettigrew stated Cabot had his hand up.

Bill Hamilton stated go ahead Cabot.

Cabot Trott stated also with 45-290 I don't see many hobbyist things, from bikes to others not listed. So, saying that if it's not listed, I don't think we can go ahead and maybe I'm missing where it says if it's not listed it's not a permitted use, but as a hobbyist, I see no hobbies listed.

Charles Pettigrew said well the ...

Bill Hamilton responded we have nothing in our ordinances that relates to hobbyists. That's something that a lot of other towns have. Eliot does not have that and they certainly don't have automobile hobbyist as a permitted use or even as an ordinance.

Charles Pettigrew responded and the point is, Cabot, that is if you're a bicycle hobbyist you don't have oil and antifreeze and lead getting...

Cabot Trott stated I get all that, but we're looking at what's in the ordinance and when we are looking and you are talking about a non-prohibited use because it's not listed here, then we also have to look at so many other things aren't listed as hobbyist that would be non-permitted also. Unless you've got something that I don't have here in the state statute that says if Eliot doesn't list it, it can't exist. That's what I'm looking for.

Charles Pettigrew stated okay I put in the appeal that this does seem to be unique to Eliot, but in particular the like I said, the main point here is Ms. Bishop is saying there is nothing she can do because it's a hobbyist use, where I think she misunderstood what the detective actually said with what you have there's a hobbyist, for example the state

7:00 PM

doesn't actually define what a hobbyist is either, but they do say if you have antique vehicles those antique vehicles are exempted from the graveyard statute.

Bill Hamilton stated let me just interject for a second to try and clarify. The state provides an exception to the graveyard statute, the automobile graveyard statute and that is and automobile hobbyist. Not a bicycle hobbyist, not any other kind of hobbyist just specifically an automobile hobbyist and they have definite rules and regulations, restrictions, conditions, etc. It's a state law much like ...

Cabot Trott stated yeah.

Bill Hamilton stated go ahead... I just wanted to try and clarify and try to answer that question. Go ahead Charles.

Cabot Trott stated and that's more what I was looking for, Bill, is to try and clarify if we don't have it, where's it coming from.

Bill Hamilton stated yeah, right okay.

Charles Pettigrew stated well other towns do have it.

Bill Hamilton replied they do, we don't; any other questions to the appellant? Other abutters at this point, would like to? I'm sorry, let me go to the code enforcement officer at this point and let's get her...

Charles Rankie stated Mr. Chairman, is it appropriate if we have any others listed as appellants to speak first?

Bill Hamilton stated we could, yes, we could. Ordinarily the way it goes is that the key appellant gives testimony and then the code enforcement officer sort of rebuts or responds to that testimony, and then we go down to abutters, and then we go down to interested parties, and then that's how it works. If you want me to do that, we can do that.

Charles Rankie stated I bring that up, Mr. Chairman, because Mr. Pettigrew said in his beginning that he was going to be the primary presenter and then the others would chime in ...

Bill Hamilton stated okay.

Charles Rankie continued so, to get the fullness of the actual appeal that would be helpful.

Bill Hamilton stated okay, let's do that. I know Mr. Brodeur has had his hand up. So why don't you go ahead.

David Brodeur stated, hi this is David Brodeur, can you hear me?

Bill Hamilton responded yes.

David Brodeur stated my fundamental question is how many unregistered vehicles do I have to put up with as my neighbor. I bought this property 17 years ago in a suburban area and I expect to live in a suburban area. What are the standards in Eliot for a suburban area and can you have 10, 20, 30 unregistered vehicles; and where's the limit? I understood the limit to be you could have two (2) unregistered vehicles and that's it. And it seems like I've got an automobile graveyard next-door to me and I don't think that's appropriate.

Bill Hamilton stated thank you; any questions from the board to Mr. Brodeur? No questions. Okay, I'd like to hear from the CEO at this point.

Charles Pettigrew stated you still have Kathy Spellacy and Mike Christy.

Bill Hamilton stated I don't have their ... if they want to speak certainly, go ahead; Mike Christy why don't you go ahead.

Mike Christy stated hello everyone, I'd like to share some personal observations. I've been a resident of Eliot for 18 years; Sue Bowzer and I reside at 18 Fernald Lane; our home abuts the Downes' property on two sides. We've lived here for 8 years. After purchasing the home, we immediately added a deck. From the deck and sliding glass door we have a clear view of the Downes' property. We spend a significant amount of time on the deck where we try to enjoy the peacefulness of the outdoors and nature, in all seasons. This peacefulness and realization of quiet enjoyment has significantly impacted by the growth, noise and activities of the auto graveyard. The noise from the exhaust of these few trucks that actually run and the towing of those that do not run by other excessively loud trucks consistently disturb the peace. I have taken some pressure level of trucks in excess of 115 db. That's from our deck. Not only are we concerned about the aesthetics and noise from a junkyard, we are concerned about the environmental impact over time, especially to ground water and nature. A casual look on Google Maps appears to show eight (8) other graveyards hidden in the Eliot Suburban District, so this is not an isolated situation. As a bee keeper, I'm required to have a food license from the State of Maine issued. When the state inspector came to our home, the first question she asked me was; what's with the junkyard? At family holiday dinners the view through the slider from the dining room table was of thirty (30) junk trucks instead of a natural meadow, the scenery was of rusted, broken down vehicles scattered about. Then, when Sue's daughter got married, the photographer taking photos of the wedding dress had a difficult time finding a spot in our backyard without junk trucks in the background. If the automobile graveyard was present in 2012 when we purchased our home, we would have looked elsewhere. We never anticipated to have endured such a disruption of peace and the quiet life we have. We are concerned about the marketability of our property. We paid a premium price in 2012 and that was without a field of junk trucks negatively affecting the value. The previous owner of our home, warned us at the closing about disruptive activities and taunting he experienced. We now understand some of the reasons for him selling

7:00 PM

the property. This auto graveyard has a direct impact on our property value, lifestyle, happiness, peace of mind, it weighs on us every day. We did not sign up to live next to this eyesore and disruptive noise. And neither did our neighborhood. Thank you.

Bill Hamilton stated thank you. Mrs. Spellacy?

Kathryn Spellacy stated, yes, good evening. It will be short. I've lived in Maine 25 years and I moved over to this house in Eliot December of 2016 and Jace had a few cars in the driveway and he worked on them on and off. Sometimes it was a little too loud. And then these vehicles started to arrive on flatbeds and we were up to close to 40-41 cars in the field, and please don't roll your eyes at me anymore. So, I've talked to Jace, he's a nice young man, just asked him if there could be some kind of a compromise because we are so tired of listening to these engines. It happened all day Easter and it just goes on and on. And he should have every right to work on his vehicles and do what he wants to do but it's affecting everyone. And you can obviously see that it took a lot of time for us to put our appeal together and believe me we all have better things to do than this. And I live in the neighborhood. I just would like to get along with everyone. It's taken a great deal for me to get to this point but I've really, really had enough. And as Mike pointed out, the prospect of selling and moving again, I don't think anyone would buy my home with all these vehicles across the street so that's about it.

Bill Hamilton stated thank you; any questions of any the appellants by the board? If not, Ms. Bishop would you weigh in please?

Ms. Bishop stated certainly, thank you. So, auto graveyard, we have the definition is typically where vehicles are abandoned or no longer used at all. In this case the vehicles are still being used regularly. There are multiple state agencies that became involved in review of the property. One was Steven Burzinski from Oil and Hazardous Material Responder Maine, DEP Division of Response Services. He came down based on a complaint to look at potential oil spills. The end of this letter says, "based the site visit Maine DEP, Division of Response Services did not find any actions it could take. If petroleum leaks are found in the future, I recommend the Eliot Fire Department or the Eliot CEO be called first as they are closer than the Maine DEP office in Portland; and I understand how they have authority to enter the property to check for petroleum leaks." So, they didn't make mention of the property appearing to be an auto graveyard, they mentioned that they didn't really have any issues, or Steven Burzinski didn't in that particular case. That was on 6/14/19. Then we have another letter from Eric Hamlin, Division of Materials Management Bureau of Remediation and Waste Management, his letter is dated February 4, 2020. It was a follow-up inspection of the property. The inspection was in response to complaints received by the Department and the Office of the Attorney General regarding the accumulations of automobiles at 314 Beech Road. His formal guidance and direction was that there are two pieces of specific guidance he had to offer under the department's solid waste rules. Based on observations, one of them was tire storage, that they shouldn't have more than 50 tires; the other one was open burning. The department rules on open burning prohibit the open burning of anything but wood that has not been chemically treated. Again, he did not call out any kind of auto junkyard, auto graveyard,

BOARD OF APPEALS MEETING MINUTES (Remote via Zoom)

7:00 PM

or anything like that in his findings. After I visited the site and met with Jace and Kathryn on February 28, 2020 and Jace explained the vehicles and how he uses them, the ones that are lined up in the rear of the lot are the hobby vehicles, there are a couple in the front that he was basically using the parts from some of those to create vehicles. He'll use some parts from one vehicle to create another. He had a little pile of scrap material that he had just sorted out for recycling and then he had two (2) unregistered vehicles. After I left the site that day I went and called Bruce Harley, Detective, I'm sorry he's Senior Detective of the Bureau of Motor vehicles. I talked to him for about a ½ hour about the property, the history. I believe at that time he had already come down and visited the site as well. We talked about what a hobbyist is and he expressed that there are many forms of an auto hobbyist, but generally they will have their vehicles, they will pull one in, tinker with a bit, put it back grab another one and tinker with that one, so it's kind of just tinkering with a vehicle as they want to as their hobby. He said, "This is the closest thing to a hobbyist that I have seen". So, I didn't get a written statement from him, but we did have that conversation. There was an email that came from Detective Robin Stankervitz from the Maine Bureau of Motor vehicles, this was dated 9/17/2019. The email says, "hi there, we visited Jace Downes again yesterday after Charles Pettigrew sent an email to the Secretary of State. Our visit yesterday was to determine whether his seven (7) antique registered vehicles meet the criteria of antique. We found that they do. However, some of them have significant rust therefore could be questionable as being substantially maintained. Jace is going to register them as passenger vehicles instead to be safe and avoid further complaints. I just wanted to follow up with you about something that Jace mentioned. He stated that he is trying to obtain a hobbyist permit. Is that true or something the town offers? In our opinion he certainly meets the criteria." In talking with our town attorney about the hobbyist exception with the law and with the way that is written; "An automobile graveyard does not include an area used by an automobile hobbyist to store, organize, restore or display antique autos, antique motorcycles, classic vehicles, horseless carriages, reconstructed vehicles, street rods or parts of these vehicles as these vehicles are defined in Title 29-A, §101 as long as the hobbyist's activities comply with all applicable federal and state statutes and rules and municipal ordinances, other than ordinances that are more restrictive than this subsection regarding the storage of vehicles or vehicle parts that are collected by a hobbyist, except that a municipal ordinance may require areas used by an automobile hobbyist to comply with the screening requirements in section 3754-A, section 1, paragraph A" ... and it goes on from there. So, with our local ordinance not having a hobbyist as a permitted use and the state ordinance on automobile graveyard stating that the local ordinance cannot be more restrictive than the state's and it further says that if you want to adopt screening for a hobbyist use that you can do that. So, with the way that the laws are written and talking with the town attorney, it didn't seem that this use would fall into an auto graveyard the way that this automobile graveyard definition is written. Regarding the noise, okay so the only noise complaint that I received that I recall receiving was emailed Wednesday April 15, 2020 at 6:34 pm. It says "please find attached following noise complaint please investigate and enforce. Now we will send you a separate email of noise comparison video of separate measurements." Now a noise complaint should be acted on right away. So, if there's a noise complaint during normal business hours we get a call on that, I can go out with decibel reader at the property line and see what the readings come in at per that complaint. This

7:00 PM

one that I received came in after hours and it was followed up by an email, kind of a lengthy email with some kind of scenario question and answers on how a conversation might go if Charles and Jace were to have a conversation. So the noise, again, if there's a noise complaint that comes in, if you could just notify me at a time that I could actually go out and address it. Getting an email after the fact, doesn't really, is not something that I can go out and check the noise level at that time. And I think that's what I've got at this time. I'm sorry, can I add one more thing?

Bill Hamilton replied yes.

Ms. Bishop continued the wetlands map, so with the town's GIS you pull up the property on the GIS and put on the wetlands and Shoreland Overlay, there are no wetlands on this property, and that's all I've got at this time.

Bill Hamilton stated is that your testimony Ms. Bishop?

Ms. Bishop stated yes.

Bill Hamilton stated thank you. Questions from the board to the code enforcement officer; Ellen.

Ellen Lemire stated Ms. Bishop can you clarify when you said that local statutes or ordinances cannot be more restrictive than the state and the language within this statute?

Ms. Bishop responded yep.

Ellen Lemire continued, so basically, it's overriding our home rules for this.

Ms. Bishop stated, right.

Ellen Lemire asked, so we cannot apply any criteria?

Ms. Bishop stated well it's just, it's only speaking to the automobile hobbyist that if, it says the hobbyist's activities comply with all applicable federal and state statutes and rules and municipal ordinances, other than ordinances that are more restrictive than this subsection. So, it's stating that the ordinances can't be more restrictive than that area; regarding the storage of vehicles or vehicle parts that are collected by a hobbyist. Except that a municipal ordinance may require areas used by an automobile hobbyist to comply with the screening requirements and then it calls them out in the state law.

Ellen Lemire stated so they're overriding all of our other criteria that protect our ground water and all those things, all the site plan review criteria that is required in any auto activity that's within our land use table, they're overriding that?

Ms. Bishop responded I wouldn't be able to confirm that, I think it's only speaking to an automobile hobbyist versus a different type of use.

Ellen Lemire stated okay but there's only a definition of what an antique or hobbyist is, there's no criteria by which we can relate it or define it more specifically.

Ms. Bishop stated well not that I've found within the laws. The owner might be able to speak to that a little bit where he's got possibly more information on a hobbyist and what a hobbyist and definitive laws but I just got what's in front of me with the Maine law on it.

Ellen Lemire stated yeah, the Maine law has almost nothing.

Ms. Bishop responded, right, it's just that paragraph with the exception piece.

Ellen Lemire stated correct; and so, the fact that we are an MS4 Urbanized Area under permit by the DEP doesn't have any impact on the way the contours, or sloping, of that property down to the urbanized area, there's no concern there?

Ms. Bishop stated well it's a single-family residential lot use, not like a commercial-type use and a personal use on the lot. If it were a junkyard or auto graveyard, I feel that's where those regulations do come into it.

Bill Hamilton stated any other questions Ellen?

Ellen Lemire responded not right now.

Bill Hamilton stated okay, Cabot?

Cabot Trott stated Ms. Bishop, so without having anything that clearly defines a hobbyist, you based your decision on the fact that between the other investigating parties it does not fit the definition of a graveyard, it does not fit the definition of a junkyard. How did you form your decision if we don't have something for hobbyist?

Ms. Bishop stated well just because the use is not complicit with an auto graveyard, as an auto graveyard is defined. Where I go back to is the abandoned vehicles, where people would typically park the vehicles and take out all the fluids and sometimes even be able to sell the parts; that's not the use that appears to be happening here.

Cabot Trott stated so you basically made the decision on the fact that it didn't fit the criteria for the other uses.

Ms. Bishop right, it doesn't fit the criteria of junkyard or an auto graveyard, correct.

Cabot Trott stated alright, thank you.

Bill Hamilton asked other questions from the board? Charlie.

7:00 PM

Charles Rankie stated thank you Mr. Chairman. First is about noise, noise has been brought up here a few times. Ms. Bishop it's my understanding from reading what we have in front of us for an appeal. Noise has nothing to do with the appeal, noise is simply another ordinance. Am I correct in that?

Ms. Bishop stated well noise is a separate ordinance. I kind of, with my response to and the decision I grouped the complaints because there are multiple complaints. There's also personal, what I call I guess personal complaints that come into it.

Charles Rankie responded yeah, I understood that, but I thought it was worthy to make clear that that's not what we are looking at; that's within your shop at this point and time. What we are looking at is, is this a hobbyist or is this a junkyard that needs to be dealt with, is that the question before us I believe?

Ms. Bishop responded yep, yes.

Charles Rankie stated okay. Could I ask you to make it more clear than the question that Cabot asked. I believe, from the information that you have sent to us, that you have had subject matter experts from the State down to visit the site and they have basically told you in their professional opinion that the appearance of the property and the collection of vehicles they understand to be those of a hobbyist. Is that correct?

Ms. Bishop replied somewhat correct. So, I did not request any assistance from the State to come down and look at them. I believe that was, it could have been Charlie or other neighbors but so, Steven Burzinski, I did not call him down. He came down per a complaint to his office. Eric Hamlin was the same situation, same with Robin Stankivitz and Bruce Hurley. They all came down with complaints from the neighbors. I couldn't tell you specifically which neighbor. And then they contacted the office to give me the follow up on it and I guess what I was saying in there is that none of them brought up any concerns or mention of auto graveyard or auto junkyard. In fact, the detective Robin Stankivitz had said that...hold on I'd like to read it right to you. She said, "In our opinion he certainly meets" let me back up; "he stated that he is trying to obtain a hobbyist permit, is that true or something the town offers? In our opinion he certainly meets the criteria." And that was pretty well in line with the conversation with the Senior Detective Bruce Hurley at the State. So with (4) four different agencies, I believe there might have been a fifth, the Attorney General's office from what I understand, were getting inundated with calls so they sent somebody down to take a look; and then when people came down, a couple hour drive to come take a look at the site, they kind of called me asking me what's the back story here, because I'm not really sure why I was called down with a complaint, was the gist of all of them.

Charles Rankie asked the State statute that you cited where it said that the town ordinance could not be, I think I can quote, "more stringent" than the state ordinance. That's pretty much what quoted, do you find that to be usual that the state would make such a statement that can't be more stringent, or is that unusual?

7:00 PM

Ms. Bishop stated well it's possible because you can't, not all ordinances local; sometimes not everything is included in the thoughts of that process. The attorney actually kind of showed me that section you know, where it states that your local ordinance can't be more restrictive, it doesn't read exactly like that, let me read it to you again. "As long as the hobbyist's activities comply with all applicable federal and state statutes and rules and municipal ordinances, other than ordinances that are more restrictive than this subsection regarding the storage of vehicles or vehicle parts that are collected by a hobbyist, except that a municipal ordinance may require areas used by an automobile hobbyist to comply with the screening requirements in section 3754-A", and it goes onto other sections of that.

Charles Rankie stated okay, so the key word there is restrictive, not stringent.

Ms. Bishop replied right.

Charles Rankie stated, just as an observation to share with my colleagues, I find that unusual for the State, and Rosanne could help me with this one, when working on the Charter the only bound that we had as a town was that we couldn't overrule a State statute, but we certainly could make things more stringent. So, I guess my observation on that is the State is focused on this hobbyist thing. It's not just a random thing that was thrown out there, I take it ...

Ms. Bishop stated right, and I agree

Charles Rankie continued (*inaudible*); yeah, okay, thank you, that's all I have for now, thank you.

Bill Hamilton stated Rosanne I see your hand is up.

Rosanne Adams stated Ms. Bishop you mentioned that Robin Stankivitz and the response to her she said that the owner was trying to obtain a permit and of course they asked if that's true, and if that's something the town offers and of course we don't have an ordinance for hobbyist. Did they ever come to you and say that they would like to do that?

Ms. Bishop asked, the Downes?

Rosanne Adams replied, yes.

Ms. Bishop stated he didn't, no they recognize, Jace recognizes himself as a hobbyist. I don't believe that there was any application process for it found.

Rosanne Adams stated my next question is then, what is the process for as resident to create something that is not in our ordinances? How, how it seems very strange in this case that we can create something that doesn't exist. Just because you know I say that I want to do this.

7:00 PM

Ms. Bishop, yeah, again, most often when you have two, any kind of conflicting laws or ordinances, the stricter applies and it will say so right within them. In this case it is a little bit unique where it's saying kind of the opposite other than ones that are more restrictive. I can't speak to how they arrived at that or even the background behind it, just how it reads today.

Bill Hamilton stated any other questions from the board to the code enforcement officer? I have a quick question; just a clarification, on your understanding of an auto graveyard. Our ordinance says that an auto graveyard involves the storage for three (3) or more unregistered or unserviceable, discarded, worn out or junk motor vehicles, including all vehicles which cannot pass the state inspection test in their existing condition or are otherwise inoperable. Your definition seemed to imply that junkyards really are just for totally discarded vehicles. That's really not what our ordinance says. I just want to make that very clear. We have very distinct definitions as to what an auto junkyard is and I think we need to follow that, rather than the notion that it's just for old junky vehicles that can't run anymore. That's what you were implying I believe in your testimony. Jay?

Ms. Bishop replied, right.

Bill Hamilton stated, I'm sorry, go ahead Ms. Bishop why don't you reply.

Ms. Bishop continued so where it's, sorry can I speak?

Bill Hamilton stated yes, sorry go ahead.

Ms. Bishop, do you want me to reply to that? Where it calls up storage of three (3) or more vehicles; it's not, I don't believe that are, but the owner can speak to this, but I don't believe they're stored out there, I believe they are actively used as part of the hobby. So, they are not just parked and forgotten about forever.

Ellen Lemire stated how are they used?

Bill Hamilton stated excuse me, it also says including all vehicles which cannot pass the state inspection test in their existing condition or otherwise inoperable. It doesn't say only the issue of storage. It mentions all vehicles. I mean, you may have vehicles that you are working on, that are not junk vehicles and you are not storing them you are in the process of working on them but if you've got ten (10) unregistered vehicles in your yard and you're working on all of them, theoretically you have an auto graveyard. The way I read the ordinance. You care to respond to that Ms. Bishop?

Ms. Bishop said yeah, so my understanding is that they are all operable and except for one that he might currently be building, but again, I'd probably just have the owner speak to that.

Bill Hamilton stated yep, and isn't he storing those vehicles on the property?

7:00 PM

Ms. Bishop replied well, they are parked there, depends, we'll see if we have a definition for storage.

Bill Hamilton stated I think that's a common definition, it'd be one those dictionary definitions I believe.

Ms. Bishop stated yeah, we don't have it in our local.

Bill Hamilton stated yep, Jay you had your hand up.

Jay Meyer stated yes. I'm just curious, Ms. Bishop, if you are aware of how many unregistered vehicles are presently on the property?

Ms. Bishop replied not presently ...

Bill Hamilton stated we can ask the ...

Ms. Bishop continued at this time, I think at the time of my letter twenty-two (22).

Bill Hamilton stated we can ask that question

Jay Meyer asked may I ask when the last time you visited that property is.

Ms. Bishop stated I'm sorry.

Jay Meyer stated may I ask the last time you visited that property?

Ms. Bishop yeah, that was February 28th, as far as stopping and visiting and doing that site visit. I've driven by it regularly since then, though, since we've been back from the pandemic.

Jay Meyer stated thank you.

Ms. Bishop responded sure.

John Marshall stated Mr. Chairman?

Bill Hamilton stated excuse me, we are still working with board members at this point.

John Marshall stated yes.

Bill Hamilton stated I'll be right with you right after that. I'm sorry; I thought that was David Brodeur, my apologies; John go ahead.

John Marshall stated there was discussion on the State criteria that it seems to meet the State criteria. Do you know what the State criteria is?

Bill Hamilton stated you're asking Ms. Bishop that question I take it?

John Marshall responded yes.

Ms. Bishop stated meets the state criteria as far as what?

John Marshall stated hobbyist! What we're claiming to be here.

Ms. Bishop stated right, so I know we've discussed there's not a whole lot of information with the state on hobbyist, but that information came from automobile graveyard definition and it explains that automobile graveyard does not include a number, that was number 2, the paragraph we've been talking about would be more restrictive ordinances.

John Marshall stated is there a limitation as to how many vehicles a hobbyist can have?

Ms. Bishop replied not that I have located for information, no...

John Marshall stated except that they have to be registered...

Ms. Bishop stated I don't know ...

John Marshall continued they have to be registered and inspected, though, don't they?

Ms. Bishop replied it doesn't actually call that out here in the exception.

Bill Hamilton stated if I may, I can read that section of the State ordinance if Ms. Bishop doesn't happen to have that in front of her, I'd be happy to. It's Section 3552 1A and its a State Statue and it says: "Automobile Hobbyist requires that vehicles be substantially maintained, in original or restored condition primarily for use in exhibitions, club activities, parades or other functions of public interest." It has no other requirements, no criteria and my understanding is that a number of other towns have established ordinances and I believe Mr. Pettigrew has submitted those ordinances that towns have very restrictive ordinances about automobile hobbyist and

Charles Rankie stated Mr. Chairman did you read the definition of an antique? That sounded like the definition of....

Bill Hamilton responded did I read the definition of antique? ...

Charles Rankie stated yes.

Bill Hamilton replied no this is a section on automobile hobbyist Charlie.

Charles Rankie stated hobbyist?

7:00 PM

Bill Hamilton continued this is the State statute on automobile hobbyist, which is the issue that is in front of us.

Charles Rankie asked could I impose upon you to read that one more time, please.

Bill Hamilton stated certainly! Section 3752 1A of the State statute: "automobile hobbyist requires that vehicles be substantially maintained, in original or restored condition primarily for use in exhibitions, club activities, parades or other functions of public interest". That doesn't mean private parties, it doesn't mean your own, you know, your own exhibition at your house, because we don't have the ability to do that in Eliot. You can't have an exhibition at your house, you can't do that. We don't have an ordinance that allows exhibitions at your house. So, that's what it says.

Charles Rankie stated that is very significant. Thank you.

Bill Hamilton stated you are welcome. Any other questions from the board to the code enforcement officer? John?

John Marshall stated not me.

Bill Hamilton stated oh, I thought you had your hand up, sorry. Ellen? No. Okay.

Ellen Lemire stated the only thing I was kind of curious, well I guess it wouldn't matter because apparently there are no criteria. All other auto uses in town are SPR that are actually allowed in our table of land uses, which means Planning Board review. And we are an MS4 town which brings us to a higher level of standards and DEP oversights and I'm just really struggling with that.

Bill Hamilton stated any other questions of the board to CEO. Anybody from the abutters that would like to ask the CEO any questions.

Charles Rankie stated Mr. Chairman I have a question

David Brodeur stated this is David Brodeur ...

Bill Hamilton stated I'm sorry we have a number of people that want to speak. Mr. Brodeur you had your hand up first, go ahead.

David Brodeur stated yes so I sent in a picture over a year ago, of an old truck and a bunch of fenders on the property that the Downes' own across from Fernald Lane rotting into the ground and I have a hard time understanding how that's not an automobile graveyard but no one's addressed that. I don't understand how we, as a town, do not get to vote on what we want a hobbyist to be included as or restrictions on. I don't believe that home rule says that a State law can also be (*inaudible*) on any involvement of ours. I live across from greater than 20 vehicles that are uninspected, rotting, moving around some drive some don't; I don't understand the definition of what is a hobbyist vehicle and what

7:00 PM

is a graveyard vehicle! If it doesn't move in (*inaudible*) more than 4 weeks is that a graveyard vehicle? I need definitions!

Bill Hamilton stated Ms. Bishop?

Ms. Bishop I missed that last sentence, he cut out a little bit. What was it?

David Brodeur stated I don't understand where the definition is between a hobbyist vehicle and a graveyard vehicle!

Ms. Bishop right, we are lacking some definitions within our ordinances that would be helpful for clarification. We don't have a definition of a hobbyist in our ordinance or a.... (*inaudible*).

David Brodeur stated well I sent you a picture over a year ago of vehicles rotting in the ground across from Fernald Lane and nothing has been done about them. Are those graveyard vehicles or hobbyist vehicles?

Ms. Bishop asked how many are there.

David Brodeur stated there's at least one vehicle sitting over there rotting with fenders but I don't know how it involves in the count?

Ms. Bishop stated well with it being on a separate lot, it would be looked at separately, with the two unregistered vehicles. And I believe there's only two on that lot.

Mike Christy stated there are at least ten (10) or twelve (12).

Bill Hamilton stated this is Mike Christy.

David Brodeur stated I'm confused now. The Downes have several lots that are all conjoined. I don't understand how many one property owner can hide on several lots. So that has to be made clear.

Ms. Bishop stated so the lot on Fernald Road is a separate lot from 314 Beech Road.

David Brodeur stated so I don't understand again, how we can play the shell game and move vehicles around.

Ms. Bishop stated yeah. No, I can't speak to that I'm looking at 314 viewing that as a hobbyist and not an auto graveyard the part

David Brodeur stated there is no home...there is no home across from Fernald Lane. It's just a dead auto graveyard.

Ms. Bishop asked with two (2) vehicles? Is that correct?

David Brodeur stated I have no idea how many of them are there now, but it seems like a place you can put them just to hide from you.

Ms. Bishop stated potentially. It's not an easy site to see from the road. The last time I did see out there, there was two (2) unregistered vehicles on the Fernald Road lot.

David Brodeur stated so this just seems like we are trying to get around the law.

Bill Hamilton stated okay, thank you Mr. Brodeur. We can certainly hear more from you. There are a couple of other people that have their hand up. Mr. Pettigrew, you have a question for the code enforcement officer?

Charles Pettigrew stated a question and sort of a clarification. Mainly, and I think once again this is what the problem is. When this kind of addresses what, I know a lot of this I covered in the packet, so I don't know, maybe you want to read the packet again but under an automobile graveyard it says, under, this is Exhibit 85. 3752 "automobile graveyard means a yard, field or other outgrowing area used to store three (3) or more unregistered or uninspected motor vehicles." It doesn't say anything about parts vehicles, it doesn't say anything about they're being used, they're being regularly used. And on the inspection report she sent me, she said there were, as of February, there were twenty-four (24) unregistered vehicles. So, under the automobile graveyard statute, three (3) or more is an auto graveyard. Now there is the exception to that that says an area used by an automobile hobbyist used to store, organize, display, antique autos as these vehicles are defined in Title 29A section 101. So, if you have let's just say twenty-four (24) vehicles, four (4) of them have been restored so they are as they came from the factory or at least inspectable. They can be driven down the road; they have been used in events of public interest. I refer to China v. Alfano as a legal precedent because that pretty much tells you everything you need to know about the hobbyist law. Now one way to solve this issue is the BMV can come down, and I think it's Exhibit 34, 36, something like that, and if you pay \$40 a vehicle the BMV will come down and they will certify that a vehicle is legitimately an antique and that means that they are supposed to go through it and see can this vehicle pass the inspection test. Has this vehicle been used in parades, exhibitions of public interest and this is one of those things where the BMV detective kind of puts that badge on the line and has to be able to uphold that in court. So that's kind of where you get into this, I don't consider it a gray area, but it can be confusing of, if they are antiques, a legitimate antique does not count against your two unregistered vehicles. So, if you have two unregistered vehicles and two antiques, you're golden. If you have two unregistered vehicles, two antiques and twenty (20) more unregistered vehicles whether they be used for something or parts vehicles or whatever, that is an automobile graveyard. And as far as the ordinances go, the towns that have the ordinances aren't more restrictive because, more restrictive is, if you were, the way that they are all written is, because I went and I've read them all. Say, if you have three (3) vehicles, let's just say for the sake of argument that you have five (5) vehicles. They are all unregistered. You go and get an ordinance passed because you want to be a hobbyist. You jump through the hoops that you are required to do. Then you get your two (2) unregistered vehicles and then those

BOARD OF APPEALS MEETING MINUTES (Remote via Zoom)

7:00 PM

three (3) other unregistered vehicles count as your hobbyist vehicles that you are going to tinker with, as Bruce Hurley supposedly said. Because, once again, I haven't heard anything from this Bruce Hurley guy. But that's where it kind of, that's where in my appeal I mention I don't think that Bruce Hurley was actually trying to overrule Maine's home rule law. I think the auto graveyard, and granted the law could be written a little bit clearer and Ms. Bishop does have the authority to rule on the State law which is under Exhibit 86. "Municipal officers through their designees may enforce the provisions of this sub chapter." So, that's how you get, there's the difference between the hobbyist ordinances so you can be a legitimate hobbyist, you can have your five (5) unregistered vehicles, two of them can be your parts cars or whatever and the three (3) are the ones that you are actively working on to tinker with and as long as you are doing stuff so stuff is not getting in the ground water, it's not affecting property values, etc. That is not what's going on across the street. What's going on across the street is there are at least twenty-four (24) unregistered vehicles and I don't know how many of them are antiques, but I don't, it doesn't really look like any of them are antiques. Now, if Detective Hurley was to come down in February and said this one's an antique, that one's an antique, that one's an antique, these 4-5 vehicles are all antiques, that's fine and that would actually answer Ellen's question about how can the State override our own laws and ordinances and protections if it's legitimately an antique, if it's restored in close, or substantially restored maintained as in original condition. It doesn't have dry-rotted tires, it doesn't have a leaky gas tank, it doesn't have rust bolts, and it's something that's safe to be driven on the road. That's, I think that's where some confusion is going on. Because I had a hard time wrapping my mind around this myself. But there's the ?? and also really the town's ordinance in 2003 should have been changed to the same way the State law was changed in 2003 so it just says unregistered or uninspected; however, Ms. Bishop can enforce both the State law and the Town ordinance.

Bill Hamilton stated Ms. Bishop would you care to respond to that?

Ms. Bishop I don't have a comment for that, no.

Bill Hamilton stated okay, any other questions from the board to the code enforcement officer? Cabot.

Cabot Trott stated yeah, we're not trying to determine if this a graveyard, isn't the appeal the fact that it was determined that he is a hobbyist?

Charles Pettigrew stated no the appeal is it's a graveyard!

Cabot Trott stated no, she's declared it to be a hobbyist, correct?

Charles Pettigrew stated yeah, but I am, we are requesting that you reverse her decision and say that and direct her to pursue it as an automobile graveyard and investigate and see, are these vehicles actually antiques? And if there are ones that are antiques, so be it, as long as you know the BMV has, or a State trooper or somebody has blessed it and said "yes these are statutorily antiques". That is the whole point of the appeal.

Cabot Trott stated okay, but you've also had conversations with her, or emails where she stated to you that her department does not due to legality or validity of what car is antique or what's not, because that's not part of her scope.

Charles Pettigrew stated I would not agree. That is part of her scope, her scope is to investigate and take action to abate. We are saying that it is a graveyard and we want her to investigate it and not just look at it and say that "I don't want to deal with it" it's a hobbyist use.

Cabot Trott stated well I don't think, Charles, in all these letters and emails between the two of you, I don't see anywhere, where she's decided she doesn't want to deal with it. I don't, that's not the question. If you are appealing and our job is to go ahead and say that, you want us to change what she did or to say that she was in the wrong in this decision. We've got to base it on the fact that she made the decision that it's a hobbyist. And everybody keeps pointing out that the fact we don't have a clear cut on a hobbyist but yet I'm looking at all the stuff in the package on her side and yours which yes, I've read both and many of places through State agencies have come out and said that they don't fit the graveyard ...

Charles Pettigrew states but the, Cabot....

Cabot Trott continued nobody is coming out saying it's definitely a hobbyist but there are many statements in here where they are clearly, and I agree, we're lacking on all of that, for saying hobbyist and stuff like that but I'm trying to get something here besides (*inaudible*) he's not going to qualify for graveyard, we've determined that, he can't meet all the requirements for a graveyard. We've got that beaten to death. We understand ...okay, but I'm trying to find something where ...

David Brodeur stated excuse me, how did we decide it does not meet the qualifications of a graveyard?

Cabot Trott stated because he's not applying for a graveyard, we're trying to go ahead ...

David Brodeur stated who said it's not a graveyard?

Cabot Trott stated I'm not saying it isn't a graveyard, I'm saying we know he cannot have a graveyard there. What I'm trying to see

David Brodeur stated well so I've got twenty-two (22) vehicles unregistered across from my house ... (*inaudible*)

Cabot Trott stated you're not listening to me, you're not listening, we know ...

Bill Hamilton stated okay hold on ... can we keep this. I'm going to have to mute

Cabot Trott continued where this is ...

Bill Hamilton stated Cabot can I just interject just for a second,

David Brodeur stated I don't understand....

Bill Hamilton stated would you just hold it for a second ...

Cabot Trott continued I'm not

Bill Hamilton stated would you just hold it for a second This is not only a question of whether this is an automobile hobbyist; it's a question of whether there is a graveyard in a Suburban Zone, which is not allowed. That's the secondary part of this appeal. It's very clearly spelled out in the appellants both in their exhibits and their 27-page appeal- that they are saying it is an automobile graveyard and the code enforcement officer is saying that it is an automobile hobbyist. That is very clear. So, I just want to make that clear, let's not get that argument going any further.

Cabot Trott stated well again, Mr. Chairman, I just ...

David Brodeur stated I don't think its normal to live in a suburban area and have twenty-two (22) cars driving around in the field across from me ...

Bill Hamilton stated excuse me I understand, yes go ahead...

Charles Rankie stated Point of order, Mr. Chairman, point of order!

Bill Hamilton stated yes Charlie.

Charles Rankie stated point of order please. You asked if anyone else from the board has a question of the code officer.

Bill Hamilton replied that is correct!

Charles Rankie stated Charlie is out of order. So, we need to stay in order.

Ellen Lemire stated agreed.

Bill Hamilton stated okay, let's back up a second, go ahead Cabot.

Cabot Trott stated I'm not arguing any fact that he can have a junkyard or an auto graveyard. Everybody keeps focusing on that. What I'm trying to figure out more, my point is, and if everybody listens, that I'm trying to find out the hobbyist part. I've got plenty of the other stuff. I've got I don't know how many exhibits here showing that could, can't possibly have a graveyard there. Our ordinance doesn't say can have a graveyard there.

7:00 PM

That's not my question and I am trying to find out more on how we got to the hobbyist and how she made her decision

Bill Hamilton stated well, again, I think she based her decision on the State and I'll read it once again, Section 3752: "an automobile hobbyist requires that vehicles be substantially maintained, in original or restored condition primarily for use in exhibitions, club activities, parades or other functions of public interest". That is the statute, that is the State Statute. Eliot does not have an ordinance, that is the State statute that I believe the code enforcement officer, correct me, that's what I believe she used to determine that this was not an auto graveyard, but an automobile hobbyist. Is that correct Ms. Bishop?

Ms. Bishop replied yes that is correct and it goes back to that exception ...

Bill Hamilton stated okay, I'd like to move on. I think we've covered this particular aspect quite well at this point and we can bring it up in further discussion. Charlie, if you have a question for the code enforcement officer, go ahead; if it's something new.

Charles Rankie stated it's significant I believe, Mr. Chairman.

Bill Hamilton stated go ahead.

Charles Rankie stated you read in the statue, two descriptors you read that I would like to pose to the CEO, you said that the vehicles must be significantly maintained, and they must be for public display. I would ask the code officer if that is the case.

Ms. Bishop stated I would have to defer that to the owner of the property who has expressed that they recognize themselves as a hobbyist and have done the research within the hobbyist regulations, in addition to the other agencies that have come down on that. So, he would have to speak to the condition of the vehicles at this time.

Bill Hamilton stated thank you. I would like to move to the owner of the property at this point and have them testify to some degree or respond to the comments that have been brought up to this point and I would like to have the board, not the appellants, not the abutters, I'd like to have the board respond to the questions that are brought up by the owner of the property. Go ahead.

Kathryn Holmes stated go ahead?

Bill Hamilton stated could you please state your name and address please for the record?

Kathryn Holmes replied sure my name is Kathryn Holmes, I'm the daughter of Charles Downes and Marylou Downes and I'm the mother of Jace Downes.

Bill Hamilton stated thank you.

Jace Downes stated and I'm Jace Downes.

Bill Hamilton stated hi Jace.

Jace Downes stated nice to meet ya, nice to meet all of you!

Bill Hamilton stated okay, go ahead. Give us your story.

Jace Downes stated so I'll make it short and sweet. I collect 73-87 Chevy trucks for the purpose of a hobbyist. I have a ton of them. I have four (4) of them along the road as we speak. It's very, very, very, very hard to find parts for these things. So, it's like, if a moose comes up and if I hit 'em with my pickup and wipe the front end off of it I can't find parts for that in (*audible*) every junkyard that is known to man doesn't exist anymore, I can't find parts for these things. Almost everything I've got I run on the road aside from the ones that I use parts off them. I guess basically I want people to ask me questions, from the board.

Bill Hamilton stated okay.

Jace Downes stated I don't really want to talk with anyone else.

Bill Hamilton stated alright, I'd be happy to start.

Jace Downes replied yes.

Bill Hamilton asked how many vehicles do you have on the property, currently?

Jace Downes replied I have no idea; maybe, roughly twenty (20), give or take.

Bill Hamilton asked and how many of those are unregistered vehicles?

Jace Downes stated probably, maybe about a dozen, roughly.

Bill Hamilton asked and how many of those are uninspected vehicles?

Jace Downes stated out of the ten (10) that are not registered?

Bill Hamilton stated yes.

Jace Downes stated I have no idea, probably all of them, probably out of the ten (10) yes, they are uninspected; ten (10) that are not registered.

Bill Hamilton asked ten (10), you said that there are twelve (12) unregistered, are those twelve (12) also uninspected?

Jace Downes said what's he saying?

Bill Hamilton replied you said, I'm sorry, you said there were...

Jace Downes stated I'm confused right now

Bill Hamilton stated okay, you said you have a total of about twenty (20) vehicles, right?

Jace Downes replied roughly, yes.

Bill Hamilton stated and when I asked you how many unregistered vehicles you said twelve (12), is that correct?

Jace Downes replied yes.

Bill Hamilton asked and how many inspected vehicles?

Jace Downes stated all of those are uninspected.

Bill Hamilton asked all twelve (12), all twelve (12) are uninspected?

Jace Downes replied yes.

Bill Hamilton asked have you ever performed, have you ever taken your vehicles to a parade or to an exhibit over to

Jace Downes replied, oh yeah, oh yeah.

Bill Hamilton asked okay can you name where you've been and where

Jace Downes replied Super Chevy Show over at New England Dragway, the Barrington Truck Show, Cruise Nights. I know everybody down there at the Eliot Commons, been to the Rochester Truck Pulls with them. I've been to them over and over, I've been there a lot of times ...

Bill Hamilton stated okay, okay what kind of screening do you have to keep the vehicles from being shown, being visible by the public?

Jace Downes replied if you drive down Beech Road ...

Bill Hamilton stated yep.

Jace Downes continued, on the right, the trees are all wicked grown in...

Bill Hamilton stated okay.

Jace Downes continued you can't look through them right now.

Bill Hamilton stated okay.

Jace Downes continued you can't see them...

Bill Hamilton stated what about in the winter time, how's that screening work?

Jace Downes replied I line them all up in the back corner over by my neighbor which likes me which I'm not going to name names right now.

Bill Hamilton stated okay, how far from Beech Road are the vehicles parked?

Jace Downes replied it's all different right now.

Bill Hamilton stated but at some time you have them fairly close to the road and sometimes you have them in the back?

Jace Downes replied yep.

Bill Hamilton stated okay, do you have any plan for monitoring any oil spills, or brake fluid spills or anti-freeze spills or any of that, gasoline spills?

Jace Downes replied I

Bill Hamilton stated you have

Jace Downes replied I have that under control every day. I have Speedy Dry, I have everything, the EPA gave me; those spill blankets I have a bunch of those. The EPA was here, he looked at, he crawled under, every single one of my trucks.

Bill Hamilton asked do you ever sell your vehicles; have you ever sold any of your trucks?

Jace Downes replied not really, I keep all my parts for myself, every single one

Bill Hamilton asked so you never sell a truck that you sort of (*inaudible*) that somebody that just wants it?

Jace Downes replied uh, when.

Bill Hamilton stated truthful.

Jace Downes replied when I get done with one of my square bodies and it's completely destroyed, it goes to the scrap yard.

Bill Hamilton stated okay so you never sold a vehicle to, one that you've fixed up ...

Jace Downes stated I have sold, I have sold, I, have sold some of my trucks in the past, yes.

Bill Hamilton stated okay.

Jace Downes stated so.

Bill Hamilton stated that's all the questions that I have. Does anyone have questions for Jace, from the board? Yes, Charlie.

Charles Rankie stated I would like to ask Jace how he defines significantly maintained and what he does to maintain that standard.

Jace Downes asked can you repeat that again, I can't hear you; and clarify that.

Charles Rankie stated yes, sure, the State statute cites that in order for you to qualify as a hobbyist you need to keep your vehicles, all of your vehicles significantly maintained

Charles Rankie asked how do you define significantly maintained?

Jace Downes replied that's impossible for the parts ones, if I use the truck for parts, to replace a fender or a hood on one of my other trucks. I take parts off of that so on one of my trucks that I use every day I put it together between probably twenty-five (25) square bodies (*inaudible*) then the other parts go to the recycling, (*inaudible*). So as far as my truck being on the road, everything, I replaced everything. I'm constantly working on my pickups.

Charles Rankie stated we are hearing testimony of very loud noises. So how can a vehicle be significantly maintained and have very loud noises?

Jace Downes replied I have to move them from one place to another and it's like, my version of loud noises is different compared to their version of loud noises.

Jace Downes stated if I have one with a broken exhaust on it and I have to move it to (*inaudible*) in Portsmouth or one side to other of my yard to fix it, you know ..

Bill Hamilton asked any other questions to the owner, uh to Jace? Jay?

Jay Meyer stated yeah, I'm curious. You talk about your square bodies. I'm curious how many square bodies you have? And then how many other vehicles that you have that you do not consider to be a square body on your property?

Jace Downes replied so, the vehicles that I don't have that square; that vehicles that are not, I have a 1980 Monza? That is registered and insured and I drive it on occasion and

7:00 PM

then I have a, it's the Creature, it's a Camaro on a 4-wheel drive, (*inaudible*) up in Lebanon, stuff like that ...

Jace Downs stated and then I have my Saturn that I drive every day and then I have the old Eliot, Steve (*inaudible*) sold that. Eliot was for (*inaudible*).

Jay Meyer stated so, I'm sorry, I know that you named them. Did you just name four (4) vehicles that you have that are not square bodies on your property?

Jace Downes replied yes, but those are registered.

Jay Meyer asked how about unregistered vehicles on your property that are not square bodies?

Jace Downes replied I have a 1968 Chevelle SS that is not registered, that is a vehicle that is not a square body.

David Brodeur stated this is a question, what standing does Jace Downes have?

Bill Hamilton stated excuse me, we are still asking Jace, I'm sorry; I'll answer to that question. He is responding as sort of a defendant of the property, an associate of the property owner.

David Brodeur stated he is not the owner.

Bill Hamilton stated no I'm saying he's not the owner. I'm saying he's the defendant with the ...

David Brodeur stated he's not listed on the title. I don't understand what his defense, why he has standing in this discussion.

Bill Hamilton stated it's not a question of standing, Mr. Brodeur, it's a question of witness testimony. He has the ability to testify in front of the Board of Appeals to give us the information that we need to make a determination in this appeal.

David Brodeur stated thank you, I just want to make. I want it recorded that he is not a property owner.

Bill Hamilton stated that's correct. I did not say that or imply it if it sounded that way it could just be the device here.

David Brodeur stated (*inaudible*) is my abutter not their children or grandchildren.

Bill Hamilton stated correct we understand that, it's very clear. He is simply a witness testifying to the case...

7:00 PM

David Brodeur stated he's the owner of these vehicles, not a witness. This is different; this is the person that has those vehicles on that lot.

Bill Hamilton stated yes, and Mr. Brodeur, we need to know that information just so you know because it's his vehicles on that property, owned by someone else, that you are complaining about and that's the nature of the complaint ...

David Brodeur stated that is correct, I would like to hear the questions directed to the property owner, not a transient.

Bill Hamilton stated excuse me, I have, we all have the authority to listen to witnesses. He's an interested party, we have that, he has that ability to talk to us and I wish you wouldn't interrupt sir.

Jace Downes stated I'm offended!

David Brodeur stated he's got less of an interest than I have.

Bill Hamilton stated if you continue to interrupt, I'm going to have to mute you so that we will not hear your testimony sir. Now are there any additional questions from the board to the property owner and the person who owns the vehicles on that property; any other questions. Ellen, I haven't heard from Ellen in a while. Go ahead.

Ellen Lemire stated I'm kind of curious, one of the requirements in the statute states you can have permissible modifications to your vehicles. Can you tell me specifically what those are?

Jace Downes stated clarify, that, that's a broad question.

Ellen Lemire stated no it's, it's your vehicles. If they are truly antiques under the hobbyist definition of the State statute have to be and I can't remember the exact term, very strongly original to the original make of the car, of the vehicle. So original parts

Ellen Lemire continues close to that as possible and has to be substantial, so

Jace Downes stated I have go ahead.

Ellen Lemire asked what are the permissible modifications that you can utilize to actually meet that criteria?

Jace Downes replied I have my trucks registered as passenger vehicles...

Ellen Lemire asked you have your ...

Jace Downes stated not antiques.

7:00 PM

Bill Hamilton stated Ellen they don't have to be antiques to be a hobbyist, just so you know.

Jace Downes stated no.

Bill Hamilton asked anybody else? I thought I saw somebody else, Cabot, I saw your hand up. Go Ahead

Cabot Trott stated Jace, with all of the vehicles out there, I'm just trying to clarify, you have four (4) that are not part of the square bodies correct?

Jace Downes replied correct.

Cabot Trott stated alright, you have ...

Jace Downes continued but they're, but they're ...

Cabot Trott continued registered?

Jace Downes replied yes.

Cabot Trott stated and you have twelve (12) non-registered, non-inspected?

Jace Downes replied correct.

Cabot Trott stated and then overall approximately twenty (20) vehicles total?

Jace Downes replied roughly, yes.

David Brodeur stated where are the ones that are on the lot across from the Downes'?

Bill Hamilton stated excuse me Mr. Brodeur, I am going to mute you right now. Ellen could you mute, please?

Cabot Trott continued so your intention is with the four (4) trucks you have, that are now complete together you're taking to your shows. I take it these other ones are for you to maintain parts, is that what I'm clarifying?

Jace Downes replied correct.

Jace Downs stated and to possibly put on the road someday.

Cabot Trott stated alright, so I'm just trying to clarify with everybody asking questions, I'm just trying to get my notes right.

BOARD OF APPEALS MEETING MINUTES (Remote via Zoom)

7:00 PM

Charles Rankie asked six or eight. He says he has twenty (20) and twelve (12) are not registered so that leaves eight (8)? So how did we get for (4)?

Cabot Trott stated no, four (4) that are different from the hard, square bodies.

Charles Rankie stated okay.

Cabot Trott stated those are part of it.

Bill Hamilton stated Ellen you had your hand up.

Ellen Lemire asked you said that you had your cars registered as what?

Unknown speaker stated passenger vehicles.

Jace Downes replied passenger vehicles.

Ellen Lemire asked passenger vehicles? So, there's no wording on any of the license plates on your hobbyist designation, include antique auto, custom vehicle, horseless carriage, or street rod or antique motorcycle. There's nothing like that on those registrations?

Jace Downes replied uh

Jace Downes replied they have a possibility of being registered as an antique.

Ellen Lemire stated but there's nothing on your current registrations with the State that actually designates any of these vehicles under the statute by which you call yourself a hobbyist?

Jace Downes replied no I don't have anything with an antique auto plate on it right now.

Ellen Lemire stated okay, have you ever had a designation?

Jace Downes continued although they can be!

Ellen Lemire asked again, have you ever had that designation?

Jace Downes replied yes.

Ellen Lemire asked for which vehicles?

Jace Downes replied plenty of them.

Ellen Lemire asked and you have proof of that?

Jace Downes replied yes.

Ellen Lemire stated okay.

Bill Hamilton stated okay that should, is that enough information from the owner of the property and the person Jace who owns the vehicles for us to proceed. Is there any other question from the board to the owners of the property. Yes, Jay?

Jay Meyer stated I'd like to go back to the other vehicles on the property and I asked Jace what vehicles he may own, but perhaps the question should have been what other vehicles on the property could be owned by others, other than yourself, because it appears there is more than just four (4) vehicles on that property?

Jace Downes stated my grandmother owns one (1) vehicle, my mother owns a vehicle.

Jay Meyer asked unregistered as well?

Jace Downes (*inaudible*)

Bill Hamilton stated I'm sorry I didn't hear that.

Jay Meyer stated I'm asking about, specifically asking about unregistered or un-inspected vehicles on your property that perhaps are not yours but that reside on your property, on your family's property.

Jace Downes stated no.

Jay Meyer stated no, I'm asking about a number.

Jace Downes replied none.

Jay Meyer stated so all the vehicles on the property are your possession or your, are registered are yours.

Jace Downes replied except for my parents and grandparents vehicles.

Jay Meyer asked do they own unregistered vehicles on the property?

Jace Downes/other unknown speaker stated no.

Jay Meyer stated okay, thank you.

Bill Hamilton stated anything else. Any more questions from the board to the owner of the property and the gentleman that owns the vehicles? Yes, Ellen.

7:00 PM

Ellen Lemire stated so when you were asked about the screening, you did talk about the trees, the forested area, but there's a lot more than just that area where your vehicles can be viewed. So, you have not met the screening requirements for this particular

Bill Hamilton stated Ellen, excuse me, there are no screening requirements at this point, and we don't have an ordinance. You don't really have to answer that question.

Ellen Lemire stated oh, the State says that some screening could be requested

Bill Hamilton stated by the town, but we don't have an ordinance, so therefore there's no screening requirements. Just to clarify. Okay, anything else? I'm going to give the appellant, Mr. Pettigrew, and the other two appellants we'd be happy to open up Mr. Brodeur's phone line again after Mr. Pettigrew and Mr. Christy and Mrs. Spellacy. Go ahead. You have the last bite at the apple basically. You have the last word before I close the hearing and before we do deliberations.

Mike Christy stated this is Michael, may I go please?

Bill Hamilton stated yes, go ahead.

Mike Christy stated thank you. I'm sitting here listening to a lot of testimony here and I'm getting the impression that the board is being hoodwinked on several levels here. After listening to Jace's testimony there are several inconsistencies and falsehoods that were stated. I see what happens in this field with the junk trucks every day. Let's start with Ms. Bishop's testimony. Her opening statement said that the vehicles are being used regularly. That is absolutely not true. Absolutely not true. There are probably twelve (12) vehicles that will actually run, the other ones are either towed around by a chain or pushed bumper to bumper. She says that he obviously tinkers with vehicles. None of these vehicles are ever tinkered with, they arrive on the property, they get pushed around or they get run until they get blown up and they get pushed to the back of the property

Mike Christy continues okay abandoned vehicles. I'd like to understand what the timeframe is for abandoned vehicles, because I know for a fact, that there are some vehicles that haven't moved for two (2) years ...

Mike Christy continued what is an abandoned vehicle, 6 weeks, 3 months, 6 months, a year. There are at least twelve (12) abandoned vehicles that I see from my deck every single day. Okay, they have not moved. The ones up against Beech Road were either pushed there or towed there. I've watched this, these people don't understand. You don't understand how much you've been lied to during this investigation.

Bill Hamilton stated well excuse me, we need to hear your testimony, that's fine, go ahead.

Mike Christy stated okay, this is not a hobbyist. This is a hoarder that is collecting junk. I've never seen anybody take parts from one vehicle and put it on the other. There are

7:00 PM

vehicles out there that he acquires parts from other junkyards and puts them in the beds of the trucks to be sold. I've seen at least six (6) trucks be hauled away in the last few months as sales. I've watched people come out here, they look at them, and they decide to buy them or not. If they decide to buy them, they either have a flatbed or a flatbed shows up a couple of days later and it gets hauled out. Most recently they've been using the (*inaudible*) equipment borrowing that from his landscaping job and using a bobcat & excavator to haul and push vehicles around the yard. I'm just so apprehensive that the board is not, should not be, believing everything they are hearing because more than 80% of it is not true. I'm sorry I'm getting a little emotional here, because this has been going on for too long. That's all I can say now. Thank you for your time.

Bill Hamilton stated thank you. Who of the appellants would like to go next as a closing statement? If I could ask, please try to keep it brief as we are starting to get into a late hour.

Ellen Lemire stated Mr. Chair?

Bill Hamilton stated I'll be very clear, we don't act, and our brains get a little fried if you hold us out here too long. So, keep it as brief as you can, okay.

Ellen Lemire stated Mr. Chair. Scott and Brenda they also have their hands up and they haven't even spoken yet.

Bill Hamilton stated Scott and Brenda.

Ellen Lemire state yes.

Bill Hamilton stated they are abutters. Yes, go ahead.

Scott Higgins stated good evening and thank you for the Board's attention. I am an abutter to the property and I entered an email today that was sent to the Board that I requested get read into the record.

Bill Hamilton stated I'm sorry, I never received that letter, and I'm sorry. If you would like to read it to us now, that's fine.

Scott Higgins stated I can't read it because I don't have it right in front of me. I sent it to the code enforcement officer and they forwarded to the board this afternoon. You should have it on your emails.

Bill Hamilton stated does anybody on the board have that letter?

John Marshall stated I have not seen that yet.

Scott Higgins stated can you find that as part of your deliberations perhaps?

7:00 PM

Bill Hamilton stated unfortunately, unless Ms. Bishop has it, I do not have a copy of it and you sent it in quite late.

Scott Higgins stated yes it went in first thing this morning and I did get acknowledgment from the Acting, uh ...

Bill Hamilton stated okay let's ask the code enforcement officer if she has a copy of that letter. Ms. Bishop?

Scott Higgins stated she was cc'd on it.

Bill Hamilton stated Ms. Bishop do you have a copy of that letter?

Ms. Bishop replied I do, yes. Do you want me to read that now?

Bill Hamilton replied yes, please.

Ms. Bishop stated it says "Kristina, we have reviewed the information submitted in association with Application 2 contained in the June 18, 2020 Board of Appeals Public Hearing Notice. We found this information compelling and factually sound. For those reasons, as an abutter to Application 2 on the agenda we would like to go on record as being in favor of granting an Administrative Appeal on a decision of the Code Enforcement Officer (CEO) regarding property located at 314 Beech Road. We think that this situation needs to be formally addressed by the town. Existing zoning regulations should be enforced by the CEO. If the CEO feels that changes are needed to current regulations, then those current regulations should be formally changed to clearly codify proposed new activities. This process is necessary to protect the local environment through a prudent permitting process. It would also protect property values and the local individuals and businesses who have followed the approved permitting processes for conducting activities within the town of Eliot. Those individual/businesses might be held responsible if environmental damage did occur at or adjacent to a property used by someone without formal approval and they were the only entity on formal record as a potential pollution source. Sincerely, Scott and Brenda Higgins, 59 Charles Lane, Eliot, ME 03903."

Bill Hamilton stated thank you. Scott and Brenda, do you have anything additional you would like to state at this point?

Scott Higgins stated, based on the discussions tonight, I can see the competition between the desire to do activities and also the desire to protect the Town of Eliot from activities that are done kind of ad hoc within the town. And I think we have an opportunity here to use the existing regulations of the town to grab an opportunity to get him, the person who wants to do these activities, to join into a permitting process or application process that allows the Town to look at this stuff and look at these applications, above board and in light of day, and give good credence to state laws and environmental laws and make sure that both the needs of the property owner and the needs of the adjacent property owners are accommodated to the extent possible. One concern I have, having had extensive

7:00 PM

interface with (*inaudible*) law and environmental law, if a problem does occur from someone that is not a property owner and they leave the property and the property owner doesn't have any record of participating in an activity that caused the pollution, then the adjacent property owners that have permits for conducting, in this case, commercial operations, would then be liable for that environmental damage. Which I don't think is appropriate in this case. For that reason, I would like to see the application approved, make it so that we stop what we are doing and get it done through a permitting approval process. Thank you.

Bill Hamilton stated thank you very much. The, I'm sorry.

Cabot Trott stated for the record, I did get that in email.

Bill Hamilton stated it's been read into the record, so it's part of the record. Mrs. Spellacy and Kathy Hoffstetter, that we haven't heard from.

Kathy Hoffstetter stated I am just an interested party. I'm at 19 Heaths Lane. I am not an abutter.

Bill Hamilton stated that's okay. As an interested party you have the right to speak tonight. Did you hear my comment?

Kathy Hoffstetter stated yes, I did.

Bill Hamilton stated okay. If you'd like to say something you certainly may, if not that's okay too.

Kathy Hoffstetter stated I have seen trucks towed on flatbeds and frames taken away on flatbeds. (*inaudible*), no I don't have a whole lot to say, but I have seen things that people have stated here. I don't know what the conversations are, whether they're selling the trucks or whether being hauled off and traded and something else comes (*inaudible*) part of his business, (*inaudible*).

Bill Hamilton stated okay well thank you very much; Charles Pettigrew would you care to? Has everybody had a chance to speak once at least?

Charles Pettigrew stated Kathy would you like to go one more time and then I'll finish up.

Bill Hamilton stated okay, perfect.

Kathryn Spellacy stated sure. Like I said, I live across the street. I'm retired so I'm home a lot. I do realize that he works on his vehicles. But there are days that he drags those trucks and lines them up in different formations and this can go on for hours. With the windows shut because I can't open them, the air conditioner on and my television, I can still hear these engines. Whether it's an Expedition dragging a truck with a chain or it's a

7:00 PM

vehicle being pushed with a snow plow (*inaudible*) but it's constant and it effects a lot of people and there have been a lot of complaints. If you inquire with the Police Dept. how many calls have been made about the (*inaudible*), and people have talked with Jace and tried to compromise and nothing ever happens. Randy Spay has talked to you, Steve's Auto Body has talked to you. We just want to compromise. We just want you to be fair to your neighbors. That's it.

Bill Hamilton stated thank you very much. Mr. Pettigrew. Yes.

Charles Pettigrew stated okay ...

David Brodeur stated I have one comment to make before Charlie.

Ellen Lemire stated I'm speaking right now sir.

Bill Hamilton stated go ahead Ellen, again I have to apologize, in this format, but it's new to us and a little disruptive. Go ahead Ellen.

Ellen Lemire stated did Karen O'Conner get a chance to speak?

Bill Hamilton stated I don't know. I just saw that name pop up.

Karen O'Connor stated no, I haven't. I am an abutter to the property. We have wetland between the properties. The wetland runs down the side of my property. He parks those cars right against our property and I am afraid with the oil and gas leaking from those vehicles, ...

Karen O'Connor continued is contaminating our property I drive by those...

Bill Hamilton stated Ellen, can you mute. Hold on a second, if anyone speaks or even coughs or background talking, we cannot hear. Karen, go ahead, finish up.

Karen O'Connor continued so I drive by. I'm on Keiths Lane. I drive down Fernald Lane and there have been cars across the street sitting there for 2-3 years not moved. There are piles and piles of tires behind the house. And if there's ever a fire down here and those tires catch on fire, we could have a very big issue here. It's very unsafe and you people need to go down and check the property cause there's junk thrown all around and car parts piled up and it's not a hobbyist. It's a junkyard and, like I said, there is water between our properties. It might not be registered as wetland but there is water and it runs down the side of our property, so it's on two sides and, if that gets contaminated, it's going to contaminate people's wells in this area. So, is the town going to be re-drilling our wells if they get contaminated? I will look; I will sue the town if my well gets contaminated. Or if my property, if there are signs of contamination on my back property, I will sue the town if you people don't do anything. And that's all I have to say.

7:00 PM

Bill Hamilton stated thank you very much. Okay, we have room for one more closing statement and I believe that's Charles Pettigrew.

Ellen Lemire stated yes.

Charlie stated yes.

Bill Hamilton stated go ahead and if you could make it brief that would be perfect.

Charles Pettigrew I will be as quick as possible. If you look at Exhibit 50, which is the site plan for the subdivision, it does show a wetland. Now maybe the surveyor was wrong but that's where we got the information that it's a wetland. Once again, Ms. Bishop said there were twenty-four (24) unregistered vehicles when she did her site inspection. Now there's only, I don't remember what the total was, eight (8), where did the other math amount go. And once again, the definition of an automobile graveyard is a yard, field or other outdoor area used to store three (3) or more unregistered or uninspected vehicles. Doesn't matter if they are parts vehicles, doesn't matter if they actually run, doesn't matter if they are being used, doesn't matter if they are being pushed around with chains. The only exception to the automobile graveyard as far as hobbyist goes is if they are legitimate antiques. And the only way they can be determined to be legitimate antiques is if the BMV detective comes down and fills out that certificate. And then he needs to be able to support that in court. And that is what we are asking the Town of Eliot to do is have the code enforcement officer reverse the decision that this is a hobbyist use, as there is no hobbyist use in Eliot, and pursue it as an auto graveyard. And if there is stuff that are antiques, and we're shown this is antiques, then fine; that's an antique. But I would ask that the noise stop.

Bill Hamilton stated thank you very much. We are about to close the public hearing and before we do, I would like to hear from our two alternates. I would like to start with Jay. I'd just like your thoughts about what we heard before we get into deliberations. I'd just like to hear what your thoughts are.

Jay Meyer stated well, I think my biggest issue is to look at our Eliot Code. Section 45-290 sentence 2 says that "any use not listed is a prohibited use"; and I really do not understand why it got any further than that, when hobbyist is not mentioned here. So that particular issue concerns me right off the bat and two, I have some other concerns about the amount of vehicles that are at the property. If in fact it were considered a hobby, there are other vehicles on the property that would not fall into that category. That's about all I have at this point.

Bill Hamilton stated thank you Jay. Rosanne, do you have some thoughts for us about this appeal?

Rosanne Adams stated yeah, I concur with some of the same thoughts that Jay's had and, also, I would note that previous code officers did have a problem with this and saw it as an auto graveyard, but they did not pursue it to its final resolution. But I'm concerned that

7:00 PM

because we don't have an ordinance to cover this that I don't know how we can see it as an allowed use without that ordinance. Is that possible? Does anybody know that? Those are my thoughts.

Bill Hamilton stated thank you. At this point, I am going to close the public hearing. There will be no further testimony from anyone in the audience. There will only be deliberations between members of the board and so the public hearing is closed.

First, I'm going to read some findings of fact. There has been an awful lot of information and I've probably missed a lot. Some of the findings of fact I have taken from some of the excerpts that have been mentioned tonight. Just briefly, I'm going to give it shot. Think of others that I may have missed.

So, the standing and timeliness issues have been dealt with. One appellant had testified that he has lived in town for 23 years, another for 18 and another for 17. Eliot's ordinance defines "auto graveyard" as involving "the storage for three (3) or more unregistered or unserviceable, discarded, worn-out, or junked motor vehicles, including all vehicles which cannot pass the state inspection test in their existing condition or are otherwise inoperable. §3752 1 A) of the State Statute define automobile hobbyist as "substantially maintained in original or restored condition primarily for use in exhibitions, club activities, parades or other functions of public interest." Section 45-290 of the Eliot Code, does not list "automobile hobbyist" as a permitted use and goes on to state that, "any use not listed is a prohibited use" in the Suburban Zone or in any other zone. Section 45-290 of the same ordinance also lists, as I have mentioned, "equipment storage-and trucks, three (3) or more" as a prohibited use in the Suburban Zone. Section 45-101 thru 45-103 requires that the CEO use "appropriate action to prevent any unlawful use and violation of any particular law or ordinance" of the Town of Eliot. Next, there is no ordinance currently in place in Eliot regarding automotive hobbyist or automobile hobbyist. Such an ordinance would require the voted approval in the majority of voters of the Town of Eliot and would likely contain specifications, permits, requirements including setbacks, screening, annual registration, limits on the number of vehicles, etc. The State junkyard statute and hobbyist exception were passed in 2003. Eliot has not enacted a hobbyist ordinance, an automobile hobbyist ordinance, during that time. It was testified that there are vehicles within 300' of wells and cemeteries. It was testified that currently there are over twenty (20) vehicles located on the property at 314 Beech Road, of which twelve (12) are unregistered and twelve (12) are uninspected. The State of Maine is a Home Rule state allowing cities and towns to enact ordinances which are not counter to State law. Examples are, and this did not come in testimony, but I'd like to add, examples that we have recently are the marijuana law and the adult entertainment law, both of which were state statutes but also required individual towns to approve and come up with standards. The Code Enforcement Officer testified that the site was inspected by several state inspectors and felt that this was a hobbyist enterprise and it was noted that at least two (2) of the inspectors stated if the town has a municipal ordinance that addresses it.

Ellen Lemire asked if the town had them.

7:00 PM

Bill Hamilton stated yeah, well they said, well one from what I read, said it's a hobbyist enterprise, if the town has a municipal ordinance that addresses it.

Ellen Lemire stated okay.

Bill Hamilton stated that's the way I read it.

Ellen Lemire stated yep.

Bill Hamilton stated the CEO testified regarding noise, stating there was one (1) complaint submitted after hours. And it was testified that the state can certify antique vehicles by simply the applicant requesting that. I believe it was a \$40 fee that was mentioned and that may specify which vehicles are antique and which aren't. That's what I have at this particular point. What else should be findings of fact?

John Marshall stated Mr. Chairman.

Bill Hamilton stated yes.

John Marshall stated I'd like to modify one of your points where you quoted our table of land use saying that if it's not a listed use, it's a disallowed use. But recently we have added to the table of land use at the very end. It says, "uses similar to allowed uses". In this particular case, the only thing I can find as a similar use as to what's being requested here, is an "auto recycling operation". That would be the closest and it's pretty much not allowed there.

Bill Hamilton stated that's correct.

John Marshall stated but we do need to be careful of that statement on the beginning of the table of land uses. It has been modified now by uses similar to allowed uses.

Bill Hamilton stated I don't know how to phrase that. How would you phrase that John?

John Marshall replied I don't know that it has to be changed from what you said. I think it has to be something that we need to be aware of.

Bill Hamilton stated I think that's a great idea, great point. Again, I feel anything similar to the use that is currently being applied by the defendant in this case, there is no similar use that would probably be as you said, John, allowed in the Suburban Zone. Are there any other findings of fact that I may have missed. Yes, Charlie.

Charles Rankie stated the defendant used that term, I don't know what better, has testified that the vehicles take part in public displays and he specifically named a few.

Bill Hamilton stated that is correct, yep.

7:00 PM

Charles Rankie stated and that there's another point that I think is significant. Our code officer testified that she was comfortable that the vehicles met the criteria of being substantially maintained. She testified that she was comfortable with that, which is part of the State statute of a hobbyist. Those two I think we should add.

Bill Hamilton stated okay anything else.

Charles Rankie replied not from me.

Bill Hamilton stated anybody else?

Ellen Lemire stated one of the things I was thinking about, was none of the wording on any of his registrations/license plates contain the appropriate words to designate the cars as hobbyist.

Bill Hamilton stated is there a designation in the registration ...

Ellen Lemire stated well, Section 457 for hobby registration plates so they have to say, they have to have a description of antique vehicle, horseless carriage, or street rod or antique motorcycles, the description is antique. And he testified that that is not on any of his registrations.

Bill Hamilton stated okay.

Charles Rankie stated where is that coming from?

Ellen Lemire stated Section 457 of 29A.

Rosanne Adams stated Bill.

Bill Hamilton asked anything else.

Rosanne Adams stated Bill.

Bill Hamilton stated yes.

Rosanne Adams stated I just wanted to clarify something because when you asked, perhaps I didn't hear right. When you asked the code officer if those, the state, people who came down that were called at different times by the abutters, had all said that it was more of a hobbyist activity. She said well, not quite. And when I look at the letters that we have from those people the only one who really stated that was Robin. In fact, in other material that wasn't brought up, but was sent to us and I don't know if I can speak to that or not?

Bill Hamilton stated go ahead.

7:00 PM

Rosanne Adams stated David Gulbrad actually said that it doesn't sound like it's a hobbyist and he would be glad to work with, I think he was speaking to Dana, yep Dana, on something. So, there's more than just like everybody said this and nobody said that. But the way we put it in there, as if it was fact, it sounded like all the State people said that they thought this was a hobbyist.

Bill Hamilton stated right, that's a good clarification. Yeah, maybe I'll rephrase that. The code enforcement officer testified that the site was inspected by several State inspectors and felt that this may be a hobbyist enterprise, if the town has municipal ordinances that address it, does that "may" help at all?

Rosanne Adams stated if you're speaking of the "may" because of what she heard from them, it made her think, then yes.

Bill Hamilton stated okay.

Rosanne Adams stated but as long as it's not implying that they all said it was.

Bill Hamilton stated yeah, no.

Rosanne Adams stated because they don't have the right to make that decision for our town.

Bill Hamilton stated exactly. This is just testimony of the code enforcement officer that I just thought was relevant...

Rosanne Adams replied yep.

Bill Hamilton stated it's just to support the case to some degree. Anything else on findings of fact?

Ellen Lemire stated I'm not really sure how to phrase it, but I did ask about the MS4 designation in our town and the Urbanized Area that I'm speaking of is very close to that property. There are wetlands surrounding that property and the contour lines from our own GIS map has all the contours going down towards those wetlands in that MS4 urbanized designated area, between Hanscom Road and Route 236.

Bill Hamilton stated okay, I think that just by mentioning that there are wetlands involved is that enough for you?

Ellen Lemire replied no.

Bill Hamilton stated how would you like it phrased?

Ellen Lemire stated there aren't any wetlands on the property itself, but the property itself is surrounded by wetland.

Bill Hamilton stated okay, so let's put that in. The property itself is surrounded by wetlands, how's that?

Cabot Trott stated well Mr. Chairman, there is other property in that same neighborhood that listing that because of what they have on there may not be the best thing to do. As far as there is a business right next store that stores race fuel and other hazardous materials.

Bill Hamilton stated right.

Ellen Lemire stated is it an officially recognized business?

Cabot Trott replied I believe it is.

Bill Hamilton stated yep.

Ellen Lemire replied then they meet the criteria.

Cabot Trott stated well, I would hope so, but I'm just saying with all the designation and stuff being careful that we don't group them in together, Ellen, is what I'm trying to say.

Ellen Lemire stated I'm not.

Cabot Trott stated no I know that you're not; I'm just making sure that we don't write it may sound like that.

Bill Hamilton stated how about if I just say the property itself is in the vicinity of wetlands. How's that?

Charles Rankie stated Mr. Chairman I don't see the relevance, I don't see the relevance of putting that statement in. We're not asked to be, to approving a business, it's not relevant.

Bill Hamilton stated well, I see.

Charles Rankie stated it's not relevant.

Bill Hamilton stated well, I think it's the issue of public safety, which is part of our charge as well, and it is part of the complaint that has been leveled against the defendant in this case that it's possible ...

Charles Rankie stated if there were a total wetland there, that still wouldn't have anything to do with the decision that we are being asked to render. That would be something that the code officer would deal with during a permitting process for something way before us. I just don't see it's What we are looking at here, this is not easy for us. The rules, does Eliot have a rule against this. Is there a reason why it can't be?

Bill Hamilton stated against polluting wetlands?

Charles Rankie stated there aren't any wetlands from what we have in front of us.

Bill Hamilton stated okay, do we want to address this?

Rosanne Adams stated Bill, I have to disagree. There are wetlands, they are delineated wetlands. Mr. Pettigrew testified to that, because he was using the plans, and it's on the plans of the Downes' family when they split the lot into two pieces and you can see it right on the plan, exhibit 50. And, so, there really are wetlands there and I think Ellen has a good point as far as ??.

Bill Hamilton stated so then the code enforcement officer testified that there are no designated wetlands on the GIS map, on the property?

Ellen Lemire stated yes, no not on the property. That's what she said. I created my own map.

Charles Rankie stated Mr. Chairman, I have a compromise here.

Bill Hamilton stated okay.

Ellen Lemire stated the Shoreland and the MS4 Urbanized Area and the contours, which are important because that shows you how the water is going to flow. Clean water and contaminated water as well.

Cabot Trott stated which would be the same direction that the commercial property next door would also do.

Ellen Lemire stated but that one is an approved business, correct?

Cabot Trott stated I'm assuming so.

Ellen Lemire stated well we aren't talking about any other piece of property tonight except ...

Cabot Trott stated I know, I'm looking at the same map and I'm looking at the wetlands not being on the property. Yes, they are, if we are looking at trying to approve, but to sit there and just say that drainage going off. Well, yeah, all from Littlebrook Airport down is draining in that direction is my point. So ..

Bill Hamilton stated if we simply state as I stated in the beginning that there are some wetlands involved in the area, not designated wetlands. Is that enough or should we just avoid the whole thing, or Charlie, you said you had a compromise. Go ahead.

7:00 PM

Charles Rankie stated yes Mr. Chairman. I think all we need to do to meet what's here is to cite Exhibit 50, which is a plan by the property owner that shows wetlands.

Bill Hamilton stated okay.

Charles Rankie stated that's a professional product and it shows wetlands on the property so I think that meets the needs that Ellen is expressing.

Bill Hamilton stated okay so to simply say that there are wetlands on the property is that enough?

Charles Rankie stated Exhibit 50 shows wetlands on the property.

Bill Hamilton stated alright.

Cabot Trott stated and that goes to the actual case that we are working on.

Bill Hamilton stated okay, alright. Does everybody agree on that?

Cabot Trott replied yes.

Bill Hamilton stated anything else? Any other findings of fact we may have missed. There's an awful lot of information but I think we have the gist of it. Okay. We have findings of fact. The hearing is closed. I'll entertain a motion at this point and then we can have some discussion.

John Marshall stated gee, we haven't had any of that yet!

Bill Hamilton stated we can have a discussion after we have a motion, that's for sure. Is that you John making a motion, did I hear?

John Marshall stated I didn't make a motion, no.

Bill Hamilton stated who would like to make a motion?

Charles Rankie stated I'll make a motion.

Bill Hamilton stated okay.

Charles Rankie stated I move that we deny the appeal.

Bill Hamilton stated who made the motion?

Charles Rankie stated Charles.

7:00 PM

Bill Hamilton stated okay Charles. Okay and anything else in that motion to direct the CEO to do anything or at this point to try to mitigate the problem that you see by denying the application? You want to deny it?

Charles Rankie stated deny it, correct.

Bill Hamilton stated okay.

Charles Rankie stated to expand on answering your question; I would be willing to modify my motion after some discussion.

Bill Hamilton stated okay; so you made motion to deny.

Charles Rankie stated I'm hearing you want a motion on the floor and then we can have some discussion. So, there's a motion on the floor to get to some discussing.

Bill Hamilton stated okay is there a second to the motion?

Cabot Trott stated sure I'll second so we can get some discussion, because I'm not sure.
...

Ellen Lemire stated that's not how you make motions Cabot.

Cabot Trott stated Ellen, I didn't make the motion. I seconded it for discussion and I'm not directing anything. Just because I seconded the motion doesn't mean that I support it or add to it. I want to hear the discussion.

Ellen Lemire stated whatever!

Cabot Trott stated thank you I appreciate that.

Bill Hamilton stated a motion has been made and seconded; discussion. The originator of the motion, please have a discussion.

DISCUSSION:

Charles Rankie stated and, also, I piggy back on with what Cabot said. Simply because I made the motion does not mean that I'm going to vote in favor of it as you know. What I would like to hear from my colleagues is I would like to hear someone of my colleagues convince me that this is not a hobby. Let me back up just a minute. A lot of folks that are at our meeting tonight assume that we have powers and authorities that we don't have. Our power and our authority is to act on existing ordinances and State laws that we have, and that's where we are at. What we've been listening to about a hobby and a hobbyist, I would like to have my colleagues discuss that and I would like to be convinced that this is not a hobbyist situation. Fair enough?

7:00 PM

Bill Hamilton stated okay, let's hear your thoughts on it.

Charles Rankie stated my thoughts are that I've heard a lot of testimony that pushes us towards a hobbyist. I, with a lot of the public that we listened to talk, had no idea that there was such a thing in the State statute and I had no idea the State statute, for example, Jay made the statement that 45-290 says if you don't have it, you can't do it. Well the State trumps that by saying the town can't say you can't do it. You can have a hobbyist. So, I'm wrapped up around is this really a hobbyist. If this is a hobby, then it's a hobby. It's permitted by the State statute and I would have done what Ms. Bishop did from what I'm hearing.

Bill Hamilton stated okay, well let me read what the State statute says, once again. Automobile hobbyist require that vehicles "be substantially maintained, in original or restored condition, primarily for use in exhibitions, club activities, parades, or other functions of public interest". So, if you are an automobile hobbyist and you don't do anything with these vehicles, which one of the court cases that we reviewed, presented by the appellant, said then the court denied the fact that he was a hobbyist simply because he collected junk vehicles and didn't go anywhere with them and that didn't meet the definition. In this case, I don't feel that this is a hobbyist because it doesn't meet the State definition for one thing. I don't feel it does. I think, uh, I just don't think that these are substantially maintained, I don't think they are in original or restored condition, I don't think that they are primarily for use in exhibitions, club activities, parades or other functions of public interest. I don't believe he has met any of those. I think they

Bill Hamilton continues are simply a collection that he has passion for, excuse me I'm not done. He has passion for and I certainly honor that. I have passion for things as well. But my passion for things doesn't involve my neighbors. And his passion does involve his neighbors in a zone that doesn't allow the type of activity that I feel he's comprising, which is a junkyard. It's an automobile graveyard. But it's an active automobile graveyard, but that doesn't mean he's an automobile hobbyist by State definition. I don't feel he meets those requirements. And as far as, the 290, our ordinance, 45-290, that is a rule. Anything that's not in our ordinance, except with the exception of what John was saying, if it's something similar that's a permitted use in the zone, then maybe that's something that may be considered, but if it's not listed in our ordinance and, under 45-290, then it's prohibited. It didn't say not allowed, it said prohibited. It didn't say, well you can think about it, it says prohibited. We don't have an ordinance; we don't have an ordinance for an automobile hobbyist. The State has an ordinance for automobile hobbyist, and we may not want to subscribe to it. We may have our own design about where we want an automobile hobbyist; we may not want one in the suburban area. We may want them only in the rural area. Which a lot of towns have done, we may want limit the number of vehicles, we may want to create screening requirements, we may want to require all kinds of other things, but we don't have an ordinance and I don't believe, much like the marijuana ordinance and much like the adult entertainment ordinance, we are not compelled to follow State statutes. I don't believe, I might be wrong, but I don't believe just because the State says, that there is such a thing as an automobile hobbyist that the towns have to allow it. I don't think the State is saying that at all. The State says very clearly that

7:00 PM

towns, and many towns have done this, can provide an ordinance with restrictions and with qualifications and other things that would allow someone who is a genuine hobbyist and would you know not twenty (20) cars, most towns allow two (2) or three (3) or four (4), not twenty (20). My definition of an auto junkyard is much closer to what this property is being used for, than an auto hobbyist. You wanted a clarification, that's my clarification.

Charles Rankie stated Mr. Chairman, can I ask you to read. What did you say and what was the bottom line on the State statute that described hobbyist that said...the wording that said supersedes whatever the town might want to do?

Bill Hamilton stated it doesn't supersede, no.

Charles Rankie stated well what is the wording; can you look at that?

Bill Hamilton stated I'll try to find it, meanwhile, I'll try to find it.

Charles Rankie stated we might want to bring Ms. Bishop ... (*inaudible*).

Ellen Lemire stated I got it.

Charles Rankie stated Ellen's got it.

Bill Hamilton stated go ahead Ellen.

Ellen Lemire states defined in Title 29A section 101, "as long as the hobbyist's activities comply with all applicable federal and state statutes and rules and municipal ordinances, other than ordinances that are more restrictive than this subsection regarding the storage of vehicles or vehicle parts that are collected by a hobbyist, except that a municipal ordinance may require areas used by an automobile hobbyist to comply with the screening requirements".

Bill Hamilton states see the State statute doesn't have anything to do with the number of vehicles, screening of vehicles; it doesn't have any of that. It's so vague to believe that that's the law would be a mistake; in my opinion.

Ellen Lemire stated yeah.

Charles Rankie stated Bill in this discussion...

Bill Hamilton stated I'm sorry.

Charles Rankie continued in this discussion, which I asked to be shown that this isn't a hobbyist. So, you feel that, in your argument, you feel that because of the lack of repair and actually there's nothing with your, (*inaudible*) ... mudding type trucks they would display some better maintenance characteristics, is that what you are saying?

Bill Hamilton stated yeah, I feel at the very minimum Charlie, he has to at least, if he was a legitimate hobbyist then his all of his vehicles would need to be substantially maintained and they would need to be inspected, they would need to be registered, all that stuff. You know, as an antique vehicle they need an antique registration, which he does not have. There's nothing that he has done, as far as I'm concerned, that has enabled him, other than the fact that he feels like a hobbyist and he probably feels that very deeply and I appreciate that. But the State statute is what I care about and that Statue is what we are asked to believe in, in terms of allowing this use in a zone, which does not permit auto junkyards or auto graveyards, and that's quite, as far as I'm concerned, even if we did have an ordinance I don't believe it would exist in the Suburban Zone.

Ellen Lemire stated no.

Bill Hamilton stated so, no. I don't go with it.

Charles Rankie stated thank you Bill, you've helped.

Bill Hamilton stated okay, anybody else? I'd like to hear from everybody. John.

John Marshall stated I think I can give him 3-4 vehicles that could be construed to go into the hobby category; things that he takes to mud runs or whatever. However, what are we going to do with the 15-20 others that are parts vehicles? I don't believe I heard in your reading of the hobbyist law anything to do with parts vehicles and keeping such things as that. And I think we have an issue here too of just being a good neighbor. But the closest he comes to is an auto recycling and that's out the window. It's not even considerable.

Bill Hamilton stated okay, thank you; Ellen do you want to weigh in.

Ellen Lemire stated you said everything I was going to say Bill.

Bill Hamilton stated alright, do you confirm that?

Ellen Lemire replied yes.

Bill Hamilton stated Cabot.

Cabot Trott stated I think in this case I truly do believe that Jace believes that in his heart that he is hobbyist, this is what he's doing with them; these are a hobby to him. He does have four (4), I agree with John, that he takes to shows, to his truck rallies, he also, the State statute that you read does allow for maintaining parts vehicles. But there is so much that is missing; that the State doesn't give us for guidelines. As much as I would love to sit there and think that we're going to come up with some kind of guidelines for this, ourselves, there have a hobbyist down the line, I don't know. I can see where our code enforcement officer, where Ms. Bishop gathered all of her information and made her decision, a tough one. I don't envy being in her spot. But yeah, I think with what we have for

7:00 PM

information, it's a tough decision to be able to make. The State doesn't give us much for guidance, the town doesn't have ordinances and our job is cut and clear by the ordinance; and all of the information that all of us present and know how many we get there. I just truly think this is going to be a tough one for us no matter how we go. It would be nice to have more support from the ordinance to make our decisions easier.

Bill Hamilton stated thank you. Is everybody weighed in on this; any other discussion? So, the motion again that Charlie brought was to deny the appeal; all those in favor. I'm going to have our recording secretary ...

Charles Rankie stated Mr. Chairman, one last bit of discussion please.

Bill Hamilton stated that's what I asked for, go ahead.

Charles Rankie stated I take that John's statement, doesn't want to be confused with our decision about being a poor neighbor, because that really isn't part of our decision. Although there have been displays of being a poor neighbor, that isn't part of our decision, I believe, and I don't think that John meant that it was part of our decision so I think that should be clear because we know that there are always happy and unhappy parties in things like this.

Bill Hamilton stated you are absolutely correct. That's not part of our decision-making process. Our decision-making process is very narrow. It's to determine whether the CEO acted in accordance or erred in terms of understanding the code. We have a very, very narrow focus and neighborhood feelings certainly are important but that's not what we make decisions on.

Charles Rankie stated well said, I'm good.

Bill Hamilton stated okay. So...

Cabot Trott stated Mr. Chairman.

Bill Hamilton stated yes.

Cabot Trott stated I would you clarify what a yes vote or a no vote will get us.

Bill Hamilton stated a yes vote means that you would deny the appellant, which would deny Charles Pettigrew and the three others who have asked that the code enforcement officer basically have a cease and desist order issued to the property owner and then let the town deal with the violation if it's not complied with.

Cabot Trott asked so that would be the yes vote?

Bill Hamilton stated that would be the yes vote. No vote would be that we essentially, I'd like to have a second vote after this just to confirm, but a no vote would basically say

7:00 PM

that we don't, we do support the appellants, that we do support their complaint and we do support their request to have the code enforcement officer not view this as a hobbyist, an automobile hobbyist, but as an automobile junkyard and to order a cease-and-desist order because an automobile junkyard is not allowed in the Suburban Zone.

Ellen Lemire stated did he ask for a cease-and-desist order?

Bill Hamilton stated he did not but is our purview to be able to direct the code enforcement officer in this case to actually, to do enforcement.

Ellen Lemire stated yes, that's true, or determination or remand it back to her for more investigation. They are pretty flexible in all those things.

Bill Hamilton stated right. It's up to us in another vote, maybe if this vote does not pass. I would like to see a positive vote with instructions to the CEO as to what direction this should go. So, any other discussion on the motion? The motion again, a yes vote would be to deny the application. I'd like to have our recording secretary, Deb Parent, do a roll call.

Motion to deny:

Bill Hamilton:	Yes
Charles Rankie:	Yes
Ellen Lemire:	Yes
John Marshall:	Yes
Cabot Trott:	Yes

VOTE:
5-0
Motion Approved

Bill Hamilton stated I'd like to entertain another motion at this point.

Charles Rankie stated I would make a motion, but if someone else has one.

Cabot Trott stated go ahead.

Charles Rankie stated **I would move that we instruct the code officer to present the property owner with a cease-and-desist order immediately. Additionally, we ask that the code officer notify the Planning Board that they need to give attention to an ordinance for hobbyist at their earliest convenience.**

Bill Hamilton stated I think I have to amend your motion to actually approve ...

Ellen Lemire stated yes.

Bill Hamilton stated the appeal as opposed to simply ask for a cease-and-desist order right away. To approve the appeal and then ask the ...

Charles Rankie stated **I amend to approve the appeal and then follow up with the cease-and-desist as well as notifying the Planning Board that we've uncovered some things that need attention.**

Bill Hamilton stated okay, is there a second?

Cabot Trott stated **second.**

Bill Hamilton stated discussion, any other discussion on the motion?

Ellen Lemire stated yeah, I just have a comment to make. I was writing down some things like, having the CEO determine if this meets the town definition of auto graveyard or junkyard because my sense, well for one, thing she's very limited as to how far into the property she can go, anyway, and there's been a lot of neighbors knowing what's going on but it doesn't seem like the town really knows what's going on. So, the determination of whether this is actually a graveyard or junkyard or it factually qualifies for the State statutes.

Bill Hamilton stated let me read ... go ahead

Ellen Lemire stated I just think that information is going to have to come out, anyway, in order for the Planning Board to develop an ordinance.

Bill Hamilton stated right; well, that will be an ongoing process for sure.

Ellen Lemire stated yes it will be.

Bill Hamilton stated and the definition of an auto graveyard involves "the storage of three (3) or more unregistered, or unserviceable, discarded, worn out or junk motor vehicles including all vehicles which cannot pass state inspection; the state inspection test in their existing condition or are otherwise inoperable".

Ellen Lemire stated right.

Bill Hamilton stated okay, I think it's very clear that a cease-and-desist order is in the works on this auto graveyard; any other...

John Marshall stated is the cease-and-desist order something that we can insist on or is that the Town Manager's or Selectmen's purview?

7:00 PM

Bill Hamilton stated I think we're asking for the CEO to do it. However, she needs to do it; either to go to the Town Manager or however she has to do it. I think it's within our purview and if it's not we will find that out. I thought it is. Yes

Cabot Trott stated Mr. Chair, Ellen brought, her point brought up something else, about going on the property. Maybe Ellen does know something about this. People mentioned other lots. Does this, because it only dealt with 314, prohibit the other lots that may exist. How's that, can we put something in there for that? I don't know.

Bill Hamilton stated the appeal, let me clarify that. The appeal was for Map 38 Lots 10 & 46 in the Suburban Zone.

Ellen Lemire stated right.

Bill Hamilton stated so that's what, those lots. It's not just 314 Beech Road. It's for Map 38 Lots 10 & 46. Okay?

Cabot Trott stated, okay, thank you.

Bill Hamilton stated you're welcome; any other discussion? Can we have a Roll Call vote? All those in favor would be saying yes to approve this appeal and to direct the code enforcement officer to issue a cease-and-desist order on this property in question, Map 38 Lots 10 & 46, in the Suburban Zone and ask the Planning board to begin immediate discussion on forming an auto hobbyist ordinance. Is that correct Charlie?

Charles Rankie stated yes that's perfect. Thank you.

Bill Hamilton stated welcome.

Deborah Parent stated okay roll call vote:

Bill Hamilton:	Yes
Charles Rankie:	Yes
Ellen Lemire:	Yes
John Marshall:	Yes
Cabot Trott:	Yes

VOTE:

5-0

Motion Approved

Bill Hamilton stated the motion has passed. The appeal has been granted. I might say that I will issue a Notice of Decision within 7 days to the appellants; and anyone has, any of the interested parties or abutters have a right to appeal to our decision to Superior Court within 45 days. Thank you all. I know that this has been a long road and I hope; I'm pretty sure we made the right decision but you know we're humans. I understand that

7:00 PM

everybody wants to do things that they enjoy but on the other hand we do live in a neighborhood and we do live in a civilized society where we have to look out for everybody else as well. This pandemic I think is showing us exactly that. We can't just do things on our own. Thank you all.

Findings of Fact:

1. A public hearing was held on 6/18/2020.
2. The owners of the property are Charles & Marylou Downes and Kathryn Holmes.
3. The appellants are abutters Charles Pettigrew, Michael Christy and Kathryn Spellacy who have demonstrated a legal interest in the property by meeting the definition under Sec. 45-50 of the Eliot Ordinance. In addition, appellant David Brodeur is a neighbor "directly affected" by this decision.
4. The applicants met the timeliness requirements as defined under Sec. 45-50.
5. A completed application was submitted on May 17, 2020.
6. The appellants request that the Code Enforcement Officer's decision issued on 4/28/20 declaring that Mr. Downes is an "automobile hobbyist" and is exempt from the definition of automobile graveyard be reversed.
7. One appellant testified that he has lived in Eliot for 23 years, another for 17, and another for 18.
8. Eliot's ordinance Sec. 1-2 defines "auto graveyard" as: "a yard, field, or other open area used as a place of storage for three (3) or more unregistered or unserviceable, discarded, worn-out, or junked motor vehicles, including all vehicles which cannot pass the state inspection test in their existing condition or are otherwise inoperable."
9. Maine Statute 30A §3752 1 Paragraph (A) (2) and 29A-101 of the Maine state statutes defining automobile hobbyist requires that vehicles be "substantially maintained in original or restored condition primarily for use in exhibitions, club activities, parades or other functions of public interest."
10. Section 45-290 of Eliot Code, does not list "automobile hobbyist" as a permitted use in the Suburban Zone and goes on to state that "any use not listed is a prohibited use" in the Suburban Zone or in any other zone.
11. Section 45-290 of Eliot code also lists "equipment storage" and trucks, 3 or more" as a prohibited use in the Suburban Zone.

7:00 PM

12. Section 45-101 thru 45-103 requires that the Code Enforcement Officer use “appropriate action to prevent any unlawful use and violation of any particular law or ordinance” of the Town of Eliot.
13. There is no ordinance currently in place in Eliot regarding “automobile hobbyist.” Such an ordinance would require the voted approval in the majority of voters in the Town of Eliot and would likely contain specifications, permits, requirements including setbacks, screening, annual registration, and limits on the number of vehicles, etc.
14. The state junkyard statute and hobbyist exception were passed in 2003. Eliot has not enacted an automobile hobbyist ordinance during that time.
15. It was testified that there are vehicles within 300’ of wells and cemeteries.
16. It was testified that currently there are over 20 vehicles located on the property at 314 Beech Road, of which 12 are unregistered and 12 are un-inspected.
17. The State of Maine is a Home Rule state allowing cities and towns to enact ordinances which are not counter to state law. Examples are marijuana law and adult entertainment law, both of which were state statutes but also required individual towns to approve and come up with standards.
18. The Code Enforcement Officer testified that the site was inspected by several state inspectors and felt that this may be a hobbyist enterprise and it was noted that at least two (2) of the inspectors stated if the town has a municipal ordinance that addresses it.
19. The Code Enforcement Officer testified that she was comfortable with the defendant meeting the criteria of “substantially maintained.”
20. The Code Enforcement Officer testified regarding noise, stating there was one (1) complaint submitted after hours.
21. It was testified that the state can certify antique vehicles by the applicant requesting that and that may specify which vehicles are antique and which are not.
22. The defendant testified that he does use some of the vehicles for public displays.
23. The defendant testified that none of his vehicles are currently registered with an antique designation.
24. Exhibit 50 does show wetlands on the property.

ITEM 6 – OTHER BUSINESS

7:00 PM

Bill Hamilton stated I don't think I want to do anything else tonight. I did have minutes but I don't think I want to do that. And just as a little piece of extra information other business; the issue of our zoning ordinance for the planning board to review the non-conforming lots of record, I asked Kristina if that has indeed been in the works and I believe it has.

Kristina — David does have that on the list for the Planning Board to review. The Planning Board will be reviewing different ordinances that they want to address at their upcoming meeting on the 23rd and that is one of them.

Bill Hamilton stated thank you.

Charles Rankie stated Mr. Chairman I have two really quick things for you. Rosanne and my terms expire this year. I have put in a letter requesting another term and I have asked them to copy you with the application; just a way of keeping you informed. I think Rosanne might have as well. Can we find out?

Bill Hamilton stated Rosanne, are you going to be with us again?

Rosanne Adams stated yep I will.

ITEM 7 – ADJOURN

Charles Rankie stated okay. Motion to adjourn?

Ellen Lemire stated second.

Bill Hamilton stated all in favor. All were in favor.

Meeting adjourned at 11:30 PM.



Bill Hamilton, Chair
Date approved: 8/27/2020

Respectfully submitted,

Deborah Parent, Recording Secretary