ITEM 1 - ROLL CALL

Present: Dennis Lentz - Chairman, Ed Cieleszko, Christine Bennett, Melissa Horner, Carmela Braun, Bill Olsen – Alternate.

Also Present: Lee Jay Feldman, Interim Planner, Kristina Goodwin, Land Use Administrative Assistant

Voting members: Dennis Lentz, Ed Cieleszko, Christine Bennett, Melissa Horner, Carmela Braun, Bill Olsen – Alternate (appointed).

NOTE: Mr. Lentz explained that there was a mix-up in the paperwork for Ms. Bennett's re-appointment; that she will participate in the discussions but will recuse herself from tonight's voting. As a result, Bill Olsen was appointed as a voting member for this meeting.

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – 10-MINUTE PUBLIC INPUT SESSION

Mr. (Jeff) Leathe, Brixham Road, thanked the PB for their service to Eliot. He discussed §45-467 (A-F) Open Space Development, quoting the Purpose – *"A. Purpose. The purpose of these provisions is to encourage the preservation of the rural character of Eliot by preserving undeveloped land, including farmland, forest land, wildlife habitats, and other undeveloped lands. This is done by allowing an innovative type of development which permits homes to be built on lots which are smaller than normally allowed, but requires undeveloped land to be preserved. open space development standards of this section shall be mandated in those parts of Eliot identified by the 2009 Comprehensive Plan and 2010 Open Space Plan, as high in conservation values, but shall be utilized at the discretion of the applicant elsewhere. The overall density of an open space development is no greater than a conventional subdivision development. In an open space development streets and utility lines are usually shorter, thus allowing development at a lower construction cost initially and lower maintenance costs in the future."* He went on to say that, while undoubtedly well-conceived and well-intended, he asked the PB to be very careful in granting future open space development approvals and variances in rural sections of Eliot because he believes there is potential for serious, unintended consequences. He added that current rural zoning is 3 acres (130,950 sq. ft.) per home and, according to this ordinance, civil engineers and developers are allowed to build homes on 20,000 sq. ft. (.469 acres), which represents about an 84% reduction in the amount of land required per home and is currently allowed in the rural area; that this would allow 6½ homes to be built in a 3-acre rural lot. He said that he would hazard a guess that what he would consider cluster housing concept generates the unintended consequence of creating more housing density than is currently found in the Suburban, South Eliot, or non-rural zoning area; thus diminishing, not preserving, the rural character of our Town, which defeats the purpose of this ordinance. He agreed that cluster housing developments reduce the housing costs for civil engineers and

developers, which he is sure is highly important to them, as their goal is to make as much profit as quickly as possible but he wonders if this ordinance incentivizes civil engineers and developers to seek parcels of rural land in towns like Eliot, Maine; towns that aren't economically feasible to be developed based around the standard 3-acre zoning ordinances and, therefore, they're less expensive for them to buy and they can make the case that open space zoning is a bid towards preservation and conservation when, actually, that case does not exist due to basic economics. He added that it is possible that the open space ordinance, in fact, allows more development of rural land in Eliot than would normally occur, thus, unnecessarily reducing the rural character of Eliot further; that open space, or cluster housing, developments place intense and competing pressure on our physical and natural resources by, in part, increasing the spot demand for adequate ground water, electricity, and high levels of sewage disposal in sectional areas. He explained that, in the Brixham Road rural area, we have heard of numerous wells running dry in the last two years and, in other areas of Town, there is currently drinking water contamination. He added that there are other potential unintended consequences of open space cluster housing; that in a further, kind of odd twist, he thinks that cluster housing might be better suited and safer in the Suburban areas of Eliot versus the Rural Zone, as they would benefit from Town water, Town sewer, more reliable police and fire protection, and closeness to Town services. He said that this type of development generally requires that a homeowner's association (HOA) be formed, membership is mandatory, with by-laws that detail how the common area is to be maintained by all homeowners; that in the rural area this may include the use of a private sewer system, which can be quite costly and difficult to maintain properly. He said that, in 17 years of being involved in HOA's and his experiences, he has learned that a further unintended consequence of the open space ordinances is that these types of resident groups can be quite dysfunctional and that certain members refuse to participate, refuse to pay annual dues, refuse to pay additional dues when things like sewer systems fail and, generally, they leave a bit of a mess behind. He added that this topic of how to manage private sewer systems is a current and important topic on the table today with the Eliot SB. His final point is that all development activities are extremely complicated; that you can look no further than the stack of pages representing the land use rules in Eliot and the number of experts involved in these projects; that development activities, next to our school system, are perhaps the most important activities that occur in our Town and have the most impact on the ongoing quality of life and ongoing attractiveness of Eliot as a rural community. He said that, as he understands, we have a part-time State planner who is here about 12 hours/week; that, in the past, we've had a planning person for 40 hours/week and another unintended consequence when you don't have appropriate staff is that, when you're looking at very complicated development projects, you don't have the staff resources to support and help you through all of the decisions, not only evaluating and understanding, but monitoring those developments as they are undergoing development; that as good as the State planners are, you can't possibly do all that on 12 hours/week. He would recommend, highly, that we go back to full-time people that can support the needs of this Board and the residents of Eliot to make sure that future land use opportunities are directed appropriately.

Mr. Lentz thanked the speaker for his comments. He said that open space came to our attention last month and Ms. Sherwin has been working on it; that she has had a family emergency and Mr. Feldman is filling in, which has caused us to be somewhat in limbo for a bit. He added that people will see that come up on an agenda in the near future; that we had an example of that the

Town tried several years ago and, in his personal opinion, it didn't work so well, and there have been no other attempts since then. He also said that both he and Ms. Bennett discussed their concerns regarding the amount of time with the planner position.

Ms. (Anna) Fordyce, Brixham Road, said that her property abuts the gravel pit (Great Hill) currently owned by Mr. Staples. She added that in this area we have had wells run dry and she's concerned that developing the gravel pit with additional homes will further tax the available water for our wells. She said that, due to the sandy soil in the gravel pit and the amount of water that moves through the property because it's a watershed, a large concern for the Brixham neighborhood is that a the poorly maintained leach field by a HOA, and the above listed factors, could combine and lead to ground water contamination. She added that, as we all know, water is an everyday need for homes and many of us have thoughtfully chosen to live in a rural area in Eliot and to live on our specific road that we love. She said that we rely on our wells and appropriate groundwater and leech fields and to have something go wrong, such as wells running dry or contaminated water, turns into a huge issue for both physical and financial health as fixes are incredibly expensive. She added that these issues are not limited to the Brixham Road area, as there are other areas in Town, including Green Briar, that are already dealing with issues of water quality and contamination; that she believes it's important not to change ordinances for open space development or exploit them to help developers. She urged the PB and the Town of Eliot to use the current ordinances to benefit the residents that are already there for our health and safety.

Mr. Lentz asked what development she was speaking about, specifically.

Ms. Fordyce said that, from her understanding, there are plans not submitted yet for Mr. Falzone to put in a development in Mr. Staples' gravel pit. She added that the neighborhood was concerned that, specifically, the open space ordinance would lead to inappropriate development for what our neighborhood can handle.

Mr. Lentz said that we have seen nothing come in, at all, for that or another area that seems to be an issue right now. He thanked her for her comments.

Ms. (Sarah) Plocharczyk said that open space came up briefly at the last meeting speaking about the frontage requirements for the open space ordinance and maybe reducing those to make more sense. She explained that she and her husband are relatively new to Town and chose Eliot for its rural, agricultural, industrial character; that we have several farm animals on our rural 8 acres and we love Eliot's rural, agricultural character. She added that she loves the open space concept and thinks they're great if they're placed in the correct area; that she would hope this PB would take into account where we want to see development in our Town while preserving our character as farmers and our heritage as farmers rather than the alluring property taxes we would get from such a development. She explained that she has already had a complaint regarding their farm animals; that we are within the ordinances for State and local, and they think they're in the Village or Suburban, so she thinks that people's expectations and making it clear on where our agricultural zones are and where our neighborhoods belong [is important].

Mr. Lentz thanked her for her comments.

Ms. Horner encouraged people to keep coming to see how we are working on open space and give us your input.

ITEM 5 – ELECTION OF OFFICERS

Mr. Lentz said that, if there are no objections, we will put this off until the next meeting.

After some discussion, the PB agreed to put this on the next meeting agenda.

ITEM 6 – REVIEW AND APPROVE MINUTES

Mr. Cieleszko moved, second by Ms. Braun, to approve the minutes of July 2, 2019, as amended.

VOTE
5-1 (Ms. Bennett abstained)
Motion approved

ITEM 7 – REVIEW NOTICE OF DECISION(S)

Ms. Horner moved, second by Mr. Cieleszko, to accept the Amended Site Plan PB19-6 Notice of Decision, as written.

VOTE
5-1 (Ms. Bennett abstained)
Motion approved

ITEM 8 – OLD BUSINESS

There was no old business.

ITEM 9 – NEW BUSINESS

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: _____
2nd Hearing: _____
Site Walk: N/A
Approval: _____, 2019

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

Mr. Taylor said that this is a Natural Resource Protection Act Permit (NRPA) from the DEP, along with a permit from the Army Corps of Engineers (ACE), and requiring a Shoreland Permit for the construction of a structure to replace an existing structure that is there. He explained that the location of the existing structure, built a long time ago, is within the 25-foot setback to the riparian line, that they were unable to work with the abutter to keep the current location, and the next best spot was to the northern side of that. He added that we will remove the existing docking structure, continue to use the existing accessway down the embankment, with a short walk over to the new docking location; that the existing footpath out below the highest annual tide will be allowed to restore over time to emergent vegetation. He explained that the new docking structure is:

- Traditional, timber, docking structure
- Installed along the Piscataqua River
- Accessway leading out to a fixed pier (40 feet)
- Seasonal gangway and float, removed in the off season and
  - stored in an upland facility or stored off site
- Floats position: 400+ feet out to low water channel (toward Franklin Island)
  - Dock will be high and dry at low tide
  - To reduce impact, built on float skids to keep suspended above mud

Mr. Cieleszko asked how far along the project was in the State permitting process.

Mr. Taylor said that the application is submitted and accepted; that, with what we've proposed and building it to the smallest structure we possibly can at that location, and given that we really are kind of handcuffed with not being able to put it in the original location, he doesn't see the State having much of a pushback on it.

Mr. Cieleszko asked, to the permitted pier, is the connector to the berm (the yard) going to be all above ground; is it steps or another actual ramp.

Mr. Taylor said that it looks like what will suffice is the approximate 15-foot just sloped section of ramp that…the only connection to the tidal buffer zone would be where that access is connecting at ground level. He added that it will be typically supported by two posts, usually the handrails that start the pier; usually 4X4's that actually suspend and hold the beginning of that accessway.

Mr. Cieleszko asked if the top is laying on the ground or on more posts.

Mr. Taylor said that that's when you are walking onto the access; that there's usually 4X4 posts that are used to suspend the beginning of the structure; that you step onto that and walk up and, once you get to the end of the ramp section up, that's when the fixed pier starts and it is usually a couple of feet in where the first piles are driven into the ground and where it attaches to the back side of that pier.

Mr. Cieleszko asked if they are still maintaining the walkway for beach goers going across or is it going to block that.

Mr. Taylor said that the slope down from the back yard through the tidal buffer will remain as existing accessway. He added that the whole, existing dock will be disposed of.

Mr. Cieleszko asked if he was driving piers underneath the float at the end so that it lands on that; is there some type of telescopic tubes that hold that or is it anchored so it's always going to land on that.

Mr. Taylor said yes. He explained that, with this design, what we're hoping to do is to position the float so that it's not moving to-and-fro; that there would be two pilings driven on the back side, with piling hoops, so that will hold the float in position; that underneath the float, typically, it's four pilings driven and then cut off and then usually a sacrificial timber that's attached so they don't usually go crazy. He explained that what they want to happen is, if the ice is going to lift that structure, it will lift the timbers off and not rip the pilings and everything else out.

Mr. Lentz said that the location the applicant chose improves the setbacks, does it not.

Mr. Taylor said yes.

Mr. Feldman said that the original dock is within the 25-foot setback and the new dock will be far away from it.

Mr. Taylor agreed, adding that it will be relatively centered.

Ms. Horner asked if we didn't have something regarding reflectors on piers. In looking, she found the correct reference – 44-35 (14), which requires reflectors on all new and existing piers and floats exceeding 40 feet in length.

Mr. Taylor agreed, saying that this project, in total, will be longer than 40 feet.

Mr. Olsen asked if there was electricity going out to the pier.

Mr. Taylor said that none was proposed.

Mr. Cieleszko asked if the envisioned use was going to be a boat that grounds out every tide or is it something that's going to be on the dock.

Mr. Taylor said that they are mostly envisioning kayaks and canoes but, in there, it's pretty limited on size of boats; so, if there will be anything, it's probably going to be a 20-and-under outboard; that they are designed for commercial-grade built for residential docks just because of the ice and the strong capacity we can get in these waters. He added that there are different classes of pilings you can put in but this is a standard class of 8" to

10" of pressure-treated piling; that the State hasn't taken a stance of requiring any additional cribbing for boats.

Mr. Cieleszko moved, second by Mr. Olsen, that the Planning Board accept, as complete, the Site Plan for PB19-7 from Tidal Ecological Consultants, LLC for 36 Wisteria Lane.

DISCUSSION

Ms. Horner said that she would accept that with an amendment to add a note about compliance with the reflector requirement.

Mr. Feldman said that you can do it that way or, when the Public Hearing comes, you can condition the application approval.

It was clarified that the PB was approving the application site plan as complete.

DISCUSSION ENDED

VOTE
5-1 (Ms. Bennett abstained)
Motion approved

The Public Hearing for this application is scheduled for August 20, 2019.

ITEM 10 – PUBLIC HEARING ON ORDINANCE REVISIONS

NOTE: Mr. Lentz said that the SB did accept our suggested increased fine amounts

A. Public Hearing: Introduction of new ordinance: Chapter 11 – *Marijuana Establishments.* Purpose of this Article is to provide for and regulate the issuance of Local Licenses for Marijuana Establishments as defined in Chapter 11 and by the State of Maine under the Marijuana Legalization Act, 28-B M.R.S.A. Chapter 1, as may be amended.

B. Public Hearing: Amendment to existing Ordinance: Chapter 33 – *Planning and Development*, §33-190: Performance standards for adult use marijuana establishments.

Mr. Lentz explained the public hearing process.

7:44 PM Public Hearing opened.

Mr. Lentz summarized the history of the development of this ordinance; that a year ago they started writing this ordinance based on the non-binding question asking residents if they wanted adult use marijuana, which they supported in that non-binding question. It is

opt-in and requires an ordinance be passed for adult use marijuana to be legal in the Town of Eliot, thanking the Cannabis Committee for their work with the PB in writing this ordinance. He added that they started by looking at what went wrong in other states and then looked at local municipalities around us; that we chose South Portland as a template and fitted it to Eliot, also thanking Ms. Horner who did all the editing for the PB in this document. Describing the three documents, he said that one is the Planning and Development, which is what the PB has authority over; that the second is the Table of Land Uses in the Eliot Code; that the third section is Chapter 11, Marijuana Establishments, that have a lot of definitions and is, more or less, what will happen in the front office to get an application, fees to be paid, permitting – more process-related; that the amount for fees and fines is still being massaged by the folks up front.

§33-190 was addressed first.

Mr. Lentz said that this has the performance standards that explains in the Code all of those standards that need to be maintained for a retail marijuana establishment. He added that the next step is to give this to the Town Manager for the SB and they will decide if it will go on the ballot.

Mr. Fordyce asked if this would bring more tax revenue to the Town.

Ms. Braun said that she would think some revenue in fees and fines, and so forth; that they do have to adhere to the State IRS taxes, so there should be some coming in.

Mr. Fordyce said, in regard to the fines, that it would be like a bar serving underage drinking.

Ms. Braun said exactly.

Ms. Bennett said that we did try to treat it just like alcohol but, in fact, we put heavier fines for violations than alcohol establishments.

Mr. Lentz said that the process is similar to someone who comes in to get their liquor license renewed that is approved or disapproved by the SB; that, with the constraints we put in, we looked at adult entertainment that has already been in the Code for years and it this is similar.

Ms. (Jessica) O'Donoghue, Wildwood Lane, asked what kind of follow-up would there be for people who don't adhere, who's going to do the policing.

Mr. Lentz said that he doesn't think it's any different than the liquor establishments; that if there's a noted violation, the Fire Chief has the ability to go in and check on fire codes, the CEO has that same ability, as does the Police Chief.

Ms. O'Donoghue asked whether they will because there are people in Town, now, that are illegal and nothing has happened.

Mr. Lentz asked if it has been reported.

Ms. O'Donoghue said yes; that she just wanted to know if there is anything in the documents that she missed.

Mr. Lentz said no; that the PB has no jurisdiction on that.

Ms. O'Donoghue asked what was happening with the State as far as being a Maine resident.

Attorney Rines said that there is a requirement that any medical cannabis business must be – the licensed entity must be 100% Maine; officers, managers, directors at least 51% Mainers and any majority ownership of shares in any company. He added that once the State has clear bounds around the industry, and law enforcement agreed, they will start to enforce [illegal facilities]; that right now it is a gray area.

Mr. Lentz said, going a bit deeper, we define screening; current parking requirements already in the ordinance; signage and advertising; odor and emissions controls; disposal plan; noxious gases and fumes; sufficient measures to prevent smoke, debris, etc. from exiting facility; operational plan for proper disposal of all marijuana by-products; appropriate security measures; separation from sensitive uses; hours of operation; canopy size limitation; sale of edible products; no drive-through or home delivery; pesticides; inspections by CEO and Fire Chief.

Review of Chapter 11

Ms. Horner said that we worked on definitions, adding mature plant, immature plant, seedlings. She explained that Chapter 11 is about how to obtain a local marijuana license, defining marijuana establishments, saying what they couldn't do; that they need a State and a local license and explaining the application procedure; that the local license is issued through the Eliot SB after a public hearing; non-compliance revocation; fees found in the Master Fee Schedule; expiration/renewal of licenses; operating requirements; transfer of ownership/location; appeals procedure; fines for violations; that this will be effective once adopted by the Town.

Mr. Lentz said that the next step is that this will go to the Town Manager and SB and they will decide whether it will go on the ballot.

Mr. (John) Murphy, speaking as a member of the public, spoke to a seeming inconsistency with 'testing facilities' in that they are not required to have a local marijuana license but the title of the application includes 'testing facilities; so, if a 'testing facility is not required to have a local license, why are they required to make application.

Ms. Horner said that she believes that any 'marijuana establishment', whether it is a 'testing facility' or not, will have to fill out an application because it still has the land use portion included in the application.

Ms. Plocharczyk suggested adding the words "but is required to file an application" for clarification of 'testing facility' in 11-6.

8:12 PM Public Hearing closed.

Ms. Horner reviewed edits she made with the PB. On page 7, she wanted to strike "as set forth in subpart (c), below" in §11-8 of Chapter 11 because it is unrelated.

The PB agreed.

Ms. Horner said, moving to page 8, that she had been searching for Employee Licenses and she finally found it. She added that she's not against having fees for Employee Licenses but she doesn't know if it's legal; that the businesses probably won't like it but it's definitely a way for the Town to earn revenue. She clarified that she had struck it out because she couldn't find it; that if the PB decides to keep it, the language at the beginning of Chapter 11 needs to be updated to reflect the need for 'employee licenses'.

Attorney Rines asked about the timetable for this; that on the adult use side, he's not aware of a State licensing regime for employees; that there is a licensing fee under medical marijuana. He added that the onus is on the owner to make sure employees, directors, etc. check out with background checks.

After further discussion regarding the impact this could make administratively to the Town, the PB agreed to strike the wording regarding 'employee licenses'.

Addressing §11-14 on page 9, said that this was a bad reference; that once she put (B) in here we didn't need what is struck out.

Attorney Rines said that he was incorrect regarding adult use employee licensing after researching State rules.

Mr. Cieleszko said that he wanted to make sure 'testing facilities' was clarified.

The wording would say "…issuance, but is required to file an application." at the end of §11-6.

The PB agreed.

The PB also agreed to add the words "except a marijuana testing facility" between the words "…Marijuana Establishments" and "to operate…" in §11-7.

Mr. Cieleszko moved, second by Mr. Olsen, that the Planning Board take Chapter 11 Marijuana Establishments, Eliot Code §33-190, and the Table of Land Uses addition, as amended, and send them to the Select Board for action

VOTE
5-1 (Ms. Bennett abstained)
Motion approved

ITEM 11 – GROWTH PERMITS

Mr. Lentz said that we have questionnaires back from department directors but, if we looked at what Ms. Prescott had done for 2019, with 24 permits available, and look at how many were issued so far this year of that 24, we can pretty much make an assumption for the same number next year.

Mr. Cieleszko agreed.

Ms. Goodwin clarified that we are still waiting for surveys from the Public Works Department and Scholl Superintendent's Office.

Mr. Lentz said that we are waiting for a couple of folks, asking if we are leaning toward keeping the number the same.

Mr. Cieleszko said that he thinks that, if we don't send it out tonight, we've already made the choice because we are down to the wire regarding the deadline. He added that he likes the 24.

Ms. Goodwin said that, in 2018, we used 17 growth permits and, so far for 2019, we've issued 6.

Ms. Bennett said that we are beyond the starts; that she didn't see anything in what was submitted to us that indicated any need for anything additional for us to deviate from the current formula; that she thinks staying with 24 would be more than sufficient for the needs in the community right now. She did note, in particular, the Fire Chief had a lot of comments and, in particular, he noted that our ordinance incentivizes elderly housing because it falls outside of the calculations for growth permits; that he noted we've had a big bump in elderly housing and a big bump in his demand on fire services; so, that type of housing is having an impact on our Town services. She said that she would advocate we look at the Growth Ordinance, at some point, and remove that incentive for elderly housing and treat it as any other housing, putting it into the calculus for our growth permit process. She explained that her research found that, when this ordinance was implemented in the 1980's, there was some concern about whether people could age in place in the community and if there would be appropriate housing. She added that the question was whether we now have that appropriate housing but by setting it outside and incentivizing it, we're distorting our housing needs.

Mr. Lentz asked, before starting our discussion, if we could reach out to Ms. Cepetelli and ask her to join us. He added that we could put this on an upcoming agenda, for sure.

There was a brief discussion regarding issues around setting aside one type of housing over another and the various impacts to the Town.

The PB agreed, by consensus, to leave the growth permit number at 24. This decision will be forwarded to the SB.

ITEM 12 – CORRESPONDENCE

There was no correspondence.

ITEM 13 – SET AGENDA AND DATE FOR NEXT MEETING

Growth Permit Ordinance discussion
Open Space Ordinance discussion
Election of Officers
Comp Plan discussion?

The next regular Planning Board Meeting is scheduled for August 6, 2019 at 7PM.

ITEM 14 – ADJOURN

There was a motion and a second to adjourn the meeting at 8:33 PM.

Dennis Lentz, Chair
Date approved: 8/6/2019

Respectfully submitted,

Ellen Lemire, Recording Secretary