

ITEM 1 - ROLL CALL

Present: Dennis Lentz - Chairman, Ed Cieleuszko, Christine Bennett, Melissa Horner, Carmela Braun,

Also Present: Abbie Sherwin, Planner.

Absent: Bill Olsen – Alternate (excused).

Voting members: Dennis Lentz, Ed Cieleuszko, Christine Bennett, Melissa Horner and Carmela Braun.

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – 10-MINUTE PUBLIC INPUT SESSION

Mr. (Frank) Fortunato, Riverview Drive, said that he owns the property at 7 Sanborn Lane; that the plan was approved December 4th but the plan was never signed. He asked if he could give it to the PB to sign it for him.

Mr. Lentz said that he remembered that presentation and asked if we normally signed the mylar.

Ms. Sherwin confirmed that they did.

Mr. Lentz asked if we have a copy of that mylar.

Ms. Sherwin said that she and Ms. Bishop (CEO) have been talking about this plan because neither one of us were here when it was approved; that we are trying to make sure that all the materials are in the file and that the plan that gets signed is the actual approved plan.

Mr. Fortunato asked if the PB would sign as it has already been approved.

Mr. Lentz said that it should have been signed the night of approval, on the mylar copy.

Ms. Bennett asked if it would impede you drastically if we put this off until the next meeting.

Mr. Fortunato said that, ordinarily, he would say yes, but it's been six weeks without being issued a permit and he has a contractor ready to bail out because he has not been able to do the project for two months, which is putting his business in financial problems.

Mr. Lentz said that he thinks we're stuck; that he agreed with the Planner that we should have all that information together in the file; that he doesn't know how all this went wrong; that it might have been because of the Planning Department transition at the time. He added that he thought the best thing to do was to wait and get everything together.

Mr. Cieleuszko asked if, once everything is gathered together, could we just be called in to sign it and not wait until the next meeting.

Mr. Fortunato asked if Civil Consultants would have the mylar.

The PB said yes

Mr. Fortunato discussed the sticking point of tying into public sewer. He said that it's been approved to use the existing on-site septic and Mr. Feldman and Mr. Pratt have said that he is not required to tie into a private system; that that seems to be a sticking point with the CEO and he doesn't understand why. He added that it's a little unclear in the conclusion from the PB.

Mr. Lentz said that she asked me today and he told her that his recollection was that we had asked Mr. Harmon if the current septic system was adequate and Mr. Harmon said that it was more than adequate and he doesn't think we went any further with discussion about hooking into any sewer.

Mr. Fortunato said that he had it tested and pumped by Sturgeon Creek.

Mr. Cieleuszko agreed about the sewer discussion and added that we got letters from the attorney discussing whether he had to - re: characteristics of a new ownership; that at the time we determined that, because it's just new members of the trust instead of a completely new ownership, that Mr. Fortunato was not bound by that sewer rule. He added that there were several things wrong with it and there was no need for him to tie into the public system.

Mr. Fortunato said that he thinks Ms. Bishop is looking for a note that says it was approved with the existing system.

Mr. Lentz said that he would see her tomorrow.

Mr. Fortunato will get a copy of the mylar from Mr. Harmon and bring it to the Town Office (Planning Department).

PB members will come in to sign the mylar once it is in.

Ms. (Donna) Knox, Pleasant Street, discussed her submitted letter regarding Spinney Creek Shellfish aquaculture expansion, asking if the PB had discussed this.

Mr. Lentz said that the PB all got a copy of her letter; that her request was to have a site plan review and public hearing by the PB; that he didn't think that was a responsibility of the PB. He added that he did go to the Town Manager and we sent a letter to Bernstein Shur, and she should have gotten a copy back from Attorney Saucier.

Ms. Knox said that she had not received that.

Mr. Lentz explained that Attorney Saucier said that it was absolutely not a PB responsibility; that our responsibility always starts with an application from a citizen to change the land, modify the land, etc., which kicks off the process of application review.

Ms. Goodwin said that, at this point, the CEO and attorney have discussed it and, at this point, there has been a letter drafted to Spinney Creek, once Attorney Saucier has reviewed it, because they want to do a site visit and gather some information from Spinney Creek, as well, to be fair to both and figure out if this would truly be an expansion. She added that, if it is found to be an expansion, then the decisions would be made from there.

Mr. Lentz said that, if it is determined that this is an expansion, unless Spinney Creek came in with an application, it would come under the purview of the CEO.

Ms. Knox said, for the record, that in her letter she said that it would be a 600% of their function, not their structure, and she misspoke; that it would be in the range of shellfish that they are now producing of between 488% and 525% expansion in terms of the depuration plant on the shore of Eliot; that she is referring to the code that only allows them 25%. She added that she is representing a lot of Eliot residents and asked if she could be informed when these decisions are made.

Ms. Goodwin said that we can certainly keep Ms. Knox apprised as things go on and what the determination is.

Ms. Knox said that she understood Ms. Howell as saying that the expansion was only in terms of a structural facility-type of expansion and, of course, the code also speaks to function and that's what we are concerned with; that she hoped that, when they speak to the owners regarding this, they will hopefully talk about going from 60,000 shellfish to a million shellfish, if this lease goes through, because that is function not structure.

ITEM 5 – REVIEW AND APPROVE MINUTES

Mr. Cieleuszko moved, second by Ms. Bennett, to approve the minutes of August 6, 2019, as written.

VOTE

5-0

Motion approved

ITEM 6 – PUBLIC HEARING(S)

A. 36 Wisteria Lane (Map 14/Lot 2-1) #PB19-7: Shoreland Zoning Permit – An application to provide a permanent 4’X15” access ramp leading to a 4’X40’ fixed pier, 3’X20’ seasonal gangway, and a 10’X20’ seasonal float to provide access to the Piscataqua River on the owners’ approximate 150’ frontage. This will replace an existing permanent pier.

Received: June 7, 2019

1st Heard: July 16, 2019

Public Hearing: August 20, 2019

2nd Hearing: August 20, 2019

Site Walk: N/A

Approval: August 20, 2019

Mr. (Zachary) Taylor, Tidal Ecological Consultants, LLC, was present for this application.

Mr. Lentz explained the public hearing process for the public’s benefit.

7:15 PM Public Hearing opened.

Mr. Taylor said that the project is a relatively straightforward docking structure. He added that there is an existing docking structure now; that normally we would keep the dock in the same location but, being that it is in the riparian setback, the abutter was not willing to sign off on the encroachment and we moved to the next least-impacting alternative location, which is just to the northwest of the current location. He added that it is a 44’X40’ fixed pier, with a seasonal 3’X20’ gangway, and a 10’X20’ float, a modest-sized dock. He said that the only real update to the application is that we now have the ACE approval and the ME DEP approval is pending; that he’s been in conversation with the DEP and it sounds like just a matter of processing.

There was no public comment.

Ms. Braun asked if we were getting copies of the ACE and ME DEP approvals.

Mr. Taylor said yes; that they are part of the requirement with code enforcement.

7:18 PM Public Hearing closed.

Mr. Cielezsko moved, second by Ms. Braun that the Planning Board accept and approve the application for the Shoreland Zoning Permit for 36 Wisteria Lane, PB19-7, with the following conditions of approval:

- 1. The property may be developed and used only in accordance with the plans, documents, material submitted, and representations of the applicant made to the Planning Board. All elements and features of the use as presented to**

- the Planning Board are conditions of approval and no changes in any of those elements or features are permitted unless such changes are first submitted to and approved by the Eliot Planning Board. Copies of approved permits from Maine DEP, Army Corps of Engineers, if applicable, and State shall be provided to the CEO before construction on this project may begin.
2. The permit is approved on the basis of information provided by the applicant in the record regarding the ownership of the property and boundary location. The applicant has the burden of ensuring that they have the legal right to use the property and that they are measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership, or similar title issues. The permit holder would be well-advised to resolve any such title problems before expending money in reliance on this permit.
 3. The applicant authorizes inspection of premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance.

VOTE

5-0

Motion approved

Mr. Lentz said that the application stands approved and there is a 30-day period from which the PB decision can be appealed by an aggrieved person or parties – move forward but move forward cautiously.

B. Growth Permit Warrant Article

7:22 PM Public Hearing opened

Mr. Lentz explained that every year around this time the PB is required to survey department heads to see at what level of new homes it would affect them; that we have all that back and have a proposed warrant article for the November Town ballot, which asks to establish the maximum number of growth permits at 24 for 2020.

Ms. Sherwin explained the process the PB has to follow to establish the maximum allowable number of growth permits each year; that the minimum number of growth permits is established by a State-mandated formula that looks at the previous 10 years of allocated growth permits, and issued permits, and sets a minimum number that must be allocated by the Town. She added that we sent out a survey to all relevant Town staff to get their input on what they felt Town services could support for additional growth in Town for next year, as well as the allocated and issued permits going back 10 years. She said that the minimum number can't be determined until this calendar year is over but, as of now, that number is estimated at 16 growth permits; that all that information is contained within the warrant article.

This number includes single-family homes and subdivisions.

Ms. Sherwin clarified that elderly housing and affordable housing do not fall under this growth permit umbrella; that there are different restrictions associated with that type of development.

Chief Muzeroll said that he appreciated the opportunity every year to answer the survey. He added that he wanted to go on the record as part of his comment to the PB for that survey is that he is investigating, and may do a presentation to the SB, to consider establishing a fee-basis based on square footage – a public safety impact fee is generally the term that is used; that if that were to happen, that fee would help offset infrastructure equipment changes/upgrades to support the continued growth in the community for commercial, residential, elderly, assisted living, etc.

It was clarified that the permits are on a first come-first served basis and must meet zoning requirements.

Mr. Cieleuszko asked, regarding the growth permit chart, how we gave away more growth permits than were allotted.

Ms. Sherwin said that she did not know.

Mr. Lentz said that, if he recalls, that was one of those years where people were standing outside the door waiting to get in; that he thinks we rewrote the ordinance that year to try to eliminate all that.

7:28 PM Public Hearing closed.

Mr. Cieleuszko moved, second by Ms. Braun, that the Planning Board send this, as written, to the Select Board for inclusion on the November ballot.

DISCUSSION

Ms. Bennett said that she pushed this forward but, having all the data before her, she doesn't see the need to go to 24; that we have only issued 6 so far this year and haven't even come near what the formula is allocating.

DISCUSSION ENDED

VOTE
4-1 (Bennett opposed)
Motion approved

ITEM 7 – OLD BUSINESS

A. Continued Hearing of 495 Harold L. Dow Highway (Map 53/Lot 6) #PB19-8 – Site Plan Amendment – Application is proposing to replace the structure lost in fire with a 32,000 square-foot greenhouse facility.

Attorney Rines and Mr. Hughes Pope were present for this application.

Received: July 2, 2019
1st Heard: August 6, 2019
Public Hearing: _____
2nd Hearing: August 20, 2019
Site Walk: _____
Approval: _____, 2019

Mr. Lentz said that we looked at this last time and our decision was to either accept this as a minor change or is this a major change, which would be a site plan application. He invited the applicants to share what they've done from the last time they were here.

Mr. Pope said that he thinks the PB will find that we have substantive documentation for the questions you had and asked if anyone had any questions.

Ms. Braun asked for clarification on Phase I and Phase II of the applicant's construction plan.

Mr. Pope said that we have these Phases specifically due to costs and the fire and insurance, saying that the insurance company has not given us the go-ahead to demolish the building, yet, so Phase I would allow us to put the rectangular structure in alongside it far enough away to still get machinery in to demolish the damaged structure; that Phase II is identical to Phase I and is also 16,000 square feet and is rectangular shaped.

Ms. Braun asked, regarding their stormwater management plan, if they had to go before the DEP for that or get a DEP permit.

Mr. Pope said yes; that we have a water reclamation plan in place; that we have not sent the application, yet, and will do that once we are wrapped up with everything we need with the Town.

Ms. Bennett asked, with the ultimate expansion the applicant envisions, will you have more employees.

Mr. Pope said yes; that we will not have more than 12 and, currently, we have 6.

Mr. Lentz said that, in the Planner's memo, there is a list of items from the ordinances and asked if those were all now included on the site plan.

Attorney Rines said that parking is shown and will remain the same; the project schedule has been submitted; water and wastewater treatment plan has a full topographical of the site, which we will submit, and plan to build a retaining pond at the back of the structure, with a pre-existing manmade swale there and a perfect location for the retaining pond, with a filter medium treatment for any discharge; that we are planning to install a 22,500-gallon rainwater reclamation system and there will be very little discharge from the greenhouse facility. He explained one reason to go with this is that it retains a 40-ton capacity so we can put it under the fire road, where the location is best for the run-off, and trucks will still have access and be able to drive over it.

Mr. Pope said that the greenhouses are better connected and makes it advantageous for us to collect that water and use it.

Attorney Rines said that it is all one uniform surface and will all funnel into that system.

Ms. Horner said that we, as a PB, haven't decided if this is a substantial change or minor change and the list we are reviewing with the applicants is if we decide this is a substantial change and, then, they would need to provide these things.

The PB reviewed the updated site plan, dated August 15, 2019.

Mr. Pope said that odor control was mentioned (list) and, while we did address this at a prior meeting, we are now encapsulating that space and using charcoal carbon filters to scrub the space, in addition to having charcoal and ozone control in the air condensers outside; that it's a closed-loop system and different from the one we had.

Ms. Bennett said that, at a first glance, she thought this was a major change to the existing site, with layers of revisions to the site plan; that it looks like, in this package, you met the criteria that would be required for a site plan, such as odor and stormwater management, asking if it would be onerous to consider it a site plan review; that it appears you've already met the requirements for a site plan.

Mr. Pope said that he believes we have.

Attorney Rines said that, from a financial perspective, it would be a strain on business, for sure, for us not to be able to move ahead; that in particular, with the DEP question, we are looking at three or four months; so, to the extent we can move that along, it's going to help the business.

Ms. Bennett said that we will typically approve, subject to DEP approval; that as long as you have a stormwater plan, we don't tell you if it's good or bad because the DEP is going to tell you that. She added that, timing-wise, she thinks all we'd have to do is accept the application and hold a public hearing, maybe two weeks or a month.

Attorney Rines asked if the question was whether or not we ticked all the boxes for a site plan or a question of whether we're being heard as an amendment to a site plan.

Ms. Bennett said that she thought there was some question as to whether it would be too onerous to be required to meet a full site plan.

Mr. Lentz explained that you had a 4,500-square-foot building, which was destroyed and you are tearing down, and you had told us about the security, cameras, and all that equipment that would support that 4,500-square-foot building; that, now, you want to put in a 32,000-square-foot building and we don't see anything in the package that tells us the same thing we saw with the 4,500-square-foot building.

Mr. Pope said that that's why we're here as a minor amendment because we've already been applying all the same things we've already been approved for.

Attorney Rines said that we are required to do that under State law, as well; that we have to do odor control, we have to do security.

Mr. Pope said that all we're doing is making improvements but the use, everything we're doing, is the same.

Ms. Sherwin clarified that, right now, the PB is really determining whether the proposed amendment constitutes a substantial change or if it's minor; that there are no criteria for making that determination other than whether the proposed amendment results in any substantial changes to the approved development or would further impact abutters (Ch. 33); that, again to clarify, whether or not the requirements are onerous to the applicant are really not taken into account.

Mr. Lentz asked if the PB had the information they need to make that decision.

Mr. Cieleuszko said that we have that information to make that decision. He added that, in his view and hearing the criteria, we are in the commercial zone, it's still a building, they still have all the setbacks that are Town-mandated for a commercial structure, and the only change he sees is that it is a larger building. He said that they have a new filtering system, an odor control system they sent the paperwork in with, and that odor control system under their old proposal had to contain all the odors and are still under that same thing; that nothing's changed, it's just a different product but they still have to meet the same thing – no odors beyond the exterior of the building. Regarding erosion control, he said it's a larger building but they still have full control over erosion and, in fact, better than the previous scenario and is less damaging to the environment around them. He reiterated that the only change is the size of the building and it's not even encroaching hard on the lot; that some commercial places use up every bit they can get. He said that he sees this as a minor change; that he sees, with the information presented, that it is a minor plan change.

Mr. Lentz asked if the PB was ready to vote on this.

Mr. Cieleuszko moved, second by Ms. Horner, that the Planning Board consider this proposal a minor revision to an approved plan.

VOTE
2-3 (Bennett, Lentz, Braun
opposed)
Motion fails

Mr. Pope said that he believes the last time we were here that you all gave us the impression that, if we provided the information requested, we would be good to go and he feels as though that is what we've done here tonight; that he's wondering what the change has been from that time.

Ms. Horner said that we sure did.

Mr. Cieleuszko said that there has been no change; that you were under a misconception. He added that he never thought, for a moment, that we have just told you to do this and then everything would be fine; that he doesn't think that anybody here would ever say that.

Mr. Pope said that he recognized that.

Mr. Cieleuszko said that we need another motion because it's still up in limbo.

Ms. Bennett moved, second by Ms. Braun, that the Planning Board accept PB19-7 Site Plan application as complete.

DISCUSSION

Ms. Sherwin clarified that, prior to making that motion, she thinks it would be beneficial to make a motion to determine that the application does indeed need to go through the site plan review process.

DISCUSSION ENDED

Ms. Bennett moved, second by Ms. Braun, that the Planning Board require the applicant to submit to the site plan review process.

VOTE
3-2 (Cieleuszko, Horner opposed)
Motion approved

Action on waivers requested:

Perimeter survey (§33-127(4))

An updated perimeter survey (§33-127(4)) was submitted and received. The PB agreed that this has been satisfied.

High Intensity Soils Report (§33-127(12))

Ms. Bennett moved, second by Ms. Horner, that the Planning Board waive the requirement for a high intensity soils report.

VOTE

5-0

Motion approved

Outdoor lighting (§33-127(8)(c))

Justification is that compliance with State regulations are more stringent than the Town.

Ms. Horner suggested making this a condition of approval, if and when this application is approved.

Mr. Lentz said that he prefers that but we are talking about abutters and illumination.

Attorney Rines said that State law requires that any area for at least 20 feet in front of a gate, entryway, any egress, a building, a fence, must be completely illuminated, as well as parking lots.

Mr. Lentz said that the intent is to prevent it from going into abutters property.

Ms. Bennett asked that a copy be submitted when the applicants get that approved.

Mr. Lentz asked if that was a condition of approval.

Ms. Bennet said yes and will include that in the final motion.

Amount and type of any raw, finished or waste (§33-127(18)(f))

Ms. Braun said that that should also be a condition of approval; that she thinks we should have all that information from the ACE and DEP on file.

Attorney Rines said that we have to have anything medically-related segregated and inside the fence under lock and key in a locked dumpster; that it will be behind our fence, in another fence, locked; that he has another dumpster for normal trash. He added that, with medical trash, we have to weigh it, log it, and secure it until it is professionally disposed of. He said that we may be re-composting that, as well, but that will be under lock and key, as well.

Ms. Braun moved, second by Ms. Horner, that the Planning Board make this requirement a condition of approval.

VOTE

5-0

Motion approved

Ms. Bennett moved, second by Ms. Braun, that the Planning Board accept this application, PB19-8, as complete, subject to the waivers granted this evening and the conditions of approval discussed.

VOTE

5-0

Motion approved

The Public Hearing is scheduled for September 17, 2019.

B. Citizen Petition: Agritourism Ordinance

Mr. Lentz said that this is a definition with a petition that will be in the hands of the SB; that he believes it's on their agenda for this week.

Ms. Sherwin said that this was really just to make the PB aware. She added that we had discussed putting a non-binding question on the November ballot asking voters if they were interested in having the PB work on an agritourism ordinance; that since that time, Mr. Widi came forward with a citizen's petition and this ordinance to get it put on the ballot. She said that this is the language he submitted, she believes he's gotten the necessary number of signatures to have it be put on the ballot, so the SB is taking this up at an upcoming meeting. She added that, in this packet, there is also correspondence from the Town attorney, who reviewed the draft ordinance language to see if it was inconsistent with existing ordinances; that he found it wasn't, really, but it could lead to confusion and, potentially, inconsistencies but that there was nothing glaringly obvious that would make this language illegal.

Mr. Lentz said that the way he reads the petition, and the lawyer's response, it is up to the SB at this point.

Ms. Sherwin agreed. She said that the PB does still need to have a public hearing at least 45 days prior to the November vote.

The one-page draft ordinance was written by Mr. Widi and very similar to what Mr. Widi presented to the PB.

Ms. Horner said that she still feels there's nothing to deter anyone in Eliot from doing these things, anyway; that one big thing we talked about was weddings and it's not even on there; that that's the whole reason we wanted to work with him on making this straw poll; that she is very confused.

Mr. Lentz said that he was, too; that he thought we were going down the right track and Mr. Widi decided it was not the right way to go.

Ms. Bennett said that she thinks we should review this a little more carefully and highlight any inconsistencies, like the definitions of agriculture that exist in our code; to

identify if there are any incongruities with our current zoning, as a PB, and alert the SB to that. She added that we would hate to have this pass and, then all of a sudden, have an ordinance that just isn't jiving with the rest of our code.

Ms. Horner asked, if this ordinance passes in November and we then find something isn't working with our already-established zones and ordinances, who does the cross-checking to make sure it complies.

Mr. Lentz said that that is the question.

Ms. (Sue) Plocharczyk, Brixham Road, suggested that the PB definitely look at this and see if it conflicts with any other ordinance that we currently have in Town only because we do have existing ordinances that are in conflict with each other.

Mr. Lentz agreed and is one of the reasons we started in the direction we were going; that that was not satisfactory, they said, so they took off with the citizen's petition. He added that that, more or less, circumvented the PB and any of that research that we would have done; that he thought that Ms. Sherwin had started off talking about a farm overlay and would that mean all farms; that we kind of got kicked off the bus.

Chief Muzeroll agreed, as he worked hard on that with the Town Manager and now it's completely different than the direction we thought we were going in.

Mr. Cieleuszko said that, in terms of changing any language in this proposed ordinance, there isn't much we can do to it, according to the attorney; that it is valid as it stands. He added that if, for some reason, it doesn't fit right we have to go back and write a new ordinance to override that once, and if, it's accepted.

Mr. Lentz said that the norm is that, if there's a citizen with a proposition such as this, we make a valid effort to try to define what it is they look at, it goes through our Planner, who does all the technical research, and we see where all the tentacles of the octopus lie; that this wasn't done that way.

Ms. Horner asked if farming was allowed all over Eliot; that if she's growing a garden on her property, is that farming and, if she grows a garden at her house for four years, does that mean she can have cross-country skiing at her house, too.

Ms. Sherwin said that there is a definition in the ordinance of agricultural uses so it's different than having an individual garden in your back yard.

Ms. Sherwin said that if the PB wanted to take a preference vote as to whether or not they would support this ordinance as it is currently written, then that could be done.

Mr. Cieleuszko said that we already discussed this with Mr. Widi and we didn't like it then.

Ms. Sherwin said that this would just be an official vote to document the PB's opinion.

Ms. Bennett said that she doesn't think she knows enough about whether there are any incongruities with our current ordinances; that it gives her pause.

Ms. Sherwin said that Attorney Saucier's email does say that, while there aren't any illegal provisions, there could be inconsistencies.

Ms. Horner said that she was torn because she's for working on this and promoting the idea but balancing it.

Mr. Cieleuszko said that he sees some flaws, like the definition for seasonal harvest festival is so open-ended that that could be a three-day heavy metal event; that there are no controls here.

Ms. Sherwin said that it is her understanding, based on conversations with the Town Manager, that it was the SB's opinion that, if this petition does indeed go on the ballot, they would not include the non-binding ballot question.

The PB agreed not to make any recommendation.

C. Preference Votes

1. Adult Use Ordinance

Mr. Lentz said that we've been asked to have a vote of confidence that we believe these ordinances that this Board have established are good and that we want to see them put on the ballot.

Ms. Braun noted that on lines 231 and 241 that the word 'marijuana' needs to be capitalized.

Mr. Cieleuszko moved, second by Ms. Braun, that the Planning Board send the three parts of the Marijuana Ordinance, Chapters 11, 33, and Land Use Table, to the Select Board to be put on the November ballot.

VOTE

5-0

Motion approved

2. Growth Permit Warrant Article

This was addressed earlier in the meeting.

D. Open Space Development

Mr. Lentz said that Ms. Sherwin has worked on this; that looking at the table does show some contradictions.

Ms. Sherwin said that she reviewed the Open Space Development Ordinance for applicable sections of ordinances from the towns of York and South Berwick to primarily compare the dimensional standards, as well as density, and where they are applicable; that she put that in a table format. Just to remind, she said that the Eliot ordinance is somewhat silent on most dimensional standards, including road frontage; that this was put together to give the PB an idea of how other communities address those requirements.

Mr. Lentz said that it appears to him that the way the ordinance was written kind of defeats the purpose in many ways of what he thought it was all about. He added that he thinks we need to start by trying to re-define what we believe the intent of the ordinance is and then talk about how to apply it.

Mr. Cieleuszko said that we are due for a Comprehensive Plan update.

Mr. Lentz said that his understanding was that they are not going to do that; that we are not required to update that any longer by the State.

Mr. Cieleuszko said that open space development is not a universally-accepted concept.

Ms. Bennett said that she thinks it is a commonly-recognized tool used in communities; that we have two abutting towns that have similar ordinances that we are doing a comparison with. She added that, if we aren't updating our Comp Plan, then we could go back to discuss the current one, which not only discusses the desire to, and created the rural zone with larger lots and the suburban and village zones with smaller lots, we also went in and had a very comprehensive open space plan that was developed that was an amendment to this Comp Plan that actually called for these open space developments, with the goal of conserving at least 50% of these lots, to include indigenous species and other natural resources. She said that her recollection is that this came from a potential applicant who was looking to create a site plan on a piece of property and found that, because our open space subdivision requires the same amount of road frontage (200 feet) as a conventional subdivision, they were encountering problems with getting their desired design. She suggested that we might review what that problem statement is and discuss what the ramifications are of that.

Ms. Sherwin said that a previous memo she wrote about open space identified the specific language in the ordinance that suggests that all other dimensional standards, apart from minimum lot size, must be met for an open space layout; that that language is really the crux of the issue. She added that she thinks it would benefit the PB and Town to hold a more in-depth workshop at a Board meeting that addressed just open space development, identify the issues, and potential changes and, then, go from there.

Mr. Lentz asked if the PB wanted to have this as a next step in a workshop, identifying those things that we all think are issues and address them all at once.

Mr. Cieleszko agreed.

Ms. Bennett added that she liked that Ms. Sherwin compared with other surrounding towns because part of our rural overlay zone is part of the York River watershed and the towns are now working together to manage this watershed and land use within the watershed in a consistent manner; that she would be reluctant to go too far away from the other towns, adding that York just revised their open space ordinance.

It was suggested that the section in the Comp Plan regarding this should be made available.

Ms. Horner said that she doesn't think there's anything broken with this ordinance and it was said that the only reason we are talking about this is because someone was thinking about doing a development and having a problem creating set designs based upon the language of the ordinance; that in her opinion, it wasn't that the ordinance was lacking direction but just that that applicant didn't like what that direction was. She added that she thinks this ordinance is working for Eliot because the whole point of open space development is to provide open space in the rural zone; so, the second you start letting applicants get waivers or do reductions that aren't allowed within the ordinance as it is....you can see that York and South Berwick allow for reductions and, to the conservation side, she is happy that Eliot's more conservative. She said that she would like to know if this is hindering open space applications from even walking through the door.

Mr. Lentz said that we've had one in the ten years he's been here and it did not work.

Ms. Bennett said that the whole point of the Comp Plan is to identify where the expansion zones are and where you want to conserve, which is exactly what we've done – we have a rural zone.

Ms. Horner advocated that we don't need a workshop but she isn't opposed to having one if it makes the PB and public feel better; that maybe she will learn something new but she feels like our open space is doing its job by making sure that developers adhere to the restrictions put forth in order to conserve Eliot.

Ms. (Jennifer) Fox said that she appreciated some of the comments made tonight regarding the Open Space Development Ordinance; that it was a tool recommended by the Open Space Plan. She added that there are many versions of the open space plan out there and suggested, perhaps, a review of it, not based on a particular applicant wanting to adjust it but a broader look at if it is doing the job that it was intended to do. She said that the Conservation Commission (CC) might have comments on this; that at the time this ordinance was adopted, she knows there were things the CC was not in agreement with regarding this ordinance; that, for example, York requires that open space to be held by a third-party entity (State/land trust), not just a homeowner's association so that you can ensure the reason for having that conserved open space is being adhered to. She

agreed with comments tonight that the review shouldn't be driven by one particular developer and that it may be timely to do a comprehensive review; that some of the resources in Town that you might look at are comments by the CC when this ordinance was considered and, like any ordinance, it's not perfect.

After further discussion, the PB agreed to have a workshop to review the Open Space Development Ordinance and seek input from the CC.

A workshop was scheduled for the October 1 meeting.

ITEM 8 – NEW BUSINESS

A. 16 Island Cove Drive (Map 14/Lot 17) #PB19-11: Tidal Docking Structure – 4'X16' Wooden Accessway, 4'X105' Fixed Pier, 3'X40' Aluminum Gangway, 10'X20' Float.

Received: July 12, 2019

1st Heard: August 20, 2019

Public Hearing: _____

2nd Hearing: _____

Site Walk: _____

Approval: _____, 2018

Mr. (Steve) Riker, Ambit Engineering, was present for this application.

Mr. Riker said that this was to replace an existing tidal docking structure on this property:

- Existing dock structure is old and in rough shape
- Property survey done showed existing structure within riparian setback and across property line of the abutter (east)
- Abutters agreed to allow structure to be placed at the current location on their property, signing a concurrence form
- Received ME DEP and ACE application approvals
- Review of documentation submitted
- Proposed structure slightly different than existing – pier to float ratio
 - DEP requirement to get to same water depth
 - Use longer pier length using piles instead of floats
 - Limited alternative locations due to salt marsh and shallow water
 - Proposed structure has smaller impact of square footage of indirect impact

Mr. Lentz noted to Ms. Sherwin that the dimensional numbers in her memo under 'proposed project' are different from her 'overview' narrative.

Ms. Sherwin said that the narrative is correct. Discussing her memo, she said that her comment regarding 'providing at least six feet of water depth' no longer applies; that the following statement about reflectors does.

Mr. Riker said that there would be no issue adding reflectors and asked how the PB would like that noted on the plan.

Ms. Sherwin said just a footnote on the actual plan.

Ms. Bennett said that that could be done post-approval as that is a standard condition of approval.

Ms. Horner said that, in the DEP application, it looks like they approved you for 14 pilings and you are asking us for 20.

Mr. Riker said that we did have a couple of plan revisions, explaining that the original DEP application was to replace the structure in-kind but, when the DEP required a fixed pier to get to the same length, the pile count increased. He clarified that the DEP approval does specify 18 pilings and that is shown on the plan, along with 2 upland pilings, for a total of 20.

Ms. Sherwin said that she has a copy of that DEP approval in the file.

Ms. Bennett moved, second by Ms. Braun, that the Planning Board find this application complete and schedule a public hearing.

VOTE
5-0
Motion approved

The Public Hearing was scheduled for September 17, 2019.

ITEM 9 – CORRESPONDENCE

There was no correspondence.

ITEM 10 – SET AGENDA AND DATE FOR NEXT MEETING


Ms. Sherwin said that she received an email from the Town Manager that discussion from the SB that had to do with wanting the PB to consider changing the Land Use Ordinance to somehow limit the number of vehicles allowed on any given property no matter what.

Mr. Lentz said that there is at least one situation that he is aware of that the neighbors are complaining about; that they have been out there, someone from the State looked at it; that there are a number of trucks and were told by the CEO that they could only have so many that were unregistered so they registered them all as antiques; that he doesn't believe they can drive those around at night but they are racing them around in the field; that we will keep that on the burner.

The next regular Planning Board Meeting is scheduled for September 3, 2019 at 7PM.

ITEM 11 – ADJOURN

There was a motion and a second to adjourn the meeting at 8:53 PM.


Dennis Lentz, Chair
Date approved: 09/03/19

Respectfully submitted,

Ellen Lemire, Recording Secretary

