

ITEM 1 - ROLL CALL

Present: Dennis Lentz - Chairman, Ed Cieleuszko, Christine Bennett, and Melissa Horner.

Also Present: Doug Greene, Planner.

Absent: Casey Snyder – Alternate (excused).

Voting members: Dennis Lentz, Ed Cieleuszko (late arrival), Christine Bennett, and Melissa Horner.

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – 10-MINUTE PUBLIC INPUT SESSION

There was no public input.

ITEM 7 – REVIEW AND APPROVE MINUTES

NOTE: The PB agree to review minutes and the Notice of Decision out of order.

Ms. Bennett moved, second by Ms. Horner, to approve the minutes of February 5, 2019, as written.

VOTE

3-0

Motion approved

Ms. Bennett moved, second by Ms. Horner, to approve the minutes of February 19, 2019, as amended.

VOTE

3-0

Motion approved

NOTE: Mr. Cieleuszko arrived at this time.

REVIEW “NOTICE OF DECISION” LETTER(S)

PB18-4 66 Indian Rivers Drive (Map 100/Lot 3) Request (Site Plan Review) to replace existing structure, continue multi-family residential use.

The PB agreed to table this to follow the standard procedure that all fees be paid prior to issuance of the Notice of Decision.

ITEM 5 – OLD BUSINESS

A. Further review and refine marijuana ordinances, licensing, application.

Mr. Lentz asked how do we put these sections together, now; that we talked about having the public hearing on the 19th so he would expect that, even though it's stamped draft, that there will be a lot of people here that will want to talk about it. He added that there are a lot of pieces to this and wanted this to be the least confusing for the public to follow and understand.

Ms. Bennett suggested organizing it the same way that it would be inserted into the ordinance, starting with the definition, then performance standards (33-190), then dimensional standards (45-290), then Chapter 11 (licensing, fees, applications).

Ms. Horner said that she didn't think we should do Chapter 11; that it's not complete and we don't even know what's going on, yet. She added that she thought we should only talk about 33-190, the definition, and where it fits into the Table of Land Use. She said that there were still a lot of questions with Chapter 11; that as it is right now it's not even an updated document to reflect the Town of Eliot; that she thinks it's premature as even we, as a Board, haven't dug into it and thinks the PB needs to do more review and discussion first.

Mr. Lentz suggested doing that tonight.

The Planner agreed, for the purposes of keeping on the schedule; that we'll still be waiting on any changes that happen at the State level but, if we want to get it on the June ballot, then we'll have to keep forging ahead.

Mr. Lentz said that our next step is a public hearing, it is a draft and a working document, and we aren't approaching it as something complete; that if we can do the best job we can and try to clean it up, then he thinks we're okay.

The PB agreed. They started with §33-190.

Mr. Lentz said that he couldn't find anything in there about adherence to Fire Marshall fire codes and we did have a particular email from the Fire Chief that said he would approach it as any other commercial establishment, particularly with the national fire codes. He added that he doesn't know if we need to spell that out.

The Planner said that he didn't think so; that he thinks the Fire Chief would apply the same standards that he would to any commercial project.

Mr. Cieleuszko said that, if you put a reference in there that we have to go by the national codes, those codes aren't accepted by Maine – the current codes aren't accepted by Maine nor our Town. He added that we may be adding a whole new layer of what the Fire Chief actually wanted us to do, hold them to a standard that is not actually voted on here, yet.

Mr. Lentz said that he was okay with that explanation.

Ms. Horner said that, also, the very last section (m) says "*Other laws remain applicable.*", so they have to follow all "*operating, local and State licensing, and other requirements of the State and local law and regulation.*"

Mr. Lentz said that he's reading it and he's not sure we're talking about 'marijuana store' or 'marijuana establishment'; that we use both phrases.

Ms. Bennett commented that we should be consistent.

The Planner said that he thought we were using 'establishments' because that captured all of them.

Ms. Horner said that a 'store' is not an 'establishment'; that 'establishment' is the umbrella term for manufacturing, retail, cultivation; so, the 'stores' will have their own rules.

Ms. Bennett said that 'store' was a subset of 'marijuana establishment'.

Mr. Lentz said that, if you go down to a) Separation from sensitive uses. (1) No marijuana store", he would imagine that's a paren. around 'structure', asking if that is a retail store.

Ms. Horner said yes.

Ms. (Jessica) O'Donoghue, AURCC, said that the law is about adult use retail so, if you guys can keep 'retail store' or 'store' as something consistently all along, she thinks it would be a lot easier for people to understand.

Mr. Lentz asked if she meant as opposed to 'establishment' meaning the processing, cultivation...

Ms. O'Donoghue added medical, the whole thing falls under that, in her opinion.

Ms. Horner said that she's pretty sure that only the use of 'marijuana store' is throughout this; that it's either 'marijuana store' or 'marijuana establishment'; that she doesn't think she ever used the word 'retail'.

Mr. Lentz said, so, we don't want the word 'retail'.

Ms. Bennett said or do we.

Ms. Horner said that she would check into the State definitions because it's all based on the State definitions; in checking, she said that the State definition did not use the word 'retail'.

Mr. Lentz asked if that was a good sentence (33-190) – “No marijuana store structure...”.

Ms. Horner said that, even at the last meeting, she wasn't comfortable using the word 'structure' because a store is a store is a store, but she was overruled on that.

Mr. Lentz said that it looks clumsy as he reads it now.

The use of 'medical marijuana' will be struck throughout the document.

The Planner asked if 'store' and 'establishment' were not interchangeable.

Ms. Horner said no; that they are two totally different things; that 'establishments' are the umbrella to catch retail, manufacturing, cultivation, all of it.

The Planner said that where 'store' is used, then, that is specific to 'stores' not to...

Ms. Horner clarified that it is as stated in Chapter 11 definitions.

Mr. Lentz said that, from a PB standpoint, we're not interested in setting the parameters for cultivation, processing, and the like; that we only care about what they sell in the store; that we should be concerned about all of it.

Ms. Horner said that there are some things in here that have to do with 'marijuana establishments'; that the first thing is that all 'marijuana establishments' need site plan review; that the second page is pretty much all about 'marijuana establishments'; that the rest is basically about all the 'establishments'. She added that 'stores' really only have that one little part because it's about selling marijuana near a school (sensitive uses); that, if you think about it, if someone is growing marijuana, legally, inside a warehouse building, then they're not having people coming and going and purchasing marijuana; that they're just tending it like a crop; so, to her, that doesn't require another level of...that the only thing you could elevate it to is the sensitive use thing but she doesn't even know if that's legal.

Mr. Lentz said that, if we are in doubt, then put it in because it's going to go through legal review.

Ms. Horner said that, if we enter 'establishments' where 'store' is, then nothing is going to be able to open on Route 236. She asked if we took out the 'door-to-door' thing.

Mr. Lentz said yes; that we did structure to lot line.

The Planner asked if she was saying because of the 500-foot distances, that's going to preclude the cultivation and the processing.

Ms. Horner said that this was pulled directly from South Portland and South Portland siphoned out the marijuana stores with the sensitive uses. She added that she didn't know

what their reasoning was behind that but, to her, it makes sense from a logistical standpoint because it's like putting a greenhouse up; that manufacturing is another good one in that, to her, there's no reason why that business that's happening completely inside and has nothing to do with money changing hands and people purchasing it needs a sensitive use restriction. She added that the retail thing, for her, definitely needs a restrictive use under sensitive uses; that that is the only special thing that the 'store' is going through in this ordinance.

Ms. O'Donoghue said that, if somebody is growing in a building, then they will be selling it so there is going to be some buying going on.

Mr. Cieleuszko said retail and wholesale; that they are separate entities, from what he understands.

Ms. O'Donoghue agreed.

Mr. Lentz said that, under (3) Noxious gases and fumes. Marijuana product manufacturing facilities and marijuana testing facilities, we are starting to talk about part of the 'establishment', there.

Ms. Bennett said yes, and there are parts of this ordinance where we ought to get fine-grained on the particular type of establishment because of the nature of it.

Ms. Horner agreed, saying that the manufacturing, in particular, uses the CO2 usually; that you wouldn't need the CO2 gas lines at a retail store, which is why she thinks they have that in there.

Mr. Lentz asked if they thought that read okay or is it marijuana establishments inclusive of included manufacturing facilities, marijuana testing facilities.

Mr. Cieleuszko said that he knows it's in the definition for 'marijuana establishment' to cover the different categories but, if we had an opening paragraph that reiterated the catch-all – 'marijuana establishment' is – then itemize the listing where we started with "every 'marijuana establishment' has to follow all 'these' rules" and, then, the 'store' has to follow 'these' rules. He added to organize the chapter so people can look at it right off the bat; that 'this' is all marijuana establishments, then general rules for all marijuana establishments, then more specific rules for the cultivators and retail sellers. He said that it would then be clear to anybody pursuing any kind of business, there, what pertained to them; start at the general and go down to their own section; that he thought that would really help out the clarity of the whole document. He added that it would be like Chapter 1, section A, subsection – an outline form – from general to the most specific. The Planner said that the sensitive uses would go to the end, then.

Mr. Cieleuszko said that they would go to 'stores'.

Mr. Lentz said that that would work.

Ms. Horner asked if they were just asking her to move (a), (b), and (c) to the end.

Mr. Cieleuszko said yes, under their own subsection of 'marijuana establishment'.

Ms. Horner said that is what it's under already, under Performance Standards for Marijuana.

Mr. Cieleuszko said that we run from general rules that cover all, then we go into a detail section, then go back to general rules, and there's a lack of clarity.

Ms. Bennett said that that would also mean moving out D. (3) Noxious gases and fumes, which is just for manufacturing facilities.

Ms. Horner said that she completely disagreed; that what the PB is basically asking her to do is flip-flop the entire ordinance and take D. (3) out and it seems like a lot of work for the one guy that's going to open up the product manufacturing facility in Eliot. She added that for anyone who is familiar with the Town ordinances, i.e. the PB and Planner, we should know that D. (3) applies to that specific category of use and know that they need to follow D. (3). She said that, literally, the entire ordinance is about 'marijuana establishment', so everybody has to follow this whole thing and, then, the 'store' happens to have the sensitive use restriction and hours (of operation) restriction. She added that she completely understands what is being said but it seems like overkill.

Mr. Lentz suggested that it might need a heading, clarifying that it only belongs to 'marijuana store'.

Ms. Horner still disagreed; that it makes sense to her based on the way the ordinances are written in our code.

After further discussion, Mr. Cieleuszko said that his only thought on this is that it goes from generalization to more detailed analysis where Chapter 11, as we have it written, just goes willy-nilly back and forth; that he sees that as a problem.

Mr. Lentz suggested we get rid of all the strike-throughs and clean it up real good and, then, she can take a look at it, as she's doing it, to see if what we said makes any sense; that it's in her hands and she should structure it the best way she can. He asked that page numbers be put in, with line numbers and revision date.

Ms. Horner will update the draft ordinance, sending a copy to Ms. Bennett to make a comparison document that includes the additional way discussed to reorganize the document.

The Table of Land Uses entry for Marijuana Establishment is okay except to change 'yes' to 'SPR' in the C/I District column.

In Definitions, the wording was okay except to strike 'or marijuana social club'.

The Planner asked if it made sense to change 'non-profit medical marijuana dispensary' to 'medical marijuana establishment'.

Ms. Horner said that she thought we shouldn't be touching medical marijuana because, if we touch it, it has to go back to the Town.

The PB agreed.

Chapter 11 review

Ms. Horner reviewed, saying that all definitions are from the State. She said that 'Medical Marijuana Establishment' should be struck from this document, as well, which will also delete a number of definitions.

'Social club' definition will be kept, as it includes that they are prohibited in Eliot.

Discussing section 11.6 License Required, Ms. Horner said that this was where she would have difficulty sitting in front of the public unless, at the meeting, we might pre-empt it by saying that we don't know what's going on and we will update it.

Mr. Lentz suggested adding "standards have yet to be set by the State" next to the heading. This will apply to both (a) and (b) of 11.6.

Ms. Horner said that 11.7 License Classes would probably be To Be Determined TBD), as well; that 11.8 breaks down what the classes are. She added that she doesn't know if those descriptions are a Portland thing or State thing. She clarified that Class I licenses (manufacturing) do not require a public hearing but all other uses do require a public hearing.

Ms. Lemire said that she saw, for all licenses, the wording "all applications shall be reviewed and may be approved"; that all of the other ordinances that have site plan review say that it shall be reviewed and approved or denied or with a modified approval; that it is actually specified.

Ms. Horner asked if the PB wanted that change.

Mr. Cielezsko said that he wondered, if we treat this like a bar (alcohol), is it the PB that licenses this or is it the SB; that the 'classes' may be under the purview of the SB instead of the PB and, then, we use that in our land use deliberations; that this may not be under our authority.

Ms. Horner said that we talked about that last time, which caused us to table discussion until later. She suggested she could put a 'TBD' in there that says we're not sure who is going to have licensing authority for the purposes of review, that it's the PB, for now, and can be updated later.

Mr. Lentz said sure. He added that, if you look at the application, he doesn't think it would go to the SB; that they authorize the liquor license. He added that they did one just a couple weeks ago.

Mr. Cieleuszko said that he considers this class licensing as the same thing, or similar to, a liquor license and we still, as a PB, have to look at that business – the performance standards.

Ms. Horner said that we would do that if it was a bar, too.

Ms. Lemire said that the SB only approves the license, not anything else.

Mr. Cieleuszko said that this might be right up their alley.

Ms. Horner said that, while she was thinking of it, she was going to change the word 'planner' to planning department'; that she will keep 'planning board' where it is for now.

Ms. Bennett said that, the more she thinks about it, it would be the SB that would do this portion of the process and we would review the site to make sure it conforms to our land use ordinance portion. She suggested we plug in SB for the licensing procedure through the Clerk's office.

Ms. Horner will change 'planning board' to 'select board' and 'planner' should become 'town clerk'. She added that the licensing process was separate from the site plan review.

The PB agreed.

The PB discussed whether to keep two license classes or combine into one and what the reasoning might have been to have two different classes; also, whether all types of establishments needed licensing from the Town, itself, in addition to State licensing, regarding local oversight.

The PB agreed, **by consensus**, to have one license class for all marijuana establishment types.

11.8 (c) Responsibilities and review will change from 'Planner' to 'Town Clerk'.

11.8 (d) Medical marijuana will be struck.

11.9 (a) License Financials will reference Master Fee Schedule (planning to be separate from ordinances).

Ms. Horner said that, regarding **11.9 (b)**, she pulled this language from our ordinance; that she believes it was under the Special Amusement licensing. She added that those are the dollar values we have already assigned to a similar use.

Mr. Cieleuszko said that we should use it, again, because it's the same premise.

Ms. Horner said that **11.10** talks about applications and she will amend this to reflect the licensing but taking the classes out. Reference Master Fee Schedule instead of §14-778. She briefly reviewed 1. Through 9. of this section. She added that she didn't understand why we needed by-laws (3) of the corporation.

Mr. Lentz said that all of those nine items make up the application.

The Planner said that he hasn't held this to the Farmington application to see how they sync up but he did like Farmington's format. He added that there is a different application for licensing versus site plan review but was that necessary; that it seemed to him that the Farmington document was a far more concise application and didn't start to become redundant with our site plan review processes, which 'this' seemed to get into that.

Ms. Horner said that, to her, these are all site plan review applications.

Ms. Bennett asked even the Farmington document; that the Farmington document looks like a licensing application to her because it talks about if you're convicted, who is a property owner, etc.

Ms. Horner said that, on page 3, it talks about sewage disposal, water supply, tax maps and then, on page 5, it happens to have the licensing fee schedule; that maybe they are trying to put it into one.

Mr. Cieleuszko said that they are using one application that would go before both boards, SB and PB, and we each use what we need out of the one application.

Mr. Lentz read the paragraph in the middle of page 5 of the Farmington application – "Upon Planning Board approval, the application shall be forwarded to the Board of Selectmen for a Public Hearing for consideration of approval of a permit/license." He added that this answered some of their questions.

There was discussion of how best to format an application, the pros and cons of one application versus two separate applications, one site review and one licensing, and how the process would work for both land use approval and licensing approval.

Ms. Horner asked if it was the checklist that needed to be revised.

The PB agreed.

In **11-12** Denial, Suspension or Revocation of License, Ms. Horner said that she struck out the first sentence that starts with "In addition...".

The PB agreed that that was fine.

Ms. Horner said that the other change she made in 11-12 (b) was to change the reference from Chapter 27 to Chapter 45 to reflect our zoning.

11-14 Transfer of Ownership and Change of Location was discussed.

Mr. Cieleuszko said that there's a section on here that says 'employee licenses' and that, if every person (employee, officer, etc.) in the company is required to have a license, then you cover this; that, if you get a new officer, instead of the whole organization having to start from scratch, the new officer could come in to apply for a license and, if he didn't get it, then he couldn't do his duties. He added that the Master Fee Schedule would include initial employee license and that could meet a background check (Any change in ownership or change in officers of an owner shall require a new license.).

Ms. Horner said that she interpreted that, if you did have a new officer, that they would just have to come in and pay the new officer fee, not the whole licensing thing.

Mr. Cieleuszko asked if a new officer is not going to nullify the license and the company wouldn't have to start from scratch.

Ms. Horner said that that's how she read it.

The Planner agreed that that didn't shut the whole business license down.

Ms. Bennett suggested changing the language a little bit because it could be interpreted that they have to get a whole new license.

Ms. O'Donoghue asked if they were including Directors as well as Officers. She explained that incorporation in Maine has to have a minimum of 3 officers and 15 directors; so, somebody could get around it if you don't include directors by having who-knows-who as part of the corporation.

Ms. Horner said that she would work on some language for this.

The Planner asked if that was something that could be handled on an annual basis; that all officers, directors, etc. have to renew annually, which would give you an annual means to confirm who is involved.

Ms. O'Donoghue said that that is how the State does it.

Ms. Horner said that, in **11-15** Appeals, she struck (a) and (b) and added a new (a) to be in compliance with our ordinances.

Mr. Cieleuszko said that this says "Any appeals of decision under the provisions of this Article..." could mean licensing and the BOA does not take on SB decisions; that it goes directly to Superior Court and he thinks that's going to need to be worked.

Ms. Horner will correct for who appeals come before.

Ms. O'Donoghue said that she just looked up directors and officers for corporations and the minimum number of directors is one and they don't need to be listed in the Articles; that non-profits are different.

Ms. Horner will update Chapter 11 to reflect tonight's revisions.

Mr. Lentz asked if the Planner had sent out notices of public hearing for this, yet.

The Planner said no.

Mr. Lentz asked if we are late to do that.

The Planner said that it would have to be done tomorrow.

Mr. Cieleuszko said that he thought, from the last meeting, that we were going to immediately notice it and then work on it at this meeting.

Ms. Bennett said that that was her understanding, too; that we need 14 days.

Mr. Lentz said that, based on the submittal sheet for the SB, we don't have enough time to get it in for June; that he thinks it was February 28th but we will get it as far as we can.

Ms. O'Donoghue said that she talked with our local representative the other day about where the tax bill is that says municipalities get 25% back and it hasn't yet left the committee.

Mr. Cieleuszko said that he thinks we need to make sure we know what we're doing, here, on public hearing because, if we don't have enough time with this, we've either got to change the date of the meeting, or something.

Mr. Lentz said that we are right on the border.
There was further discussion regarding meeting timelines for getting this on the June ballot.

Ms. O'Donoghue said that she wouldn't be so worried about getting it on the June ballot, at this point, because she thinks the State is going to be late with all of their stuff and so much of their stuff depends on what the State comes up with.

Mr. Lentz said that there's no outside pressure but just a goal we agreed to. He added that he doesn't want to do the public hearing if we're not ready and not satisfied; that he doesn't want to put pressure on Ms. Horner to get things updated. He asked for the PB's recommendation on a public hearing.

Ms. Horner said that she is going to have her baby pretty soon; that she is the one who is pretty up to her eyeballs in this ordinance and can probably help and/or field questions at a public hearing; so, it's just something to remember when planning this date for the public hearing. She added that her due date is April 18th.

Mr. Ciesleszko said that we're not making the second meeting of this month, which is then April.

Ms. Bennett suggested moving our second meeting to the following week.

Mr. Lentz said that that was good thinking; that we could set the date for our public hearing for March 26th.

Ms. Lemire checked the calendar to make sure the date was clear.

There was discussion that, with the deadlines, this would probably go to the November ballot.

The PB agreed to move the meeting to March 26th and notice the public hearing tomorrow.

B. Update or revise ordinances: subdivisions, septic, master fee schedule, misc.

The Planner said that he thinks most of these we have touched on; that there were only a few.

§21-2. Designation, duties of building official.

The PB was okay with this.

§33-36 Planning and Development

The Planner said that this was just a language change.

Ms. Bennett said that she thought that our Comprehensive Plan is current.

Mr. Lentz said that he thinks it's current; that it's updated every ten years.

Ms. Bennett read the wording, "...adopted in January 1975 and amended **through 2009...**",

Ms. Lemire said that the 2009 Plan was the last one that was approved.

Ms. Bennett said that it would be clearer if it were to say 'amended in 2009', not amended through 2009.

The PB agreed to the language change.

§33-57. Purpose.

Ms. Horner asked where the six things came from.

The Planner said that Ms. Prescott put this together and he did not go back to verify what had been done or how she had gone about it so he couldn't speak to that; that he could go back through her notes.

Ms. Horner said that some Maine State law was struck out and it seems a little fluffy, asking if the purpose didn't require State law to be referenced.

The Planner said that it was Planning and Development; that these are the guidelines for the Town and these are basic considerations that guide the process; that they are being explicit rather than referencing some nebulous State law.

Mr. Cieleszko said that we have already gone over page 3.

Ms. Horner asked if the marijuana ordinance should be added to **§33-60** with all those things that have been added, (12) through (15); that this is "Reference to other ordinances". She added that this would have to be updated again when the marijuana ordinance was done.

§33-64. Site inspections.

Ms. Bennett asked, as she reads it, if this meant the PB would no longer do site inspections, just the Planner.

Mr. Cieleszko said that he thinks that's an added layer.

Ms. Bennett said that the Planner will do his or her own site inspection.

Mr. Cieleszko said yes, that it doesn't nullify the site inspection that are in our site plan review.

Ms. Bennett said that those are up to our discretion.

Mr. Cieleszko said right.

Ms. Bennett read some of the language, "In order that the Planner ~~planning board~~ may review the site..."

Ms. Horner said that she thought that was a weird change.

Mr. Lentz agreed.

After further discussion, the PB agreed that this change was not acceptable and leave the original language.

In §33-82. Appeals., Ms. Horner said that she doesn't know why (3) was struck.

Mr. Cieleuszko said that that wasn't right; that that would never fly because that's the last option of people trying to get something done.

The PB agreed to leave the original language.

In §33-101, Ms. Horner said that the new language is making it the Planner's responsibility to make sure the site plan review complies, so then why are we having site plan review meetings in front of the PB if the Planner's going to do it.

Ms. Bennett said that she thought that the intent, here, was that the Planner would be basically vetting the application.

Mr. Lentz added that it would be a more complete application to the PB.

Mr. Cieleuszko said that he thinks Ms. Prescott took 'sketch plan' out. He added that he thinks we had this argument and decided that the 'sketch plan' stays; that that also stays the same.

The PB agreed to go back to the original language.

§33-102. Review by appropriate agencies or officials.

The PB agreed that this was okay, except to change 'Planner' to 'planning department'.

§33-59. Expiration of site plan approval.

Mr. Cieleuszko asked if we needed a discussion on this.

The Planner said that they are broken apart because this is for site plan review for site plans, generally, covering a broader swath of projects, where Chapter 41 was specifically for subdivisions.

Mr. Cieleuszko said that it was two different types.

Ms. Bennett said that we are going to strive to get them consistent.

The Planner said that, really, the only effective difference here was that he was proposing...subdivisions, currently, don't have any expiration, which is crazy; that we could make it like this but he was proposing that they have the ability to file for a two-year extension and, after that, they would have to come back for a site plan review if they still hadn't started.

It was determined that this was agreed on at the previous meeting.

§33-126. Application for review.

The PB agreed that this was okay.

§33-128 and §41-142. Application and Technical Consultant Fees

Ms. Bennett said that we were striving to approach this in a manner similar to what other towns are doing and to also remove what seemed like an arbitrary amount assessed to the applicant and to have it associated with an actual discrete and knowable cost estimate for whatever we may be asked in terms of a technical consultant to give is better information when dealing with applications. She added that Ms. Prescott put it out on the list serve and did a real survey of this, made phone calls to neighboring towns about what they did; that it really did vary and we felt like this was a happy medium so that, if we put this forward, if we need to ask an applicant or require more technical expertise in reviewing an application, the financial burden is going to be borne by the applicant. She said, however, as we mentioned, the Planning Department would get an estimate of what that service would cost and then assess that amount to the applicant and the money would be held in escrow and there was the treatment of the escrow, as well.

Mr. Cieleuszko said that he doesn't remember conclusions coming out from this; that he thought we modified this. He added that there had been some spirited discussion at a prior meeting and we got it down to that we were going to charge the applicant for any additional services needed plus 10%; that that was the bottom line, and no draw-downs. He said that no work would proceed until they put the cash up so that the Town was never out anything and we kept 10% for any discrepancies in the proposal, any additional small funds that may come up in the estimates given to us by the experts.

The Planner said that Mr. Cieleuszko was saying that we would get rid of the 75% draw-down business and 25% business; that it's simply based on an estimate of the required technical consultant fee, plus 10%.

Mr. Cieleuszko said yes, and any balance would be given back at the end of the project.

Ms. Horner said that part of her memory of this conversation was that a technical consultant would only be used above and beyond our employees' purview and she thinks everybody agreed to that; that she wants to make sure that that gets put in there as she

feels that's very important for us or future PBs so that they aren't just willy-nilly saying they don't believe their own CEO, or something like that.

Ms. Lemire will research prior minutes for the pertinent discussions on this possible revision.

§33-132. Performance guarantees.

The Planner said that his additional language, there, is trying to ensure that we have as-built plans so that we have a record copy that corresponds to what's there.

Mr. Cieleuszko questioned "the Planner or Town Manager".

Ms. Horner questioned that, as well.

Mr. Cieleuszko said that he had reservation about the co-equal footing; that one doesn't agree with the other.

The Planner said that that's a good point and he wasn't sure. He added that, with this recent project at Great Brook, he has been consulting with Mr. Lee as to what we should look for in an escrow; that this is a goofy situation because the project is ongoing, it is decades old, and we have no guarantee; that we weren't on a clean slate and saying that 'this' is the cost of the build-out, this is what the guarantee bond needs to be.

Ms. Horner said that she didn't think he should let one current situation dictate the future outcome of the ordinances in Town; that either the Planning Department needs to own it, or not, as things will get murky and people will want to know what their job is.

The Planner said that he could agree with that.

Ms. Bennett said that she thought we should get a legal opinion about this, as far as where authority lies on this piece because we have the different forms of government – Select Board/Town Manager – and it may be that it needs to rest solely with the Town Manager and the Planner could be an advisor in some fashion, and he should, but she thinks it would be good to pass this by our lawyer just to make sure.

Ms. Horner said that changing this from the SB to the Planner is a pretty big jump of authority.

Mr. Lentz agreed.

Ms. Bennett said that even SB to Town Manager may not be something that conforms with our Charter and it might be good to get legal review.

Ms. Horner said that she would encourage the Planner or any future Town employee to not let current situations scare or dictate into making broad changes that have been

working for many years. She added that she agreed with Ms. Bennett that we should get a legal opinion, particularly this one, because that's a big change; that even on the next page, he's changing the CEO to Planner is a big leap, too, as those are two totally different entities, in her opinion.

An edit was made to **(2) Options 2.** to change from town road commissioner to Public Works Director.

The Planner said that his thinking behind putting in the planner or town manager is because they are in the office and dealing with these permits regularly and the developers are coming in; that they have continuity with the project, where the SB does not, and it was under this arrangement that the bond was let go; so who has their eye on that bond, who releases that, and at what point. He added that he doesn't know how that transpired. He said that that was the thinking behind it but he can certainly follow up.

Mr. Lentz said that it's probably Planner-initiated but it is certainly the authority of the Town Manager; that the Planner would be the trigger person because he or she is involved at that point.

The Planner agreed that they are the ones who will be most intimately involved in all of that discussion, discussion with the PW Director, and getting that figure squared away and then, at that point, the Town Manager or SB would make that determination.

Mr. Lentz said that he thought it would be the Town Manager who would put that on his report to the SB, which they normally go through when they have their meetings.

It was discussed that they saw a definite role for the Planner in this process, as the Planner/Planning Department will be familiar with the project from the start.

Ms. Bennett said that this part is critical; that if the PB approves a plan that's going to involve a road that's going to be accepted by the Town as a public road, then it's vital that it actually be built out and the project go according to what we've approved, and that includes the financial performance.

Mr. Cieleuszko asked if it wasn't the CEO's place to corral a project and keep it within the bounds of what's been approved by the PB.

The Planner said to a certain degree; that there's some Public Works involved, as well; that the CEO is really handling the homes within the project, not so much the roads and infrastructure, sewer, water, all of that. He added that those are the things that you're really bonding – the infrastructure, not the houses, which are more governed by the CEO.

Mr. Cieleuszko said that the bond guarantee, which has been the SB...he isn't sure that there should be a change to the way it is currently working, asking what is wrong with leaving it the way it is with the SB, or Town Manager could very well work with the SB; that it seems that that well is still good.

Ms. Bennett said that the Town Manager reports to the SB; that she thinks the Planners point is on the continuity, especially on a multi-year, and sometimes multi-decade, project and, in some instances, that's where Town Hall staff becomes critical and they become that institutional knowledge.

The Planner said that he would get a legal opinion.

§41-36. Filing, recording of plan.

Mr. Cieleuszko said that he had reservations last time but, with discussion, he thinks those reservations were answered last time.

Edit last word in second to last sentence from 'city' to 'town'.

This change is okay.

§41-191. Preliminary procedure.

Ms. Bennett asked if we didn't have a cluster or open space subdivision.

Ms. Lemire said yes, that it's been used once.

Ms. Bennett said that that should be added to the list in (b) as one of three categories, not two.

The PB agreed.

§41-141. Submission of application and required notices.

Th PB agreed to keep the word sketch.

§41-182. Plan revisions after approval.

Ms. Horner quoted the new language "Upon completion of the project and at the applicant's expense all work must be inspected and approved by the town or town's consultant..." and asked that we are now going to have the consultant we hired to go out and checked the stormwater run-off and charge the applicant for it.

The Planner said the Town staff typically does a post-construction inspection; that either they would do it or a consultant; that it would depend on the size of the project.

Ms. Horner said that it seemed an odd addition in 2019 after these ordinances have been around so long, asking if other towns do that – hire somebody else to go check somebody else's work for them to make sure it's okay.

The Planner said that that's kind of baked into this process; that if we require a consultant because of the scale of the project, then we're hiring a consultant outside to handle that.

Mr. Lentz asked if that was similar to what we did with the sewer pumps.

Ms. Horner said that we are modernizing the ordinance.

Ms. Bennett said yes, or allowing us to be prepared for more complex projects that may be coming down the road.

The Planner said that there are just some things out of the scope and capability.

Ms. Horner said that when she reads something like that she thinks about her husband's job, and she guesses that she doesn't know what the proper language should be, but it worries her that a future employee of the Town might abuse that for whatever reason. She added that she's probably overthinking this but she thinks about the lazy employee that asks a master electrician, for example, to go out to check something out; that they could use that as a way to get out of doing their own job without more strict language.

The Planner said that that could very well happen in almost any capacity having to sub out work, whatever it is. He added that, typically, it's not just up to the Public Works Department, for instance; that they're usually coordinating with the Planning Department regarding whether a bond can be released.

Mr. Cieleuszko said that he is having trouble with this.

Ms. Horner said that she understands with what is happening with the language, here, but she just doesn't think it's strict enough to say that it is above and beyond the capability of the Town employee, the job standard of what we expect of the people we are paying to work for the Town. She reiterated that she would hate for someone to abuse that down the road; that that would give her leverage to do that and she doesn't want her CEO to sub out his work, for example, if he doesn't have to and, to her, this makes it seem like they could.

Mr. Cieleuszko said that this section is 'Plan revisions after approval', asking why are we doing this specialized sentence for just this. He quoted, "The planning board may review and act upon such changes by application or by subdivision review.", asking if that didn't already set the whole schedule; that if you're going to go through subdivision review, then you don't need all this stuff. He added that it doesn't fit.

Ms. Bennett said that she was following for awhile thinking that this needed to just be part of the plan approval process, following it up so that we are assured that what is permitted is actually what got built.

Mr. Cieleuszko said right, which as already been modified earlier in the ordinance.

Mr. Lentz said that, in an ordinary application we approve, we even testify on the back that the CEO is allowed to go out and inspect the completed work.

Mr. Cieleuszko asked why a modification wouldn't be the same.

Mr. Lentz said that he was agreeing with Mr. Cieleuszko; that it's part of the standard conditions of approval.

Ms. Bennett said that he was saying that the process of getting permitted for their revision, or modification, would already have this within it.

Mr. Lentz said yes; that the CEO has the authority to go out and inspect.

Ms. Bennett said that the authority in there and (versus?) the compulsion to do it; that the CEO could say he doesn't feel like going out and checking that he's sure; that if they are allowed to go out and inspect, that's one thing but, if they are expected to go out and, upon that inspection, follow up in that they must get an as-built to us.

Mr. Lentz asked how that was going to change what you just said; that he doesn't see a change in that sentence.

The Planner said that he supposed that this could be captured if they have to come back to get the project reviewed; that it could be that he is letting this one particular project drive his thinking, here, but he's seen the fact that the institutional knowledge of this project is lost and changes were made that weren't documented; that it's been like pulling teeth to try and get the information from them. He added that he was trying to be explicit so that anybody reading through this could reference it and know they need to get that.

Mr. Cieleuszko said that they made changes without PB input.

The Planner said that that was correct.

Mr. Cieleuszko said that that nullifies this section, anyhow, because this is all contingent on the PB seeing the changes; that he thinks this is not right. He added that plan revisions after approval are stand-alone without the addition.

Ms. Bennett said that the PB action is done here but people can get into the field and, when they start to build, encounter a problem, and come in to talk with the CEO, then there could be some minor modifications to these things – hitting ledged unexpectedly – and what this is saying is that we need, in the end when you want to get your occupancy permit, someone from the Town is going to go out to make sure that it actually conforms to standards and you're going to send us a plan.

Mr. Cieleuszko said that that's wonderful but it shouldn't be under 'Plan revisions after approval; that you're making someone who comes in for a revision to an approved document under way more stress that someone coming in with an original subdivision

review. He clarified that, whichever way is picked – by application or by subdivision review – we should go under those rules; that there's no reason for this sentence to be here.

Ms. Bennett said that she thinks the reason this sentence has been inserted is that, throughout the years, we have been finding is that the final as-built plan is not coming back to Town Hall; that the Town has no record of how these things are being built but is it being built to standards.

The Planner said that if everything goes according to plan and as it's written, it will be covered but there are cases where it doesn't; that things fall through the cracks so he is just trying to make things have some redundancy or more explicit language.

Mr. Cieleuszko said that nowhere does it say who is going to say what's completion – the Town – but who in the Town; that it's the same problem of who is in charge.

Ms. Horner said that the way this reads right now it says that they have to turn in the final as-built plans in the first section; that she agrees that adding the sentence is overkill and that, maybe, it is one project influencing this and probably something that couldn't have been saved with an ordinance change, anyway, even if this was in force now.

Ms. Bennett said that, if it was, then what happened would be a clear violation of the ordinance and people would have standing to enforce or appeal. She added that, currently, we have nothing that says you have to come back and demonstrate what you built and that it complies with the code. She said that we have begun to add it as a condition of approval but it's not in the ordinance and, then, how does the public know that. She said that the only way they would know is if they saw the Notice of Decision, if they even knew about that.

Mr. Cieleuszko said that, then, this should be under Subdivision Review, not Plan revisions after approval; that it should be in the Performance Standards.

Ms. Horner asked if it should go in §41-179 Final Plan Specs or §41-181.

Mr. Cieleuszko said that he would like to get the attorney's opinion on who is in charge of all aspects of this so that we don't generalize and use the Town as the catch-all.

Mr. Lentz said that we should stop now; that we're getting tired. He added that we really have left is fee schedules and we'll knock that out next time.

The Planner said that he put those in there only to show the PB the different arrangement; that it doesn't have any bearing on whether it gets moved out of the ordinance, or not.

Ms. Bennett said that all of these need to be on the public hearing that we think is ready and needs to be listed in that public hearing notice.

The Planner agreed, saying that the notice is going out tomorrow.

Mr. Lentz said that he was still confused on how we organize the marijuana ordinance document for people to look at and it's going to have to be put online so that everybody has a chance to see that ahead of the public hearing meeting.

Ms. Horner said that it should go Table of Land Uses, Definitions, Article 11, and Section 33-190.

ITEM 6 – NEW BUSINESS

A. Review existing medical marijuana ordinance and procedures

Due to the lateness of the hour, this was not discussed.

ITEM 8 – CORRESPONDENCE

There was no correspondence.

ITEM 9 – UPDATES

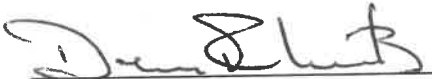
There were no updates.

ITEM 10 – SET AGENDA AND DATE FOR NEXT MEETING

The next regular Planning Board Meeting is scheduled for March 19, 2019 at 7PM.

ITEM 11 – ADJOURN

There was a motion and a second to adjourn the meeting at 10:05 PM.


Dennis Lentz, Chair
Date approved: 4/2/19

Respectfully submitted,

Ellen Lemire, Recording Secretary